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LEGAL POSITION OF CREDITORS WHO HAVE CIVIL EXECUTION RIGHTS IN THE IMPLEMENTATION OF THE HOMOLOGIZED PEACE DEED DECISION

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Abstract

In essence, every debt must be paid. For debts that are overdue, execution can be carried out upon the creditors' request through bankruptcy proceedings. The Bankruptcy Law (UU KPKPU) provides an opportunity for the submission of a settlement, which serves as a solution allowing the debtor to responsibly settle all debts. A legal issue in the execution of bankruptcy law arises in the context of the Coal Planning and Mining Corporation's legal efforts to claim its right to the debt owed by PT Asia Pacific Fiber (formerly PT Polysindo Eka Perkasa). This research employs three theories as analytical tools: the welfare state theory, the theory of justice, and bankruptcy law theory. The study is normative legal research with approaches including the Statute Approach, Case Approach, and Conceptual Approach. The data used are secondary data, comprising primary, secondary, and tertiary legal sources. The analysis technique used is a library study (law in books) analysis technique. The objectives of this research are to conclude: The position and legal recourse of creditors not included in the homologated settlement under the UU KPKPU framework, based on paritas creditorium, are the same. The bankruptcy legal regime and the parties involved in bankruptcy proceedings have operated in accordance with legal principles, which need to be evaluated for the benefit of the parties involved in bankruptcy law, and the principle of lex specialist derogate legi general does not apply or terminates after the homologated settlement and bankruptcy end, as bankruptcy conditions will conclude once a settlement agreement has been agreed upon and homologated.

Keywords: Creditor Law, Civil Execution Rights, Peace Deeds, Homologation.

INTRODUCTION

Company activities are generally carried out with the aim of obtaining maximum profit in accordance with the company's growth in the long term. For this reason, the presence of the company is expected to open up jobs and improve the welfare of the workforce, as well as provide goods and/or services needed by the community. In addition, the presence of the company is also expected to contribute to national development, either through tax payments or other social responsibilities.

However, in fact, the presence of the company is not always realized to obtain profits and meet expectations as planned. In fact, many experience losses that lead to liquidity difficulties, so that they are unable to continue their business and terminate employment. This happens, among other things, because in carrying out business activities, the management does not have the ability to make policies that obtain, manage, and use the economic resources they have quickly. In addition, it is also because the company does not operate in accordance with applicable provisions and does not implement business ethics properly (Bagir, 1995).

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.13744920

On the other hand, if the company management has the ability and carries out the management well, then the company in question will gain benefits and gain trust from other related parties, including customers and creditors. However, in companies that do not carry out their fiduciary duties so that they do not do their best for the company they lead, it can cause or result in the company in question being unhealthy. For example, for companies that make very large loans that exceed the company's capabilities abroad, of course the company is required to be able to repay its debts as agreed.

In order to support the efforts of these entrepreneurs and so that the national economy can recover, the government together with other high institutions are carrying out reforms in all areas of life, including in the legal field. Where one of the important aspects in the reform in the legal field is the enactment of Perpu (Government Regulation in Lieu of Law) Number 1 of 1998, on April 22, 1998 concerning amendments to the Bankruptcy Law. This Perpu was then re-established by Law Number 4 of 1998 concerning the Stipulation of Perpu Number 1 of 1998 concerning Amendments to the Bankruptcy Law. Finally, Law Number 4 of 1998 was amended by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The administrative process of submitting debts to the Administrator is sometimes used as a reason for debtors to prioritize and prioritize every effort to settle debt payment obligations to creditors through the Debt Payment Suspension mechanism at the Commercial Court. The administrative mechanism for recording debts as regulated in the Bankruptcy and Debt Payment Suspension Law, leads the debtor's debt payment settlement process to creditors into the administration of debt data collection and registration to all creditors, as if creditors who register and record their debts to the Administrator are creditors who deserve to be accepted/prioritized and become a reason for their debts to be settled/paid first. Even in practice, the administration of registration and data collection of creditors' receivables to the Administrator becomes a 'reason' for debtors to only accept creditors whose bills are recorded and verified by the Administrator and to reject creditors whose bills are not recorded/not verified by the Administrator.

The legal principle of paritas creditorium (equality of creditor status) is a principle that determines that creditors have the same rights to all debtor assets. If the debtor is unable to pay his debt, then the debtor's assets become the target of the creditor. The principle of paritas creditorium means that all the debtor's assets, whether in the form of movable or immovable goods or assets that are currently owned by the debtor and goods that will be owned by the debtor in the future are bound to the settlement of the debtor's obligations (Subhan, 2009).

To explore the problems that exist in practice as stated by the author, the author will first explain the case that occurred from the chronology of the case as follows, namely PT. Asia Pasific Fiber (formerly known as PT. Polysindo Eka Perkasa, based on the amendment to deed No. 50 dated September 10, 2009 before a notary in Jakarta, Sutjipto, S.H., Mkn.) in its position as a defendant, was sued for committing a breach of contract by Coal Planning & Mining Corporation as the plaintiff, namely a company domiciled in Carrera, Bogota, Columbia at the South Jakarta District Court with a case register at the South Jakarta District Court clerk's office No.439/Pdt.G/2000/PN.Jak.Sel, on October 9, 2000.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.13744920

The basis for the material of the plaintiff's lawsuit letter Coal Planning & Mining Corporation is as the holder and legal owner of 6 (six) promissory notes issued by the defendant PT. Asia Pasific Fiber each dated February 2, 1998, totaling USD. 2,400,000.00, (two million four hundred thousand US Dollars). With the issuance of the six promissory notes by the Defendant PT. Asia Pacific Fiber, the Defendant stated its ability and therefore was obliged to pay unconditionally to the Plaintiff Coal Planning & Mining Corporation on the due date, the value written on each Promissory Note. Therefore, the six Promissory Notes have all matured, but the Defendant PT. Asia Pacific Fiber did not pay the money amounting to USD. 2,400,000.00, (two million four hundred US dollars), even though the final bill had been made by the Plaintiff Coal Planning & Mining Corporation on September 25, 2000.

PT. Bahana Pembina Usaha Indonesia as the applicant filed a legal remedy by filing a cassation petition against the decision at the first instance at the Central Jakarta Commercial Court on December 24, 2004 with the cassation petition deed number 25/Kas/pailit/2004/PN.Niaga.JKT.PST. and accepted by the Supreme Court of the Republic of Indonesia with register No. 01 K/N/2005. Furthermore, the Panel of Supreme Court Justices at the Supreme Court of the Republic of Indonesia in case register No. 01 K/N/2005 on February 15, 2005 has examined, tried and decided: to grant the Applicant's request in part; to declare the respondent PT. Asia Pasific Fiber bankrupt with all its legal consequences; to order the Commercial Court at the Central Jakarta District Court to appoint a Supervisory Judge from the Court Judge at the Central Jakarta District Court and a Curator; to sentence the respondent in cassation to pay court costs at two levels of court. Against this cassation decision, PT. Asia Pasific Fiber has also filed an extraordinary legal remedy, namely Judicial Review No. 04 PK/N/2005, which was then decided by the Supreme Court Justices in case register No. 04 PK/N/2005 dated May 18, 2005 to reject the Judicial Review application from the applicant for judicial review of PT. Asia Pasific Fiber, so that PT. Asia Pasific Fiber is declared bankrupt with all its legal consequences.

Based on the Supreme Court's decision No. 01 K/N/2005 which declared PT. Asia Pasific Fiber bankrupt with all its legal consequences, the Central Jakarta Commercial Court has made a decision No. 43/PAILIT/2004/PN.NIAGA.JKT.PST dated March 3, 2005 concerning the appointment of the Supervisory Judge and Curator to supervise, manage and settle PT. Asia Pasific Fiber (in bankruptcy). Based on the decision of the Central Jakarta Commercial Court, the bankruptcy process of PT. Asia Pacific Fiber is required to carry out the process that must be passed through in the bankruptcy mechanism starting from the announcement, receipt of bills made by the curator, verification of bills, determination of the list of creditors and holding of creditor meetings in order to follow the steps and resolve various issues related to the bankruptcy experienced by the bankrupt debtor starting from the amount of debt that is still a problem to the determination of the list of permanent creditors to the amount of fixed debt from each classification of creditors, both separatist, preferred and concurrent creditors.

Several legal issues in the implementation and application of bankruptcy law apparently occurred in the context of the efforts of the Coal Planning & Mining Corporation Company in claiming its rights to debts that are appropriate and must be paid by PT. Asia Pasific Fiber. With

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.13744920

the end of bankruptcy, the technical matters of the bankruptcy process of course also end, such as the duties and responsibilities of the Curator and Supervisory Judge. Therefore, the legal status of PT. Asia Pasific Fiber is no longer in bankruptcy status, the legal position of PT. Asia Pasific Fiber returns to its original state, namely managing and being directly responsible to its creditors, including resolving matters relating to obligations to its creditors.

Based on the facts and events that occurred, the author tries to analyze and examine how is the legal position of creditors who are outside the homologated peace decision in Bankruptcy to collect the fulfillment of their rights to the settlement of their receivables? Guided by the principle of pari passu pro rata parte, which is adopted in the civil law system in Indonesia in article 1332 of the Civil Code which states that the object becomes a joint guarantee for all those who have debts to it; the income from the sale of the objects is divided according to their balance, namely according to the size of each receivable, unless there are legitimate reasons among the creditors for priority.

RESEARCH METHODS

In completing this research, a normative approach is used. The normative approaches used are the Statute Approach, Case Approach, and Conceptual Approach. The research specifications used are descriptive analytical, namely describing the research results with data that is as complete and detailed as possible. In this study, the research method used is the normative method, therefore the type of data used in this study is secondary data. In normative legal research, library materials are basic data that in (science) research are classified as secondary data (Soekanto, 2007). In conducting research, there are generally 3 (three) types of data collection tools, namely document studies or library materials, observations, and interviews. These three tools can be used individually or together (Soekanto, 2007). The analysis method used in drawing conclusions is the literature study data analysis method (law in books), namely According to M. Natsir, literature study is a data collection technique by examining books, notes, reports, and literature related to the problem to be solved (Natsir, 1988).

RESULT AND DISCUSSION

When a debtor is unable to fulfill their debt obligations, the position of the debt is linked to the debtor's bankruptcy estate. Creditors who have the right to claim receivables must be part of the bankruptcy process so that the curator can allocate the debtor's assets to pay off the debt. Debts that must be paid in the context of civil law are debts that arise as a result of default, i.e. a breach of a debt and credit agreement. If this debt meets the criteria of Article 2 of the KPKPU Law, the debtor can be declared bankrupt.

Bankruptcy occurs when a debtor is unable to pay their debts, and creditors can file a bankruptcy petition with the court. Bankruptcy law aims to ensure that all debts of the debtor are considered and avoid dishonest debtor practices. Therefore, bankruptcy law should be flexible and favor creditors who can prove their rights. However, there is an existential crisis regarding guarantees or laws governing debts outside of bankruptcy law, creating a legal vacuum (lex vacuum) in bankruptcy law. Even if a creditor is not part of the bankruptcy

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.13744920

process, the debtor's debt remains valid and must be recognized in bankruptcy law. If bankruptcy law does not recognize the existence of debts between bankrupt debtors and eligible creditors, then bankruptcy law in Indonesia has deviated from its purpose. Bankruptcy law not only applies to incapacitated debtors, but also to prevent "bad" debtors. Therefore, debts outside of bankruptcy still require recognition, so the bankruptcy estate must be used to pay off these debts. Article 2 paragraph (1) of the KPKPU Law states that a debtor who has two or more creditors and fails to pay overdue debts may be declared bankrupt through a court decision, either at his own request or at the request of creditors. Bankruptcy aims to protect creditors by ensuring that the bankrupt debtor repays its obligations.

There is no bankruptcy verdict without first filing a bankruptcy petition. This petition can be filed by creditors, the Attorney General's Office, Bank Indonesia, OJK, or the Minister of Finance. After the petition is filed and a bankruptcy verdict is issued, the debtor becomes a bankrupt debtor, and the debtor's assets are managed by a curator. Article 21 of the KPKPU Law states that bankruptcy covers all of the debtor's assets when the verdict is pronounced, and the debtor loses the right to manage their assets as stipulated in Article 24 paragraph (1) of the KPKPU Law.

After being declared bankrupt, debtors still have the opportunity to propose a peace plan with their creditors. Peace in the bankruptcy process is different from peace in ordinary procedural law, because it is carried out under the supervision of a supervisory judge and is part of the bankruptcy process that has been decided. Peace in bankruptcy, as stipulated in Article 265 of the KPKPU Law, gives the debtor the right to offer peace to creditors when filing a request for postponement of debt payment obligations or afterwards. According to Article 109 of the KPKPU Law, the curator, with the permission of the Supervisory Judge and after consulting with the temporary creditors committee, is authorized to make peace in order to settle or prevent cases from arising.

Meanwhile, Munir Fuady (2010) explains that peace in bankruptcy is basically similar to peace in the general sense, namely the existence of an "agreement" between the conflicting parties. In bankruptcy, this peace is based on the consensual principle between the parties involved. Bankruptcy settlement has different characteristics from PKPU settlement. Peace in bankruptcy focuses on debt settlement through the disposal of bankruptcy assets, while peace in PKPU emphasizes more on payment plans or debt restructuring. The following is the peace process between bankrupt debtors and creditors based on the KPKPU Law, such as:

1. Peace Procedures in the KPKPU Law
    a. Article 144: Bankrupt debtors have the right to offer peace to all creditors.
    b. Article 145: If the debtor proposes a peace plan, the plan must be provided in the court registry at least 8 days before the accounts receivable matching meeting. The plan shall be discussed and decided immediately after the accounts receivable matching is completed, unless otherwise provided by Article 147.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.13744920

c. Article 147: The discussion of the settlement may be postponed by the Supervisory Judge until the next meeting if there is a change in the committee of creditors or the settlement plan is not available on time.

d. Article 149: Creditors holding security rights may not vote in the reconciliation unless they have waived their right of precedence.

e. Article 150: The bankrupt debtor has the right to give explanations, defend, or amend the peace plan during the negotiations.

f. Article 151: A peace plan is deemed accepted if it is approved by a majority of the creditors present at the meeting, provided that the amount of debt represented is eligible.

2. Ratification and Rejection of the Peace Plan by the Commercial Court:

a. Article 156: If the peace plan is accepted, the Supervisory Judge shall set a hearing day to decide on the ratification of the peace plan.

b. Article 157: Creditors may submit reasons for rejection during the ratification hearing.

c. Article 158: The Supervisory Judge shall provide a written report and creditors may submit reasons for rejection or ratification.

d. Article 159: The court shall refuse the endorsement if the value of the debtor's assets far exceeds the agreed amount, the implementation of the peace is not guaranteed, or the peace is reached in a dishonest manner.

3. Cassation

a. Article 160: Creditors who agree with the settlement, or the bankrupt debtor, may file a cassation within 8 days after the court's decision.

b. Article 161: Cassation against court decisions follows the provisions in Articles 11, 12, and 13 of the KPKPU Law.

4. Whether or not the Peace is Enforceable:

a. Article 162: A ratified peace is valid for all concurrent creditors.

b. Article 163: If the peace is rejected, the bankrupt debtor may no longer offer peace.

c. Article 164: The decision to ratify the peace that has obtained permanent legal force can be executed against the debtor.

d. Article 165: Although there has been peace, creditors still have rights against insurers and other debtors.

e. Article 166: After the ratification of peace has obtained permanent legal force, the bankruptcy ends, and the curator must announce the peace.

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.13744920

5. Insolvency of Bankruptcy Estate if Peace Failure:
    a. Article 172: If the peace is annulled, the bankruptcy will be reopened, and the Supervisory Judge, Curator, and members of the creditors' committee will be reappointed.
    b. Article 173: The previous bankruptcy rules will be reinstated.
    c. Article 174: The debtor's actions between the ratification of the peace and the reopening of bankruptcy shall remain in force.
    d. Article 175: After the bankruptcy has been reopened, peace cannot be offered again.
    e. Article 176: The bankruptcy estate shall be distributed among the creditors in accordance with the applicable provisions.
    f. Article 177: The provisions of Article 176 shall also apply if the debtor is again declared bankrupt.
6. Rehabilitation:
    a. Article 215: Upon the termination of bankruptcy, the debtor or his heirs are entitled to apply for rehabilitation.
    b. Article 216: Rehabilitation shall only be granted if all recognized creditors have received satisfactory payment.
    c. Article 217: The application for rehabilitation shall be published in a daily newspaper.
    d. Article 218: Recognized creditors may file objections to the application for rehabilitation within 60 days.
    e. Article 219: The court shall decide to grant or reject the application for rehabilitation after a period of 60 days.
    f. Article 220: No legal remedy may be filed against the rehabilitation judgment.

Based on this process, it can be stated that the peace process in the KPKPU Law involves various stages starting from the submission of a plan by the debtor, discussion by creditors, to ratification or rejection by the court. If the settlement is ratified, this ends the bankruptcy, but if it fails, the bankruptcy estate is disposed of in accordance with applicable regulations. Rehabilitation can only be filed after the bankruptcy has ended and all creditors have received satisfactory payment.

Peace in bankruptcy has several differences with ordinary peace, such as binding all parties, more formal, requires homologation (ratification by the commercial court), there is a possibility of cassation against the rejection of homologation, does not apply to separatist creditors and prioritized creditors, aims for asset distribution, a large role for the curator, and the decision has executorial power.

In the event that the ratification of peace has obtained permanent legal force, bankruptcy ends (Article 166 paragraph 1 KPKPU Law). Peace also has an impact on the position of creditors

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.13744920

who are not included in the peace decision. The position of creditors in bankruptcy is regulated in Articles 1131 and 1132 of the Civil Code. Article 1131 states that all assets of the debtor, both movable and immovable, become collateral for all personal obligations of the debtor. Meanwhile, Article 1132 emphasizes that the debtor's assets become collateral for all creditors, and the proceeds of the sale are divided based on the ratio of their respective receivables, unless there are creditors who have the right to precedence.

As in the case of PT Asia Pacific Fiber (formerly PT Polysindo Eka Perkasa), the company was sued by Coal Planning & Mining Corporation (CPM) on the basis of default or failure to fulfill contractual obligations. The South Jakarta District Court ruled that PT Asia Pacific Fiber was guilty of default and had to pay a sum of money to CPM. However, during this default legal process, PT Asia Pacific Fiber was also involved in another legal dispute with PT Bahana Pembina Usaha Indonesia (Bahana) at the Commercial Court regarding a bankruptcy petition.

On October 28, 2004, Bahana filed a bankruptcy petition against PT Asia Pacific Fiber at the Central Jakarta Commercial Court, which was later decided by the court that the petition was rejected. However, after Bahana filed an appeal, the Supreme Court of the Republic of Indonesia overturned the decision of the Commercial Court and declared PT Asia Pacific Fiber bankrupt. After going through a long legal process, the Supreme Court rejected the judicial review filed by PT Asia Pacific Fiber, so the company's bankruptcy status remained in effect.

After the bankruptcy status was determined, PT Asia Pacific Fiber submitted a peace plan in a creditors' meeting, which was then approved by all creditors and homologated by the court. However, since CPM was not included in the list of creditors involved in this peace agreement, CPM experienced difficulties in executing the South Jakarta District Court's decision in favor of their lawsuit.

Although PT Asia Pacific Fiber has been declared no longer bankrupt after the peace agreement was homologated, this status does not exempt them from the obligation to implement the final legal verdict. Based on Article 166 paragraph (1) of the KPKPU Law, which states that bankruptcy ends after the peace agreement is homologated, PT Asia Pacific Fiber is still obliged to pay its debt to CPM in accordance with the legal verdict. CPM may request the court to issue an unmanning (warning) order to PT Asia Pacific Fiber to fulfill its legal obligations.

Juridically, the rights of CPM creditors are protected by law based on Article 166 paragraph (1) and Article 162 of the KPKPU Law. Article 162 of the KPKPU Law states that the ratified peace agreement applies to all non-privileged creditors, whether they file for bankruptcy or not. However, this provision does not expressly regulate the submission of creditors who are not involved in the bankruptcy to file for bankruptcy peace.

Regarding peace in bankruptcy, Article 170 paragraph (1) of the KPKPU Law stipulates that creditor can cancel the peace if the debtor fails to fulfill the contents of the agreement. In practice, creditors can attempt to cancel the peace through the court. For example, in Peace Decision No. 43/PAILIT/2004/PN.NIAGA.JKT.PST Jo: No. 01 K/N/2005, it is stated that after the implementation of the debtor's obligations to creditors based on the agreement, the debtor's debt is considered paid off. However, this provision creates a contradiction, where creditors

The Seybold Report
ISSN 1533-9211
DOI: 10.5281/zenodo.13744920

who are not involved in the bankruptcy have a position against the debtor, but cannot take legal action based on Article 170 paragraph (1) of the KPKPU Law. Therefore, there is a contradiction in the KPKPU Law regarding the position of creditors in bankruptcy and creditors not involved in bankruptcy. Ideally, the position of these two groups of creditors should be the same.

The case that arose between PT PEP and CPM raises several issues that when analyzed are related to public welfare, legal justice, and bankruptcy legal theory.

1. Public Welfare

In law, there is no difference in position between bankruptcy creditors and creditors outside of bankruptcy. However, in this case, CPM, which is an outside bankruptcy creditor, was unaware of PT PEP's bankruptcy condition due to CPM's position outside Indonesia. Based on Decision No. 368 PK/Pdt/2007, PT PEP continued to pursue legal action against CPM despite the bankruptcy process, which should not have been done because it violated Article 26 of the KPKPU Law. CPM was not notified of PT PEP's bankruptcy, so they were not registered as creditors in the bankruptcy and could not get payment for their debts. The state should have a centralized system that ensures creditors outside Indonesia are informed about the bankruptcy of companies in Indonesia to ensure they can obtain their rights.

2. Legal Justice

Based on Decision No. 368 PK/Pdt/2007, CPM was supposed to get its receivables paid by PT PEP, but PT PEP ignored it. This shows legal injustice, especially since PT PEP utilized legal loopholes to avoid its obligations to CPM. If the concept of legal justice, as explained by John Rawls, is applied properly, then cases like this will not happen, and creditors will get justice without sacrificing their rights.

3. Bankruptcy Law Theory

The legal theory of bankruptcy aims to ensure that creditors and debtors can exercise their rights and obligations without disrupting economic cycles. In this case, PT PEP should have included CPM in its bankruptcy peace deed to avoid further potential legal challenges. However, the reality is not in accordance with this theory. By including CPM in the deed of peace, there will be legal certainty regarding CPM's position as a creditor outside of bankruptcy.

Overall, then, this case highlights the need for reform of the insolvency system in Indonesia to ensure equality of creditors' rights, legal fairness, and fulfillment of the objectives of insolvency theory. The insolvency legal system must protect creditors in a fair manner and ensure that their rights are fulfilled according to legal principles such as pari passu pro rata parte.

The bankruptcy legal regime and the existing implementing parties as well as the bankruptcy procedural law have worked in accordance with existing legal principles, but it is necessary to evaluate these parties for the sake of fairness in the implementation of bankruptcy law. The parties in bankruptcy law in carrying out their duties can be concluded as follows, First, creditors, both CPM who have civil judgments and BPUI who are related to bankruptcy, need

The Seybold Report
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legal protection to exercise their rights. All creditors must be legally recognized and obtain a legal umbrella to enforce their rights, so that no creditor is harmed. Second, debtors, such as PT PEP, can avoid responsibility by utilizing bankruptcy decisions to delay the execution of other decisions. For example, PT PEP used the bankruptcy process as a "shield" to delay the execution of Decision No. 368 PK/Pdt/2007. This shows the need for consistent application of Article 162 KPKPU Law, so that there is no conflict with Article 170 KPKPU Law and the principle of pari passu pro rata parted can be applied.

Third, bankrupt debtors such as in the case of PT PEP in bankruptcy based on Decision Number 01 K/N/2005, the debtor did not register CPM as a creditor, which resulted in unfairness in debt payment. PT PEP should have recognized all its debts fairly and openly. Fourth, curators, according to the KPKPU Law, should be more proactive in digging up information on the debts of bankrupt debtors. However, curators often only wait for the matching of receivables and are less active. Curators must be more active in gathering information from the Ministry of Law and Human Rights and related agencies to ensure that bankruptcy is processed correctly. Finally, supervisory judges have performed their duties well, but the non-integrated judicial system is an obstacle in providing comprehensive information on case registration across judicial institutions.

The legal principle of lex specialist derogate legi generali, which means that special law overrides general law, no longer applies after a homologated peace verdict and bankruptcy has ended. This is stated in Article 166 paragraph (1) of the KPKPU Law. With the end of bankruptcy status, the debtor's position returns to its original state, which is no longer bound by the special provisions that apply during bankruptcy.

However, even though PT PEP has resolved bankruptcy through a deed of peace, it does not mean that PT PEP is completely out of the bonds of bankruptcy. Based on Article 170 of the KPKPU Law, there is a possibility that PT PEP could return to bankruptcy if it does not fulfill its obligations. The agreed peace deed (Peace Decision Number 43/PAILIT/2004/PN.NIAGA.JKT.PST. Jo: No. 01 K/N/2005) became the legal basis for PT PEP, but the principle of bankruptcy law does not only follow the principle of paritas creditorium (equality of creditors), but also the principle of pari passu pro rata parte (fair and proportional distribution). In practice, creditors outside of bankruptcy often do not have the opportunity to register their rights in the deed of peace due to the lack of arrangements that allow this. Debtors often use homologated peace deeds to prioritize payments to creditors bound by the deed, ignoring creditors outside the peace agreement.

Although Article 166 paragraph (1) of the KPKPU Law states that the lex specialis principle does not apply after reconciliation, in practice, these principles seem to still bind debtors. This is because debtors may fear the provisions of Article 170 of the KPKPU Law jo. Article 175 paragraph (1) of the KPKPU Law, which allows for a return to bankruptcy if obligations are not fulfilled. As a result, the principles of paritas creditorium and pari passu pro rata parte are often not properly applied. Therefore, this study recommends regulatory improvements so that creditors who have rights, even though they are not included in the homologated peace decision, are still legally protected.

The Seybold Report
ISSN 1533-9211
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CONCLUSION

The position and legal efforts of creditors who are not included in the homologated peace decision within the framework of the KPKPU Law are based on the principle of creditorium parity which places the position of creditors equally, regardless of whether they are in bankruptcy or not. Creditors who are not included in the homologated peace decision when PT PEP carries out the peace are one form of the still existing legal vacuum of peace procedures in bankruptcy in the form of the absence of legal regulations that can automatically make creditors who are in litigation outside of bankruptcy (Decision Number 368 PK/PDT/2007) to legally enter as creditors in the peace decision in bankruptcy. This occurs not only because of loopholes in bankruptcy law in Indonesia, but also because there is no integrated information system between judicial institutions that can automatically provide an alert to the registration of litigation between one court and another to implement the law properly (das sollen), so the existing legal instruments are not supported by a good integrated information system between judicial institutions. Civil execution in terms of peace can be carried out because the principle of creditorium parity is bound in Article 162 of the KPKPU Law, but it remains a problem because in the case of CPM who already has a civil decision that has permanent legal force is not a recognized party in bankruptcy and bankruptcy peace so that this then becomes a problem for the bankruptcy peace procedural law and is complicated by the absence of an integrated information system between judicial institutions. The bankruptcy peace system is indeed needed to support bankruptcy law in upholding the principle of commercial exit from financial distress so that if the bankruptcy law peace system is not updated, it will become a financial burden, namely legal dualism which results in the debtor (PT PEP) after the homologated peace still being required to fulfill the execution against the creditor (CPM) which has permanent legal force by paying directly and in cash which can potentially cause PT PEP to be unable to pay and be bankrupt considering the large amount and not financial capacity and on the other hand has the financial capacity to carry out the homologated peace decision.

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