SETTLEMENT OF LOSSES BY THE MANAGEMENT IN THE PROCESS OF DELAYING DEBT PAYMENT OBLIGATIONS FOR THE DEBTOR'S INABILITY TO PAY

THESIS

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LEGAL STUDY

PROGRAM FACULTY OF LAW

INDONESIAN ISLAMIC UNIVERSITY

YOGYAKARTA

2024

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Submitted to Fulfill the Requirements to Obtain Bachelor Degree (Strata-1) at the Faculty of Law Islamic University of Indonesia
Yogyakarta

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APPROVAL PAGE

بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ

THESIS

SETTLEMENT OF LOSSES BY THE MANAGEMENT IN THE PROCESS OF DELAYING DEBT PAYMENT OBLIGATIONS FOR THE DEBTOR'S INABILITY TO PAY

Has been Examined and Approved by the Final Project Supervisor for Submitted to the Examiner in the Thesis Awareness/Thesis Examination

On Date: ……

Yogyakarta, 5th November 2023 Thesis Advisor

Dr. Siti Anisah, S.H., M.Hum.

NIK. 014100111

ENDORSEMENT PAGE

PAGE OF APPROVAL

بسم الله الرحمن الرحيم

A BACHELOR DEGREE THESIS

SETTLEMENT OF LOSSES BY THE MANAGEMENT IN THE PROCESS OF DELAYING DEBT PAYMENT OBLIGATIONS FOR THE DEBTOR'S INABILITY TO PAY

This bachelor thesis has been proven and declared acceptable by the Thesis Language Advisor to be examined by the Board of Examiners at the Thesis Examination

Yogyakarta, 19 November 2023

Thesis Language Advisor,

Antun Muwuri Heratanti, S.S., M.A.

FINAL THESIS APPROVAL PAGE

بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ

SETTLEMENT OF LOSSES BY THE MANAGEMENT IN THE PROCESS OF DELAYING DEBT PAYMENT OBLIGATIONS FOR THE DEBTOR'S INABILITY TO PAY

Has been Defended Before the Examiners in the Thesis Examination

On Date: 12th February 2024

and Declared: **PASSED/NOT PASSED.**

Yogyakarta, ……

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Knowing:

Islamic University of Indonesia Faculty of Law

Dean,

(Prof. Dr. Budi Agus Riswandi, SH, MHum.)

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STATEMENT LETTER

STATEMENT LETTER
ORIGINALITY OF STUDENT FINAL PROJECT SCIENTIFIC PAPER
FACULTY OF LAW, ISLAMIC UNIVERSITY OF INDONESIA

بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ

The undersigned, I:
Name : Wahyu Adji Sutajaya
Student Number : 18410169

Is really a student of the Faculty of Law, Islamic University of Indonesia Yogyakarta who has taken Scientific Writing (Final Project) in the form of a Thesis with the title: **SETTLEMENT OF LOSSES BY THE MANAGEMENT IN THE PROCESS OF DELAYING DEBT PAYMENT OBLIGATIONS FOR THE DEBTOR'S INABILITY TO PAY**.

I will submit this Scientific Work to the Examiners Team in the Awareness Examination held by the Faculty of Law, Islamic University of Indonesia. In connection with this, I hereby declare:

1. That this scientific paper is truly my own work which in its preparation is subject to and complies with the rules, ethics and norms of writing a scientific paper in accordance with applicable regulations;
2. That I guarantee that the results of this scientific work are truly original (original), free from elements that can be categorized as "plagiarism";
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MOTTO

Man Jadda Wa Jadda

DEDICATION PAGE

Alhamdulillahi rabbil'alamin I say to Allah SWT for all the grace, favors and gifts so that I can complete this final project report. I dedicate this work to my parents who have been paying for my studies, as well as friends and friends who always provide support, enthusiasm and motivation to me. To all those who have supported and helped, may Allah SWT always provide health, safety and generosity of sustenance.

FOREWORD

Assalamu'alaikum Wr. Wb.

My praise and gratitude go to Allah SWT with His abundance of grace and grace, my thesis entitled, "**SETTLEMENT OF LOSSES BY THE MANAGEMENT IN THE PROCESS OF DELAYING DEBT PAYMENT OBLIGATIONS FOR THE DEBTOR'S INABILITY TO PAY**" is completed in accordance with the planned time. The completion of this thesis is inseparable from the help, support and prayers of many parties. Therefore, I would like to express my gratitude to:

1. Allah SWT for all the grace, guidance, and favors that never stop for His people.
2. Prophet Muhammad Saw, a figure who brought scientific civilization to be better.
3. Prof. Dr. Budi Agus Riswandi, S.H., M.Hum as the Dean of the Faculty of Law, Universitas Islam Indonesia.
4. Mrs. Dr. Siti Anisah, S.H., M.Hum., as the Thesis Advisor who continuously provides guidance, direction, and support to the author so that he can complete the final project properly.
5. All Lecturers of the Faculty of Law, Islamic University of Indonesia who have shared their knowledge with the author. Hopefully it will become a Jariyah charity that always flows until the end of life.
6. Mom and dad who always support me until today.
7. My grandfathers who taught me more about life.
8. Mundo, Angga, Zidane, who always beside me.
9. All my friends, Affan, Yuwan, Ghazy, Terexia, thanks for an amazing memories that we made.
10. All parties that the author cannot mention one by one. May Allah SWT reward a thousandfold the kindness that has been given to the author.

Wassalamu'alaikum Wr. Wb.

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ABSTRACT

This research talks about settlement of losses by the management in the process of delaying debt payment obligations for the debtor's inability to pay. This type of research is normative legal research. The approach in this study uses the statutory approach method. The results show, first, Article 1365 of the Civil Code regulates that if the management's actions harm the debtor's assets, the debtor can demand responsibility and compensation for the loss. The initial dispute resolution process can be carried out through internal PKPU mediation, involving supervisory judges, administrators and debtors. Second, in the process of resolving debts and receivables, not always all parties can accept the results of the settlement, and this can trigger legal action. Legal action aims to reach a decision that is considered fair by the parties involved. The administrators should be more careful in managing the debtor's assets during the PKPU process. Article 234 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations should be clarified regarding what responsibilities can be held by the management, how the accountability process is and how far the management can be held responsible for their actions that result in harm to the debtor's assets.

Keywords: Management, Responsibility, Suspension of Debt Payment Obligations

CHAPTER I

INTRODUCTION

A. Background of the Problem

Company activities are generally carried out with the aim of obtaining maximum profits in accordance with the company's growth in the long term. However, the presence of these companies did not all benefit and meet expectations as planned.[1]Many even experienced losses that led to liquidity difficulties, so they were unable to continue their business. This can happen, among other things, because in carrying out business activities the management of the company does not have the ability to make policies in obtaining, managing and using the economic resources they have quickly. In addition, it is also because the company does not operate in accordance with applicable regulations and does not apply business ethics properly.[2]

In its operations, the company does not always show development and increase in profit (profit), there are many risks from the business, both investment risk, financing risk and operating risk. Where all of these things can threaten the sustainability of the company's finances and the most fatal thing is that a company can go bankrupt (bankrupt) because it cannot pay its company's debt obligations. In other words, the debtor stops paying his debts. The state of stopping paying debts can occur because:[3]

[1]R. Anton Suyanto, Utilization of Postponement of Debt Payment Obligations as an Effort to Prevent Bankruptcy, Kencana Media Group, Jakarta, 2012, p. 1.

[2]Ibid.

[3]H. Man S. Sastrawidjaja, Bankruptcy Law and Postponement of Debt Payment Obligations, PT Alumni, Bandung, 2006, p. 2.

1. Unable to pay; And

2. Do not want to pay.

The two causes are of course the same, namely causing losses for the creditor concerned. On the other hand, the debtor will experience difficulties in continuing the next steps, especially in relation to financial problems. To overcome the problem of stopping paying, there are many ways that can be done. One of the ways to settle debts and accounts, can be through legal channels, including through alternative dispute resolution (ADR), Postponement of Debt Payment Obligations (PKPU), and Bankruptcy.[4]

Examined from a normative perspective, the purpose of bankruptcy and PKPU is essentially to avoid seizures of the debtor's assets, so that creditors holding material guarantee rights do not sell the debtor's property without regard to the interests of the debtor or other creditors and to avoid fraud committed by one of the creditors or debtors. Alone. Strictly speaking, from a normative perspective, the objectives of bankruptcy and PKPU are oriented towards the aspects and dimensions of the debtor's assets towards their creditors.[5]

Through Suspension of Debt Payment Obligations (PKPU) or Bankruptcy it is hoped that it will guarantee security and guarantee the interests of the parties concerned. This is because through these two methods agencies and personnel who carry out official duties from the government will be involved. the agency or institution in question is for example the Commercial Court, Supervisory Judge, Curator, and Management.[6]

[4]Lilik Mulyadi, "Bankruptcy Cases and Postponement of Debt Payment Obligations (PKPU); Theory and Practice", Bandung: PT Aliumni 2013, p. 71

[5]Umar Haris Sanjaya, "Suspension of Debt Payment Obligations in Bankruptcy Law", Yogyakarta: NFP Publishing 2014, page 28

[6]Ibid

A company that has been filed for bankruptcy at the Commercial Court has the risk of being sentenced to bankruptcy. With the bankruptcy of the company, it means that the company stops all its activities and thus can no longer enter into transactions with other parties, except for liquidation. Bankruptcy causes the debtor who is declared bankrupt to lose all civil rights to control and manage the assets that have been included in the bankruptcy estate. This "freezing" of civil rights is enforced by Article 24 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt.[7]

Companies that have been declared bankrupt will find it difficult to rebuild their business. The impact of the bankruptcy status can affect the trust of creditors to provide loans to the company. Bankruptcy status also causes the company to be included in the blacklist of companies that are rejected by banks in applying for funds or other financing.[8]

In connection with these alternative choices, the debtor should choose the best alternative. One option is to submit an application for Suspension of Debt Payment Obligations, hereinafter referred to as PKPU. PKPU must be filed by the debtor prior to a bankruptcy statement. If a bankruptcy statement has been pronounced by the judge against the debtor, the debtor can no longer apply for PKPU. Conversely, the debtor can apply for a PKPU. In such circumstances the Judge will give priority to examining the PKPU.[9]

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt itself does not clearly state the meaning of

[7]Rahayu Hartini, "Bankruptcy Law Revised Edition Based on Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, Malang: UPT Printing University of Muhamadiyah 2008, page 220.

[8]H. Man S. Sastrawidjaja, Op. cit, p. 205

[9]Bernadette Waluyo, "Bankruptcy Law and Postponement of Debt Payment Obligations", Bandung: Mandar Maju 1999, page 69

PKPU, in the law it only explains the submission of PKPU. Literally PKPU itself is a period given by law to debtors through a commercial judge's decision where during this period creditors and debtors are given the opportunity to deliberate on ways to pay their debts and provide a plan for paying all or part of their debts.[10]

Submitting a PKPU is one way for companies to avoid bankruptcy and bankruptcy status. PKPU can be submitted by debtors or creditors who have good faith, where the PKPU submission application must be submitted before the bankruptcy statement is pronounced. PKPU is an offer of a peace plan by the debtor which is an opportunity for the debtor to restructure his debts which can include paying all or part of his debt to creditors.[11]PKPU will have legal consequences for all of the debtor's assets, where during PKPU, the debtor cannot be forced to pay his debts, and all executions that have been started to obtain debt repayment must be suspended.

There is an assumption why in order to provide an opportunity to propose peace to creditors, one must go through a peace process for PKPU debtors, not just making peace between the debtor and the creditor directly. However, for this it is necessary to understand that if there are only 2 or 3 creditors, of course it will not cause difficulties, but if there are quite a number of creditors, it will certainly be difficult to realize it. If through PKPU, even though there are many creditors, to make peace as expected by debtors and creditors it will not be difficult to organize it, because it is carried out by institutions appointed by the

[10]Ibid

[11]Munir Fuady, "Bankruptcy Law 1998 in Theory and Practice", Jakarta: PT. Citra Aditya Bakti 1991, page 177.

Court, namely the Supervisory Judge and Management.[12]

In the PKPU process, an administrator is chosen who has the right to do everything necessary to ensure that the debtor's assets are not harmed because of the debtor's own actions. The scope of the management's main task is how to deliver so that between debtors and creditors an agreement can be reached on a peace plan.

The task of an administrator is no lighter than a curator, where an administrator is required to have the ability and expertise to assist and bring debtors to reach peace with their creditors. creditors can be paid.[13]

During the PKPU period, the management is the party that knows the condition of the debtor and his assets best compared to his creditors, because the debtor from time to time is in contact with the management and the management has data and information regarding the condition of the debtor's assets. Thus, the management is expected to carry out their duties optimally, so that the creditors obtain certainty in conducting discussions on the peace plan.[14]

The importance of the role of the management in PKPU raises a question about how the responsibility is in the event of negligence or mistakes from the administrator. In Article 234 paragraph (4) of Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, states that "Management is responsible for errors or omissions in carrying out management duties which cause losses to the debtor's assets".[15]

[12]Joni Emirzon, "Alternative Dispute Resolution Out of Court", Jakarta: PT Gramedia Pustaka Utama, 2001, page 38.

[13]Ibid

[14]Fauza, Muhammad Rizki, "The Roles and Responsibilities of Management in Supervising Debtors' Assets in Suspension of Debt Payment Obligations (PKPU) (Studies at PT. Mandala Airlines register case No. 01/PKPU/2011/PN.NIAGA.JKT.PST.)

[15]Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

In addition to the provisions of this article, the responsibilities of the management in the event of negligence or mistakes are no longer explained in Law no. 37 of 2004. This has become a problem, especially for parties who choose PKPU as the path for settling their debts. The question about how the management is responsible in the event of negligence or mistakes that can actually harm the debtor can make parties who previously believed in PKPU's performance to doubt or even avoid PKPU.[16]

Bearing in mind that Law No. 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt gives a "mandate" to a manager/administrator with professional abilities and expertise together with the debtor to manage and administer the debtor's assets, as well as supervise the debtor's activities. However, in practice, GP Aji Wijaya, in his writings published in online law, stated that, starting from the "resurrection" of the Bankruptcy Law until the first half of 2002, from experience and empirical observations of the management's "actions", the new management carried out several small tasks and functions ideally. That is, limited as "administrative officer" or "note taker".[17]

One of the cases of Postponement of Debt Payment Obligations was filed by PT Bank BNI Syariah as a creditor against Purdi E. Chandra as a debtor. The position of the case began when Purdi E. Chandra agreed to form a debt and receivables agreement with PT Bank Syariah and other concurrent creditors. PT Bank BNI Syariah as the separatist creditor estimates that Purdi E. Chandra as the debtor will not be able to continue paying his debts which are due and can

[16]Sutan Remy Sjahdeini, "Bankruptcy Law Understanding Law No.37 of 2004 Sutan Remy Sjahdeini, "Bankruptcy Law Understanding Law No.37 of 2004

[17]Ibid

be collected according to the terms of the request for Postponement of Debt Payment Obligations as intended in Article 222 paragraph (3) UUKPKPU. With these conditions fulfilled, PT Bank BNI Syariah submitted a request for Postponement of Debt Payment Obligations for Purdi E. Chandra to the Central Jakarta District Court.

B. Formulation of the problem

Based on the background of the problems above, the formulation of the problem in this study is as follows:

1. What is the settlement of losses by management in the process of postponing debt payment obligations due to the debtor's inability to pay?
2. What is the debtor's legal remedies to postpone debt payment obligations upon creditor application?

C. Research Purposes

Based on the formulation of the problem above, the research objectives are as follows:

1. Knowing the settlement of losses by management in the process of postponing debt payment obligations due to the debtor's inability to pay.
2. Knowing the debtor's legal remedies to postpone debt payment obligations upon creditor application.

D. Research Originality

The author conducts a search with several previous studies which have similarities and also differences to determine the authenticity of the research presented in the following table:

Writer	Comparison

Faiza Dianti[5]	Title: Postponement of Payment of Debt Payment Obligations Due to Covid-19 Which is Categorized as Force Majeure (Jurnal, 2022). Formulation of the problem: Can Covid-19 be categorizedas a Force Majure and can be used as an excuse by the debtor for the postponement of debt payment obligations in the Constitutional Court Decision Number 23/PUU-XIX/2021? What is the Judge's legal considerations with the applicable laws and regulations in resolving the Postponement of Obligations for Payment of Debt on the grounds of Covid-19 based on Constitutional Court Decision Number 23/PUU-XIX/2021? Difference: Faiza's research discusses PKPU due to a pandemic which is categorized as a force majeure. Meanwhile, the author discusses from the perspective of the debtor. Equation: Both studies discuss PKPU.

Ulil Afwa[6]	Title: Quo Vadis The Essence of PKPU Institutions Post-Decision of the Constitutional Court Number 23/PUU-XIX/2021 (Jurnal, 2022). Formulation of the problem: What are the juridical implications of the Constitutional Court Decision Number 23/PUU-XIX/2021 for the essence of the PKPU institution in Indonesia? Difference: Ulil's research discusses the juridical implications of the Constitutional Court Decision No. 23/PUU-XIX/2021 against PKPU. Meanwhile, the author discusses the relationship between PKPU and debtors. Equation: Both studies discuss PKPU.
Tri Budiyono[7]	Title: Postponement of Debt Payment Obligations (PKPU) during the Covid-19 Pandemic Period: Between Solutions and Pitfalls (Jurnal, 2021). Problem formulation: What is the solution to PKPU during the Covid-19 pandemic? Was PKPU during the Covid-19 pandemic a trap? Difference: Tri's research discusses solutions or pitfalls rather than implementing PKPU during a pandemic. Meanwhile, the author discusses the relationship between PKPU and the debtor. Equation: Both studies discuss PKPU.

Based on the description in the table above, it can be concluded that the research conducted by the author is original. This research has not been reviewed by other parties. Research originates from thoughts, so that its authenticity can be accounted for.

E. Literature Review

1. Responsibility

In the Law Dictionary, the definition of responsibility is a necessity for someone to properly carry out what has been obligated to him. According to the law, responsibility is a result of the consequences of a person's freedom for his actions related to ethics or morals in carrying out an action.[8] According to Abdulkadir Muhammad, the theory of responsibility in unlawful acts (tort liability) is divided into several theories, namely as follows:[9]

a. Liability due to unlawful acts committed intentionally (intertional tort liability), the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant has done will result in a loss.

b. Responsibility for unlawful acts committed due to negligence (negligence tort lilability) is based on the concept of fault relating to morals and law which has been mixed (interminglend).

c. Absolute responsibility due to unlawful acts without questioning mistakes (strict liability), is based on his actions either intentionally or unintentionally, meaning that even though it is not his fault he is still responsible for the losses incurred as a result of his actions.

2. Manager

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt does not clearly explain the meaning of Management in the PKPU process. However, when viewed from their roles and duties, the administrator is responsible for seeking peace between the debtor and his creditors regarding the payment of all or part of his debt.[10]

In essence, the task of the management is to manage the debtor's assets together with the debtor. The court appoints administrators who meet the requirements based on a suggestion from the debtor or on their own authority. 26 Law No. 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Debt Payment, hereinafter referred to as UUK, gives a "mandate" to both the curator and the management, not merely accepting billing claims, making billing lists, compiling lists of bankrupt debtors or debtors' wealth, or compiling billing lists. acknowledged, temporarily acknowledged and rejected, or sending invitations to creditors' meetings, but more than that.[11]

3. Errors and Omissions

In the Big Indonesian Dictionary, wrong has the meaning of something that is not right, while negligent has the meaning of being careless or not paying attention to obligations or work, so that negligence is a form of inadvertent action or not paying attention to obligations or work. In the law there is no clear definition or statement of error and negligence, but negligence has a synonym for negligence or is known as culpa/negligence in criminal law.[12]

[10]*Ibid*.
[11]*Ibid.*
[12]Royfa Tri Pamungkas, "Request for a Bankruptcy Statement to an Insurance Company whose business license has been revoked", Lex Renaissance, Vol. 6 No. 2, April 2021, p. 223.

Negligence, like intentionality, is a form of error. Negligence is a lower form than intentionality. But it can also be said that negligence is the opposite of intentional, because if it is intentional, a result arises from the will of the actor, then in negligence, the result is actually desired, even though the perpetrator can foresee it. Here also lies one of the difficulties of distinguishing between conditional intentionality (consciousness-perhaps, dolus eventualis) and gross forgetfulness (culpa lata).

The Criminal Law of Negligence (culpa) lies between intentional and accidental, however, culpa is seen as lighter than intentionally, therefore the culpa offense is a quasi-delict (quasideliet) so that a criminal reduction is made. The culpa delict contains two types, namely the delict of negligence which causes consequences and which does not have consequences, but what is punishable by crime is the act of imprudence itself, the difference between the two is very easy to understand, namely negligence which causes consequences with the occurrence of these consequences an offense is created. negligence, for those who do not need to cause consequences by the negligence itself is already threatened with criminal punishment.[13]

4. Postponement of Debt Payment Obligations (PKPU)

Provisions regarding Suspension of Obligations for Payment of Debt (PKPU) are regulated in Chapter three Article 222 to Article 294 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations

[13]Tuti Rastuti, Legal Aspects of Insurance Agreements, Yutisia Library, Yogyakarta, 2011, p. 29.

for Payment of Debt, hereinafter referred to as UUK. These provisions explain that the existence of PKPU is an offer to pay debts for debtors to creditors to either pay part or all of their debts to be able to resolve bankruptcy disputes. PKPU can also be interpreted as a relief given to debtors so they can delay payment of their debts. With the intention that the debtor can have the hope that in a relatively short time he will earn and earn income to be able to pay off his debts.[14]

In accordance with its nature, in terms of delaying debt payment obligations, the requirements are lighter compared to bankruptcy. This is based on legal consequences. Where in bankruptcy, as of the date the bankruptcy decision is stipulated by the commercial court, the debtor loses his right to transfer or manage his assets. As for the postponement of debt payment obligations, the debtor remains authorized to carry out acts of transfer and management of his assets, provided that these actions are carried out jointly with administrators appointed by the commercial court, and under the supervision of a supervisory judge.[15]

5. Management Responsibilities

Managers are individuals who are appointed by the Panel of Judges of the Commercial Court in the PKPU case to jointly manage the assets of the PKPU debtor under the supervision of the Supervisory Judge. According to Article 240 paragraph (1) UUK, with the appointment of one or more

[14]Munir Fuady, Bankruptcy law, Citra Aditya Bakti, Bandung, 2002, p. 71.
[15]*Ibid*.

administrators, the debtor's assets are immediately under the supervision of the administrator. From the date of the commencement of the temporary suspension of debt payment obligations (Temporary PKPU), the debtor is no longer authorized to carry out management actions or transfers involving his wealth without the approval of the management. In other words, the debtor may take management actions and transfer ownership of his wealth as long as he gets the approval of the management.[16]

In general it is explained that the duties of the management include verifying the amount of the debtor's debt, supervising the actions of the debtor's peace plan for his assets and discussing the peace plan offered by the debtor with his attorney. The management holds a vote on the approval or disapproval of the peace plan offered by the debtor to the creditor.

From these tasks, the responsibilities of the management are also determined in Article 234 paragraph (4) UUK. According to this provision, the management is responsible for mistakes or negligence in carrying out the duties of the management which causes damage to the debtor's assets. In other words, Article 234 paragraph (4) of the UUK is a legal basis for aggrieved parties, especially creditors, to sue the management if the administrator in carrying out their duties has caused the debtor's assets to be unaccountably reduced.[17]

[16]Andreas Albertus, Fiduciary Law, Selaras Publisher, Malang, 2010, p. 33.
[17]*Ibid*.

From the provisions of Article 234 paragraph (4) UUK, not only must the manager be responsible if the loss that occurs to a debtor's assets is done intentionally by the manager, but the manager must also be responsible even if the loss occurs due to negligence of the manager.[18]

F. Operational Definition

1. Postponement of debt payment obligations is a relief given to debtors in order to postpone payment of their debts.
2. Managers are individuals who are appointed by the Panel of Judges of the Commercial Court in the PKPU case to jointly manage the assets of the PKPU debtor under the supervision of the Supervisory Judge.

G. Research Methods

1. Research Typology

This type of research is normative legal research. Normative legal research is research that focuses on studying a research in the form of literature.[19]

2. Research Approach

The approach in this study uses the statutory approach method and conceptual approach. The statutory approach is an approach that is useful in discussing the problem of legal vacuum or norms. The conceptual approach

[18]Dangur, "Legal Protection of Policyholders Due to Bankruptcy of Bumi Asih Jaya Insurance", Khazanah Hukum, Vol. 4 No. 2, April 2022, p. 82.

[19]Bachtiar, Legal Research Methods, Unpam Press, Tangerang, 2019, p. 79.

is an approach that departs from the views and doctrines that develop in the science of law.[20]

3. Research Legal Materials

a. Primary legal material

The primary legal materials used in this study are as follows:

1) Code of Civil law; And
2) Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt.

b. Secondary legal material

Secondary legal materials used in this study consisted of book literature, legal journals, final assignments and electronic data.

4. Legal Material Collection Techniques

The technique for collecting legal materials is a technique for collecting legal materials based on literature and documentaries. The technique for collecting literature-based legal materials is to examine the discussion of a problem through materials sourced from readings.[21]

5. Material Analysis

Analysis of legal materials in this study uses qualitative analysis methods. This method outlines the research discussion according to the material that has been collected and researched.[22]

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[20]Muhaimin, Legal Research Methods, Ctk. First, Mataram University Press, Mataram, 2020, p. 29.

[21]I Made Pasek Diantha, Normative Legal Research Methodology in Justification of Legal Theory, Prenada Media Group, Jakarta, 2016, p. 156.

[22]Suteki, Legal Research Methodology: Philosophy, Theory, and Practice, Rajagrafindo Persada, Bandung, 2018, p. 130.

H. Structure of Writing

The research entitled, "**SETTLEMENT OF LOSSES BY THE MANAGEMENT IN THE PROCESS OF DELAYING DEBT PAYMENT OBLIGATIONS FOR THE DEBTOR'S INABILITY TO PAY**" consists of four chapters. Each chapter has objectives that are synchronized with each other in answering the problems of this research.

CHAPTER I consists of the background of the problem regarding the brief problem of loss settlement by management in the Debt Payment Obligation Delay process for the debtor's inability to pay; problem formulation; research objectives; research originality; literature review; operational definitions; and research methods.

CHAPTER II is an overview that fully discusses the literature review in the previous chapter. CHAPTER II assists in answering problems regarding the settlement of losses by management in the Debt Payment Obligation Delay process for the debtor's inability to pay as stated in CHAPTER III.

CHAPTER III discusses the answers to the problems regarding the settlement of losses by management in the Debt Payment Obligation Suspension process for the debtor's inability to pay according to this research. The answers to the problems in this chapter are related to the explanations in CHAPTER II. Then, it will be summarized briefly, concisely, and clearly in the form of conclusions in CHAPTER IV.

CHAPTER IV in the form of conclusions and suggestions from the discussion of the answers to the problems regarding the settlement of losses by

management in the Debt Payment Obligation Delay process for the debtor's inability to pay in this study. Conclusions as a form of summary of the answers to each problem formulation. Then, suggestions as a form of reference for readers who want to continue or improve this research in the future.

CHAPTER II

GENERAL OVERVIEW OF THE RESPONSIBILITIES THEORY, PKPU, DEBITORS, AND CREDITORS

A. Responsibilities Theory

In an action or legal relationship carried out by a party under the law, it will inevitably lead to legal responsibility, so that the existence of legal responsibility will result in rights and obligations for the party under the law. Therefore, legal responsibility is a principle that arises from the existence of legal relations that must be carried out.[23]

From a legal point of view, in everyday life the term legal interaction is recognized, which indicates the existence of legal actions and legal relationships between legal subjects. Legal interactions, actions, and relationships are conditions or circumstances that are regulated by law and/or have legal relevance. In this case there is an exchange of rights and obligations between two or more legal subjects, each of which is bound by rights and obligations. Laws are made to regulate legal interactions so that each legal subject complies with its obligations properly and obtains its rights fairly. In addition, the law also functions as a means of protection for legal subjects. In other words, the law is made so that justice is realized in legal interactions. When there are legal subjects who ignore the legal obligations that should be

[23] Nils Jansen, "*The Idea of Legal Responsibility*", *Oxford Journal of Legal Studies*, Vol. 34 No. 2, 2014, page. 224.

carried out or violate the rights, they will be subject to liability and be required to restore or replace the rights that have been violated. These responsibilities and demands for compensation or rights apply to any legal subject that violates the law, regardless of whether the legal subject is an individual, a legal entity, or the government.[24]

The notion of legal responsibility is closely related to the concept of rights and obligations. The concept of rights is a concept that emphasizes the understanding of rights in relation to the understanding of obligations. The general view is that one's rights are always linked to the obligations of others. Having legal responsibility for certain actions or assuming legal responsibility means being responsible for sanctions if you violate applicable regulations. According to Hans Kelsen's theory of legal responsibility, a person being legally responsible for certain actions or assuming legal responsibility means that he or she is liable for sanctions in the case of a violation of the law.[25]

Responsibility according to the Big Indonesian Dictionary (KBBI) is the obligation to bear everything if anything happens that can be held accountable, blamed, and prosecuted. Meanwhile, according to Titik Quarterly, responsibility must have a basis, which is a factor that results in the emergence of a legal right for someone to sue another person as well as a matter that results in an obligation.[26]

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[24] Satjipto Rahardjo, *Ilmu Hukum*, PT. Citra Aditya Bakti, Bandung, 2000, page. 55.

[25] Steven R. Ratner, "*Corporations and Human Rights: A Theory of Legal Responsibility*", *The Yale Law Journal*, Vol. 111 No. 3, 2001, page. 444.

[26] https://kbbi.kemendikbud.go.id/entri/Tanggung%20jawab, last accessed at 4th July 2023, on 21.37 pm.

There are two terms that refer to liability. First, liability is a board legal term, which implies, among other things, that liability refers to the most comprehensive meaning, encompassing almost every character of risk or responsibility, certain, contingent or possible. Liability is defined to refer to all characteristics of rights and obligations. In addition, liability is also: the condition of being subject to actual or potential liability; the condition of being responsible for actual or possible things such as losses, threats, crimes, costs, or expenses; the condition that creates a duty to carry out the law immediately or in the future.[27]

Second, responsibility means (the state of being accountable for an obligation, and includes judgment, skill, ability, and aptitude). Responsibility also means, the obligation to be responsible for the laws that are implemented, and to repair or otherwise compensate for any damage that has been caused). In addition, there is another opinion about the principle of responsibility in law, which is divided into three namely accountability, responsibility, liability. There are three kinds of legal responsibility, namely legal responsibility in the sense of accountability, responsibility, and liability. Responsibility in the sense of accountability is legal responsibility in relation to finance, for example accountants must be responsible for the results of bookkeeping, while

[27] Jonathan Bonnitcha, "*The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights*", *European Journal of International Law*, Vol. 28 No. 3, 2017, page. 901.

responsibility is responsibility in carrying the burden. Responsibility in the sense of liability is the obligation to bear the losses suffered.[28]

Responsibility in the sense of responsibility is also interpreted as an ethical attitude to carry out its duties, while responsibility in the sense of liability is a legal attitude to account for violations of its duties or violations of the rights of other parties.[29]

According to Hans Kelsen, the theory of responsibility based on pure legal theory books is divided into several parts. These parts are individual liability, which means that an individual is responsible for his own offense; collective liability, which means that an individual is responsible for an offense committed by others; fault-based liability, which means that an individual is responsible for an offense committed intentionally and foreseeably with the aim of causing harm; and absolute liability, which means that an individual is responsible for an offense, which means that an individual is responsible for an offense committed unintentionally and unforeseeably.[30]

According to Abdulkadir Muhammad, the theory of tort liability based on the Indonesian corporate law book is divided into several theories. The theory is responsibility due to unlawful acts committed intentionally (intertional tort liability), the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant did would result in loss. Second, liability for unlawful acts committed due to negligence (negligence tort

[28] Zainal Asikin dkk, *Pengantar Hukum Perusahaan*, Prenadamedia Group, Jakarta, 2016, page. 252.
[29] *Ibid*, hlm. 253.
[30] Hans Kelsen, *Teori Hukum Murni*, Nusa Media, Bandung, 2006, page. 140.

liability), is based on the concept of fault, which is related to morals and laws that have been intermingled (interminglend). Third, strict liability for unlawful acts without regard to fault is based on intentional or unintentional conduct.[31]

B. Suspension of Debt Payment Obligation

Etymologically bankruptcy comes from the word bankrupt. The term bankruptcy comes from the Dutch word failliet which has a double meaning as a noun and as an adjective. The term failliet itself comes from the French, namely faillite which means strike or payment jam. Meanwhile, in Indonesian, bankruptcy is defined as bankrupt. Bankruptcy is a condition where a debtor does not pay his debts which are due and can be collected. According to R. Subekti and R. Tjitrosudibio, bankruptcy is the state of a debtor when he has stopped paying his debts. A situation that requires the intervention of the Panel of Judges to guarantee the common interests of its creditors.[32]

Kartono defines bankruptcy as a general seizure and execution of all debtors' assets for the benefit of all creditors. Meanwhile, the definition of bankruptcy based on the provisions of Article 1 point 1 of Law Number 37 of 2004 concerning Bankruptcy and suspension of Debt Payment Obligations (PKPU) is a general seizure of all the assets of a Bankrupt Debtor whose management and/or settlement is carried out by the Curator under the supervision of the Supervisory Judge.[33]

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[31] Abdulkadir Muhammad, *Hukum Perusahaan Indonesia*, Citra Aditya Bakti, Jakarta, 2010, page. 503.

[32] Zaeny Asyhadie, *Hukum Bisnis Proses dan Pelaksanaannya di Indonesia*, PT Raja Grafindo Persada, Jakarta, 2005, page 225.

[33] R. Subekti, *Kamus Hukum*, Raja Grafindo Persada, Jakarta, 2003, page 225.

Based on the definition or understanding given by the scholars above, it can be concluded that bankruptcy is a condition where a debtor stops paying his debts to creditors. The debtor can be declared bankrupt by a commercial court on a request for a bankruptcy statement submitted by the debtor himself or the creditor.[34] Regarding the decision on the application for a bankruptcy statement, the commercial court may appoint a Curator to carry out the management and/or settlement of the bankrupt debtor's assets. The curator then distributes the bankrupt debtor's assets to the creditors according to their respective receivables. The term bankruptcy is different from the term suspension of debt payment obligations (PKPU). PKPU is a condition where a debtor cannot or predicts that he will not be able to continue paying his debts that are due and collectible.[35]

The definition of Bankruptcy according to Article 1 paragraph 1 of the 2004 Bankruptcy Act is as follows:[36]

”Bankruptcy is a general seizure of all the assets of a bankrupt debtor whose management and settlement is carried out by the curator under the supervision of a supervisory judge as regulated in this law”.

In order to obtain a more comprehensive picture of the meaning of bankruptcy, it is better for the researcher to present a number of quotations

[34] Victor Situmorang, *Pengantar Hukum Kepailitan di Indonesia*, Rineka Cipta, Jakarta, 2004, page 18.

[35] *Ibid.*

[36] Law No 37 of 2004 concerning Kepailitan dan PKPU.

regarding the meaning of bankruptcy given by experts, including the following:[37]

1. Memorie Van Toelichting says, "bankruptcy is a confiscation based on law of all the debtor's assets for the benefit of the debtor".
2. Fred B.G. Tumbuan said, "bankruptcy is a general seizure that includes all debtors' assets for the benefit of all creditors".
3. HM.N Purwosujipto said, "bankruptcy is everything related to a bankruptcy event, bankruptcy itself is a state of stopping paying its debts and in this bankruptcy there is a general seizure of all the assets of the debtor for the benefit of all the creditors concerned, which run under government oversight.".

Bankruptcy has principles in carrying out its role. These principles are as follows:

1. The principle of balance. The embodiment of the principle of balance is that, on the one hand, there are provisions that can prevent abuse of bankruptcy institutions and institutions by dishonest debtors, on the other hand, there are provisions that can prevent abuse of bankruptcy institutions and institutions by creditors who do not have good faith.
2. The principle of business continuity. The principle of business continuity is one of the statutory principles in the Bankruptcy and Suspension of Debt Payment Obligations (PKPU) Act, as a legal principle specified in a

[37] Siti Soemarti Hartono, *Pengantar Hukum Kepailitan dan Penundaan Pembayaran*, Seksi Hukum Dagang FH UGM, Yogyakarta, 2001, page 79.

statutory regulation, the principle of business continuity has gone through an ethical assessment process from the legislators. Thus, the principle of business continuity is actually the result of the embodiment of human thought which must be the essence of debt dispute resolution through bankruptcy and suspension of debt payment obligations. The Bankruptcy and Suspension of Obligations for Payment of Debt Law (PKPU), especially in its general explanation, does not mention in detail the meaning of the principle of business continuity. In a brief general explanation it is stated that the prospective debtor company will continue. Ethical assessment of the principle of business continuity at least has a weight of benefit for common life, especially in the scope of business activities. Business continuity is expected to have a positive impact on company owners, workers, suppliers, society and the country.

3. The principle of justice. In bankruptcy, the principle of justice implies that the provisions regarding bankruptcy can fulfill a sense of justice for interested parties.
4. The principle of integration. This law implies that the formal legal system and material law are an integral part of the national civil law system and civil procedural law.

It is very important to know what are the conditions that must be met first if a person or a legal entity intends to apply for a declaration of bankruptcy through the Commercial Court. It is necessary to know these conditions if the bankruptcy application does not meet the requirements, then the application will

not be granted by the Kelik Pramudya Commercial Court providing a definition of bankruptcy requirements, namely from the provisions of Article 2 of the Bankruptcy Law and Suspension of Debt Payment Obligations (PKPU), it can be seen that The juridical requirements for a company to be declared bankrupt are as follows:[38]

1. There is debt;
2. At least one of the debts is due;
3. At least one of the debts is collectible;
4. There is a debtor;
5. There are creditors;
6. More than one creditor;
7. A bankruptcy declaration is made by a special court called the "Commercial Court";
8. An application for a declaration of bankruptcy is filed by an authorized party;
9. The conditions put forward by the authorities are other juridical conditions specified in the Bankruptcy law.

According to Munir explained about the parties in bankruptcy, namely:[39]

1. The Bankruptcy Petitioner. One of the parties involved in a bankruptcy case is the bankruptcy applicant, namely the party who takes the initiative to submit a bankruptcy application to the court, which in cases is usually

[38] *Ibid*, page. 57.
[39] Bismar Nasution, *Hukum Kegiatan Ekonomi*, PT Raja Grafindo, Jakarta, 2009, page 22.

referred to as the plaintiff. According to Article 2 of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt (PKPU), one of the following parties can become an applicant in a bankruptcy case, namely the debtor himself; One or more of the creditors; The Prosecutor's Office when it comes to public interest; Bank Indonesia if the debtor is a bank; The Capital Market Supervisory Agency if the debtor is a securities company, stock exchange, clearing guarantee institution, depository and settlement institution; and the Minister of Finance if the debtor is an insurance company, reinsurance, pension fund, or BUMN operating in the field of public interest.

2. Bankrupt Debtor Party. The bankrupt debtor is the party requesting/applied for bankruptcy to the competent court. Those who can become bankrupt debtors are debtors who have 2 (two) or more creditors and do not pay at least 1 (one) debt that is due and collectible.
3. Commercial Judge. Bankruptcy cases are examined by panel judges (not allowed by a single judge), both at the first level and at the cassation level.
4. Supervisory Judge. In order to oversee the implementation of the settlement of bankruptcy assets, in a bankruptcy decision, the court must appoint a supervisory judge in addition to appointing the curator. In the past, supervisory judges were called "Commissioner Judges".
5. Curator. Since the date the bankruptcy declaration decision was made, the Bankrupt debtor loses his right to administer and manage the debtor's property which is included in the bankruptcy bill. This matter must be

handed over to the curator, it is the curator who does the management and settlement of the bankruptcy estate. Therefore, in the bankruptcy declaration decision it is also determined who will be the curator. In the past, only the Heritage Treasures Hall (BHP) was the curator. Now it's not just BHP curators who become curators, but other curators besides BHP, this is confirmed in Article 70 of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU). The position of curator will open up new jobs, but it should be noted that a curator must have specific knowledge and experience. It seems that accountants and lawyers could easily serve as curators.

6. Committee of Creditors. One of the parties in bankruptcy proceedings is what is called the Committee of Creditors. In principle, a creditor committee is a party that represents creditors, so that the creditor committee will certainly fight for all the legal interests of the creditors.
7. Administrator. Management is only known in the process of delaying payments, but not known in the bankruptcy process. Those who can become administrators are individuals who are domiciled in Indonesia, who have the special expertise needed in the context of managing the debtor's assets, and have been registered with the authorized department.

Bankruptcy statements have all the good consequences for the debtor, bankruptcy assets, and agreements made before and after bankruptcy. As a result of a bankruptcy statement for the debtor, the debtor loses his civil rights to manage assets. The freezing of this right is enforced from the time the

decision to declare bankruptcy is pronounced. This also applies to husbands and wives of bankrupt debtors who are married in a wealth union. The debtor's assets are assets that must be used to pay the debtor's debts to his creditors in accordance with the contents of the agreement. The curator who holds mortgage rights, lien rights and collateral rights over other assets can execute them. As a result of bankruptcy for agreements made before and after the agreement, if there is a new reciprocal agreement or will be implemented, the debtor must obtain approval from the curator.[40] However, if the reciprocal agreement has been implemented, the debtor asks the curator for certainty about the continuation of the agreement.[41]

Meanwhile, the legal consequences for creditors are basically, the position of creditors is the same (*paritas creditorum*) and because of this they have the same rights over the results of the bankruptcy execution in accordance with the size of their respective bills (*pari passu pro rata parte*). However, this principle can be excluded, namely for creditors who win collateral rights over assets and creditors whose rights take precedence based on the Bankruptcy Law and other laws and regulations. Therefore, creditors can be grouped as follows:[42]

1. Separatist Creditors. What is meant by a separatist creditor is a creditor holding a material guarantee right, who can act independently. This creditor is not affected by the decision of the debtor's bankruptcy statement, so that

[40] Zainal Asikin, *Hukum Kepailitan Dan Penundaan Pembayaran Di Indonesia*, Rajawali Pers, Jakarta, 2001, page 59.

[41] *Ibid.*

[42] Adnan Muhammad Akhyar, *Jurnal Akuntansi & Auditing Indonesia*, Raja Grafindo, Jakarta, 2003, page 137.

the execution rights of this separatist creditor can still be carried out as if there was no debtor bankruptcy. These separatist creditors can sell the collateral as if there had been no bankruptcy. The debtor takes the proceeds of this sale in the amount of his receivables, whereas if there is any left over, it is deposited in the curator's cash. In addition, if the proceeds from the sale are insufficient, then the separate creditor for unpaid bills can include the shortfall as a competing coordinator. As for those included in material collateral rights that give the right to sell by auction and obtain repayment in advance, namely mortgages (Chapter XX Book III of the Civil Code), Mortgage (Chapter XXI Book III of the Civil Code, Mortgage Rights (Article 1 paragraph (1) of Law No.4) 1996), fiduciary guarantees (Article 3 of Law No. 42 of 1999).

2. Preferred/preferred creditors. Special creditors are creditors who, because of their receivables, have a special position and are entitled to obtain payment in advance from the sale of bankruptcy assets. This creditor is under the holder of mortgage and mortgage rights. According to Article 1133 of the Civil Code, a special right is a right that is given by law to a debtor so that the level is solely based on the nature of the debt.
3. Concurrent creditors. Concurrent/competitive creditors, have the same position and are entitled to obtain the proceeds from the sale of the debtor's assets, both existing and future after being deducted by the obligation to pay receivables to creditors holding collateral rights and creditors with

privileges proportionally according to comparison of the amount of each creditor's receivables.

Provisions regarding the Suspension of Debt Payment Obligations (PKPU) are regulated in CHAPTER III Article 222 to Article 294 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations and Payment of Debt. These provisions explain that the existence of Suspension of Debt Payment Obligations (PKPU) is an offer of debt payment for debtors to creditors either paid in part or in whole to be able to resolve bankruptcy disputes. Therefore, the purpose of Suspension of Obligations for Payment of Debt (PKPU) is different from the purpose of bankruptcy.[43] The Bankruptcy and Suspension of Obligations for Payment of Debt (PKPU) Law does not clearly and explicitly state the meaning of Suspension of Obligations for Payment of Debt (PKPU), in the law it only explains the application for Suspension of Obligations for Payment of Debt (PKPU) which reads:[44]

1. A debtor who is unable or predicts that he will not be able to continue paying his debts which are due and payable, may request Suspension of Debt Payment Obligations, with the intention of submitting a settlement plan which includes an offer to pay part or all of the debt to creditors.
2. Creditors who estimate that the Debtor is unable to continue paying his debts which are due and collectible, may request that the Debtor be granted a Suspension of debt payment obligations, to allow the Debtor to submit a

[43] Jack P Friedman, *Dictionary of Business Terms*, Baron's Educational Series, New York, 2001, page 28.

[44] Law No 37 of 2004 concerning Kepailitan and PKPU.

settlement plan which includes an offer to pay part or all of the debt to his Creditors.

According to Kartini Mulyadi, the meaning of Suspension of Debt Payment Obligations (PKPU) is giving debtors the opportunity to restructure their debts, which includes paying all debts or part of their debts to concurrent creditors. If this can be done properly, then in the end the debtor can continue his business. Fred B.G. Tumbuan argue that the Suspension of Obligations for Payment of Debt (PKPU) is not a situation in which the debtor is unable to pay his debts or is insolvent. Suspension of Debt Payment Obligations (PKPU) is an Economic Juridis vehicle provided for debtors to resolve financial difficulties in order to continue their lives.[45]

The purpose of setting up Suspension of Debt Payment Obligations (PKPU) is to avoid bankruptcy which leads to the liquidation of assets. According to Fred B.G. Tumbuan the objective of the Suspension of Debt Payment Obligations (PKPU) especially in the case of companies is to improve the economic situation and the debtor's ability to make a profit, so that through reorganization of his business and/or restructuring of his debts he can continue his business. Suspension of Debt Payment Obligations (PKPU) is not only intended for the benefit of the debtor, but also for the benefit of creditors, especially concurrent creditors. In addition, the purpose of Suspension of Obligations for Payment of Debt (PKPU) is to prevent bankruptcy, provide opportunities for debtors to continue their business without any pressure to pay

[45] Sutan Remy Syahdeini, *Hukum Kepailitan*, Pustaka Utama Grafiti, Jakarta, 2001, page 72.

off their debts to creditors, and to improve their business. So, in essence, the final goal of the Suspension of Debt Payment Obligations (PKPU) is peace between debtors and creditors to agree together and set it in a peace plan.[46]

Based on the nature of the time when the Suspension of Obligation for Payment of Debt (PKPU) was imposed by the Court against the debtor, it is known that there are two types of Suspension of Obligation for Payment of Debt (PKPU), namely temporary suspension of obligation for payment of debt (Temporary PKPU) and Suspension of Permanent obligation for payment of debt (Permanent PKPU).[47]

Temporary Suspension of Obligations for Payment of Debt (Temporary PKPU) occurs if the PKPU registration application is received and determined before the trial at the Commercial Court begins. Temporary PKPU applications can be submitted by debtors or creditors, this is regulated in Article 225 of the Bankruptcy Law and PKPU.[48] If the application is made by the debtor, no later than 3 days the court must have granted the debtor's PKPU request and at that time the court has appointed a supervisory judge and management to take care of the debtor's assets. If the PKPU is requested by the creditor, then no later than 20 days the court must have granted the creditor's application since the registration of the PKPU application and must appoint a supervisory judge and administrator to manage the debtor's assets.[49]

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[46] *Ibid.*

[47] Sunami. *Tinjauan Kritis terhadap Undang-undang Kepailitan Menuju Hukum Kepailitan yang Melindungi Kepentingan Debitor dan Kreditor*, Pascasarjana USU, Medan, 2005, page 58.

[48] *Ibid.*

[49] *Ibid.*

Furthermore, the Commercial Court is required to present the debtor and creditor through the management for the temporary PKPU request which is granted within a maximum of 45 days since the provisional PKPU decision was pronounced. If the debtor is not present at the trial or is not present when the summons is made by the Commercial Court, the debtor can immediately go bankrupt at that time and the temporary PKPU will automatically end. The most important thing in a temporary PKPU after the provisional PKPU is granted is an immediate state of silence (stay or standstill). The silence in a temporary PKPU is a situation where the debtor makes an agreement with the creditor regarding an effective reconciliation plan. This is in accordance with Article 225 paragraph (2) and paragraph (3) of Law Number 37 of 2004 which states that the time limit for granting a temporary PKPU application by the Commercial Court is 3 days after the application is registered by the debtor and 20 days if it is submitted by the creditor.[50] Therefore, if the debtor has fulfilled the conditions set out in Article 222 to Article 22465 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Debt Payment, the court must automatically grant or grant a temporary PKPU before rendering a permanent PKPU decision. after inspection.[51]

The decision on Suspension of Obligations for Payment of Debt (PKPU) is temporarily effective from the date the decision on suspension of obligation

[50] Siti Soemarti Hartono, *Pengantar Hukum Kepailitan dan Penundaan Pembayaran*, Seksi Hukum Dagang Fak. Hukum, Yogyakarta, 2001, page 57.

[51] Umar Haris Sanjaya, *Penundaan Kewajiban Pembayaran Utang dalam Hukum Kepailitan Kewenangan kantor Pelayanan Pajak untuk Mengeksekusi Harta Debitor setelah Terjadinya Perdamaian dalam Kerangka PKPU*, Gama Media Printing, Yogyakarta, 2014, page 26.

for payment of debts is pronounced and lasts until the trial date planned by the court. The temporary Suspension of Debt Payemt (PKPU) ends when:[52]

1. The creditor does not agree to the permanent Suspension of Debt Payemt (PKPU);
2. When the Suspension of Debt Payemt (PKPU) extension deadline expired, it turned out that the debtor and creditor had not yet reached an agreement on the proposed peace plan. If connecting between Article 227 and Article 230 of the Bankruptcy Law and Suspension of Debt Payemt (PKPU), it can be concluded that as long as the trial is in progress in order to obtain a decision regarding the permanent Suspension of Debt Payemt (PKPU), the temporary Suspension of Debt Payemt (PKPU) continues to apply. Suspension of Debt Payemt (PKPU) was still born after the temporary

Suspension of Debt Payemt (PKPU) trial process. After the PKPU application is received within 45 days a trial must be held, it is hoped that it will also be accompanied by a peace plan process. This will still happen if the application for Suspension of Debt Payemt (PKPU) registration is received and has entered court with the approval of the creditor. This Suspension of Debt Payemt (PKPU) must be determined by the Commercial Court within 45 days of the temporary Suspension of Debt Payemt (PKPU) being pronounced, so that if it has not been determined, the debtor can be declared bankrupt.[53] Permanent Suspension of

[52] Ahmad Yani, *Seri Hukum Bisnis Kepailitan*, PT Raja Grafindo Persada, Jakarta, 2009, page 116.

[53] Syamsudin M. Sinaga, *Op.Cit*., page 17.

Debt Payemt (PKPU) is a continuation of temporary Suspension of Debt Payemt (PKPU), and will occur if the following conditions are met:[54]

1. Approved by more than ½ (half) of the concurrent creditors whose rights are acknowledged or temporarily acknowledged who are present and represent at least 2/3 (two thirds) of the total claims recognized or temporarily acknowledged from the concurrent creditors or their proxies present at the hearing .
2. Approved by more than ½ (half) the number of creditors whose receivables are secured by pledges, fiduciary guarantees, encumbrances, mortgages, or collateral rights over other materials who are present and represent at least 2/3 (two thirds) of the total creditors' claims or their attorneys present at the hearing.

The above conditions apply cumulatively, so both must be met. The time given in this permanent Suspension of Debt Payemt (PKPU) is 270 days from the date the temporary Suspension of Debt Payemt (PKPU) decision was pronounced. This time also counts as an extension of the Suspension period if granted by the Commercial Court. According to the elucidation of Article 228 paragraph (6). Law Number 37 of 2004, which has the right to determine whether the debtor will be given a Permanent Suspension of Debt Payemt (PKPU) or not is a concurrent creditor, while the court is only authorized to determine it based on the approval of the concurrent creditor.[55]

[54] *Ibid.*
[55] *Ibid.*

The time period given by law in this Permanent Suspension of Debt Payemt (PKPU) is the period for negotiating a peace plan between debtors and creditors. The settlement results achieved in these negotiations are expected to provide rescheduling of the debtor's debt, namely regarding the time period for debt repayment or repayment of debt, for example, debtor debt rescheduling is agreed upon for up to ten years. So, the Suspension of Debt Payemt (PKPU) period of no more than 270 days is the timeframe for achieving peace between the debtor and creditor over the peace plan proposed by the debtor. If an agreement is reached between the debtor and the concurrent creditor to provide a rescheduling period, for example for ten years, the repayment of the debtor's debts to the creditor is for ten years, not 270 days.[56]

Another legal remedy that can be taken against the decision on the application for a bankruptcy statement is an appeal to the Supreme Court. Thus, an appeal cannot be filed against the decision of the court at the first level, but an appeal can immediately be made.[57] Parties who can file legal remedies are, in principle, the same as parties who can apply for a declaration of bankruptcy, namely: Debtors, Creditors, including other creditors who are not parties to the trial of first instance but are dissatisfied with the decision to declare bankruptcy, the Attorney, Bank Indonesia, the Capital Market Supervisory Agency

[56] Munir Fuady, *Hukum Pailit dalam Teori dan Praktek*, PT Citra Aditya Bakti, Bandung, page 129.

[57] Suwardi, "*The Ideas of a Total Bankruptcy Moratory and Suspension of Debt Payment Obligations in the Emergency of the Covid-19 Pandemic*", *International Journal of Multicultural and Multireligious Understanding*, Vol. 9 No. 1, January 2022, page 288.

(bapepam) and the Minister of Finance who have made a decision on the application for a declaration of bankruptcy.[58]

Furthermore, the clerk of a court will register the request for cassation on the date the application was filed, and then the applicant will be given a written receipt signed by the clerk of a court on the same date as the date of receipt of the registration. A request for cassation submitted beyond the time period stipulated by law (more than eight days) can result in "cancellation of the cassation decision".[59]

Cassation efforts regarding Suspension of Debt Payemt (PKPU) and bankruptcy decisions have now also been regulated by the Constitutional Court (MK) through Decision Number 23/PUU-XIX/2021. In this decision, Article 235 paragraph (1) and Article 293 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payemt (PKPU) are contrary to the 1945 Constitution. The Constitutional Court's decision provides an opportunity for the debtor to submit an appeal against the Suspension of Debt Payemt (PKPU) application by conditions submitted by the creditor with a peace proposal from the debtor which was rejected by the creditor.[60]

C. Debitors-Creditors

[58] Isis Ikhwansyah, "*The Implementation of Insolvency Test on Debtors' Bankruptcy in Performing the Principle of Justice*", *Media Hukum*, Vol. 26 No. 2, December 2019, page 242.

[59] Munif Rochmawanto, "Upaya Hukum dalam Kepailitan", *Jurnal Independent*, Vol. 3 No. 2, 2020, page 41.

[60] M. Hadi Shubhan, "*Legal Restriction Of Bankruptcy Of State-Owned Enterprise (Seo) And Sustainability: The Case Of Indonesia*", *Humanities & Social Sciences Review*, Vol. 8 No. 1, February 2020, page 676.

In the Bankruptcy and Suspension of Debt Payemt (PKPU) Laws, there is a definition of a creditor, namely a person who has receivables due to agreements or laws that can be collected before a court. However, in the elucidation of Article 2 paragraph (1) of the Bankruptcy Law and Suspension of Debt Payemt (PKPU) it provides a definition, namely the types of creditors such as concurrent creditors, separatist creditors and preferential creditors. Specifically regarding separatist creditors and preferred creditors, they can apply for a declaration of bankruptcy without losing the collateral rights to the assets they have on the debtor's assets and their right to take precedence. The definition of a debtor is a person who has debt due to an agreement or law whose repayment can be billed before the court.[61]

Another definition of a creditor is a bank or other financial institution that has receivables due to an agreement or law. Then, the definition of a debtor is a person or business entity that has a debt to a bank or other financial institution because of an agreement or law. Bankrupt debtors are debtors who have been declared bankrupt by a Court Decision. The term creditor often creates multiple interpretations. The Civil Code recognizes three types of creditors, namely as follows:[62]

1. Concurrent creditors are regulated in Article 1132 of the Civil Code.

   Concurrent creditors are creditors with *pai passau* and *pro rata* rights, meaning that the creditors jointly obtain repayment (without any

[61] Law No 37 of 2004 concerning Kepailitan dan Penundaan Kewajiban Pembayaran Utang.
[62] Indonesian Civil Code.

precedence) which is calculated based on the amount of each receivable compared to their overall receivables, to all of the debtor's assets . Thus, concurrent creditors have the same position in paying off debts from the debtor's assets without taking precedence.

2. Preferred creditors are creditors who, by law, solely because of the nature of their receivables, receive payment in advance. A preferred creditor is a creditor who has special rights, namely a right that is given by law to a person who owes a debt so that the level is higher than that of other creditors, solely based on the nature of the credit. According to Article 1139 of the Civil Code, privileged receivables for certain objects include:[63]
    a. Case costs solely caused by a sentence to auction a movable or immovable object. This fee is paid from the revenue from the sale of the object before all other privileged receivables, even before pledges and mortgages.
    b. Rent from immovable objects, repair costs that are the responsibility of the lessee, along with everything related to the obligation to fulfill the rental agreement.
    c. Purchase assets of movable objects that have not been paid for.
    d. Costs that have been incurred to save an item.
    e. The cost of doing work on an item, accrued to a handyman.
    f. What an innkeeper has handed over as such to a guest.
    g. Freight fees and surcharges.

[63] *Ibid.*

h. What must be paid to masons, carpenters and other workers for the construction, addition and repair of immovable objects, provided that the receivables are not older than three years and the title to the parcels in question remains with the debtor.

i. Reimbursement and payment that must be borne by an employee who holds a public position, due to all negligence, mistakes, violations and crimes committed in his position on an item, which still has to be paid to a handyman.

As for Article 1149 of the Civil Code, it stipulates that the receivables that are privileged for all movable and immovable objects in general are those mentioned below, which receivables are paid from the income from the sale of these objects according to the following order:[64]

a. Case costs, which are solely caused by auctioning and settling an inheritance, these costs take precedence over mortgages and mortgages.

b. Funeral expenses, without prejudice to the judge's power to reduce them, if they are unreasonably high.

c. All costs of treatment and medication from the final illness.

d. Wages of workers during the past year and wages that have been paid in the current year, together with the amount of money for wage increases.

[64] Indonesian Civil Code.

e. Receivables due to delivery of food ingredients made to the debtor and his family, during the last six months.

f. Receivables from boarding school employers, for the most recent year.

g. Receivables from children who are not yet adults and people who can afford them to their guardians and guardians.

A separatist creditor is a creditor holding an *in rem* material guarantee right, which in the Civil Code is called a pawn and a mortgage.[65] An important right that a separatist creditor has is the right to have the authority to sell/execute the collateral object independently, without a court decision (parate execution). These rights are for the following:[66]

a. Pledge is regulated in Article 1150-Article 1160 of the Civil Code which applies to movable objects. In the pawn guarantee system, a pawn giver (debtor) is obliged to relinquish control of the object to be pledged to the pawned recipient (creditor).

b. Mortgage is applied to ships that are at least 20m3 in size and have been registered with the harbormaster and aircraft.

c. Mortgage rights are regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects related to Land, which are guarantees for certain land rights along with objects attached to the land.

[65] Dwi Tatak, "*Debtor's Legal Standing in The Possession of Fiduciary Collateral*", *Journal of International Economic Law*, Vol. 22 No. 1, 2019, page. 234.

[66] Muhammad Djumhana, *Hukum Perbankan di Indonesia,* PT Citra Aditya Bakti, Bandung, 2000, page 365.

d. Fiduciary rights are regulated in Law Number 42 of 1999 concerning Fiduciary Guarantees, which are collateralized by pledges, mortgages and mortgages.

Creditors are people who have receivables. In this case the person who has the receivables can be a person or legal entity, Bank, Financing Institution, Pawnshop or Other Guarantee Agency.[67] The rights and obligations of the creditor are to provide a loan to a debtor in the form of money or maybe capital for a business from the debtor or other uses that will be used from the loan money. In this case the right of the creditor has the obligation to help anyone who will make a loan. And, instead, the creditor has the right to hold the goods or valuables belonging to the debtor as collateral for the creditor to repay the debt.[68]

In a lending institution in the form of a pawn, valuable objects are used as collateral, such as gold. In the case of a fiduciary guarantee which is a special agreement held between the debtor and the creditor to agree on the following matters:

1. Guarantees that are material in nature, namely the existence of certain objects that are used as collateral.
2. Guarantees that are individual or personal, that is, there is a certain person who is able to pay or fulfill the debtor's achievements if the debtor defaults.

[67] Mig Irianto Legowo, "*Legal Consequences Due to the Execution of the Pandemic on Default Debtors by Financing Institutions on Motor Vehicle Loan Fiduciary Objects at Pegadaian Semarang*", *International Journal of Arts and Social Science*, Vol. 5 No. 7, 2022, page. 76.

[68] H.R. Daeng Naja, *Hukum Kredit dan Bank Garansi*, PT Citra Aditya Bakti, Bandung, 2005, page 123.

In fiduciary relations, it is clear that there is a close relationship between the parties, namely the existence of a relationship of trust based on good faith. The relationship of trust now is not solely based on the will of both parties, but is based on binding legal rules. Material guarantees are institutionalized in the form of mortgages, mortgages, fiduciaries, pledges, and warehouse receipt system laws. Broadly speaking, guarantees regulated in the laws and regulations of the Republic of Indonesia have the following principles:[69]

1. The right of guarantee gives priority to the creditor holding the right of guarantee over other creditors.
2. The security right is an assessoir right to the main agreement guaranteed by the said agreement. The main agreement that is guaranteed is a debt agreement between the creditor and the debtor, meaning that when the main agreement ends, the guarantee rights agreement by law ends anyway.
3. The guarantee right gives a separatist right to the creditor holding the guarantee right. That is, objects encumbered with collateral rights are not bankrupt assets in the event that the debtor is declared bankrupt by the court.
4. Guarantee rights are material rights over real rights, meaning that collateral rights will always be attached to the object or always follow

[69] Rachmadi Usman, *Aspek-aspek Hukum Perbankan di Indonesia*, PT Gramedia, Jakarta, 2001, page 238.

the object to whoever the object changes its ownership or *droit de suite.*

5. Creditors holding collateral rights have full authority to execute their collateral rights. That is, the creditor holding the security right has the authority to sell himself, either based on a court order or based on the power granted by law, objects burdened with said guarantee right and take the proceeds from the sale to pay off the debt owed to the debtor.
6. Because it is a material right, the guarantee right applies to third parties, the guarantee right applies to the principle of publicity. This means that the collateral rights must be registered at the registration office of the security rights concerned.

Through the explanation above, it can be said that the creditor's rights and obligations are as a guarantee or lending institution to provide financial assistance to the debtor, where this is registered with the relevant material guarantee institution, and in this case the creditor is entitled to receive guarantees from a debtor, and if there is no repayment of the debt by the debtor, the creditor has the right to execute the collateral by selling or declaring the debtor bankrupt because he is unable to pay the debt.[70]

A debtor is someone who has a debt. In terms of the rights and obligations of a debtor, they are the opposite of the rights and obligations of a creditor. Because a debtor is a person who has a debt, his obligation is to pay off his debt to the creditor. In addition, the debtor also has an obligation in the form of

[70] Thomas Suyatno, *Dasar-dasar Perkreditan*, Gramedia, Jakarta, 2000, page 14.

providing guarantees to creditors as collateral for their debts, as soon as the debtor pays in full, the debtor has the right to receive back the collateralized goods as collateral for loans to creditors.[71]

In this case the person said to be a debtor is a person or individual, namely in this case both men and women can be declared bankrupt by the court if they are unable to pay debts to one or more creditors. Associations or associations that are not legal entities such as matschap, firms and limited associations, corporate companies or associations that are legal entities such as Limited Liability Companies (PT), Cooperatives and Foundations.[72]

The Bankruptcy and Suspension of Debt Payemt (PKPU) Law through Chapter I General Provisions in Article 1 number (1) states that "everyone is an individual or corporation including corporations that are in the form of legal entities or those that are not legal entities in liquidation". Through this provision it is clear that everyone, both individuals and corporations, including corporations that are in the form of legal entities or those that are not legal entities in liquidation, can apply for bankruptcy and can be filed for bankruptcy, in the sense that they can become creditors or debtors.[73]

D. Debts in Islamic Perspective

In syara' terminology, scholars define debts as follows:[74]

[71] Sutarno, *Aspek-aspek Hukum Perkreditan Bank*, Alfabeta, Bandung, 2003, page 94.
[72] M. Yasir, *Aspek Hukum Jaminan Fidusia*, FAI Universitas Muhammadiyah Jakarta, Jakarta, 2004, page 10.
[73] Mariam Darus Badrulzaman, *Kompilasi Hukum Perikatan*, PT Citra Aditya Bakti, Bandung, 2001, page 66.
[74] Hendi Suhendi, *Fiqh Muamalah*, Rajawali Pers, Jakarta, 2014, page 91-92.

1. According to the Hanafiyah and Syafi'iyah scholars, qard is property that is handed over to another person to be replaced with the same property. Or in another sense a transaction that is intended to give equivalent property to another person to be returned commensurate with that.
2. According to Malikiyah scholars, qard is the surrender of property to another person without compensation or additional returns.
3. According to Hanabilah scholars, qard is the surrender of property to someone to be used and he is obliged to return it with similar assets in exchange.
4. According to Sayyid Sabiq, qard is property given by the *muqtarid* (debtor) to the *muqtarid* (debtor), so that the *muqtarid* returns something similar to it to the *muqrid* when he is able.
5. According to Hasbi As-Shiddiqi, qard is a contract carried out by two people in which one of the two people takes ownership of the property from the other and he spends the property for his benefit, then he must return the item worth what he took first. Based on this understanding, qard has two meanings, namely: *I'arah* which means *tabarru'* or giving property or someone and it will be returned, and *Mu'awadah* because the property taken is not just used then returned, but spent and paid for in exchange.

Through the explanation of the scholars above, qard is a party that gives property in the form of money or goods to the debtor, and the debtor receives something with an agreement that he will pay or return the property in the same

amount. In addition, the debt contract itself is a *ta'awun* (a help) contract for another party to meet their needs.[75]

Basically all humans want to be able to fulfill all their needs, primary and secondary rights and other needs. For this reason they are required to work hard in order to fulfill these needs. Islam encourages its people to help each other, mutual cooperation, in this case virtue and piety. The foundation of accounts receivable is the Al-Qur'an. Al-Qur'an is the legal basis that ranks first in determining the laws that apply in religious life. As for the legal basis for accounts receivable which is prescribed in Islam, which originates from the Qur'an, is QS. al-Maidah: 2 which reads:

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لَا تُحِلُّواْ شَعَٰٓئِرَ ٱللَّهِ وَلَا ٱلشَّهۡرَ ٱلۡحَرَامَ وَلَا ٱلۡهَدۡيَ وَلَا ٱلۡقَلَٰٓئِدَ وَلَآ ءَآمِّينَ ٱلۡبَيۡتَ ٱلۡحَرَامَ يَبۡتَغُونَ فَضۡلٗا مِّن رَّبِّهِمۡ وَرِضۡوَٰنٗاۚ وَإِذَا حَلَلۡتُمۡ فَٱصۡطَادُواْۚ وَلَا يَجۡرِمَنَّكُمۡ شَنَـَٔانُ قَوۡمٍ أَن صَدُّوكُمۡ عَنِ ٱلۡمَسۡجِدِ ٱلۡحَرَامِ أَن تَعۡتَدُواْۘ وَتَعَاوَنُواْ عَلَى ٱلۡبِرِّ وَٱلتَّقۡوَىٰۖ وَلَا تَعَاوَنُواْ عَلَى ٱلۡإِثۡمِ وَٱلۡعُدۡوَٰنِۚ وَٱتَّقُواْ ٱللَّهَ إِنَّ ٱللَّهَ شَدِيدُ ٱلۡعِقَابِ

Meaning: "O you who believe, do not violate the syi'ar-syi'ar of Allah, and do not violate the honor of the sacred months, do not (disturb) the had-ya animals, and the qalaa-id animals, and do not (also) disturb those who visit the Baitullah while they are seeking grace and the pleasure of their Lord and when you have completed the pilgrimage, then it is permissible to hunt. And do not ever hate (your) against a people because they prevent you from the Masjidil Haram, encourage you to do wrong (to them). And help you in (doing) virtue and piety, and do not help each other in committing sins and transgressions. And fear Allah, verily Allah is severe in punishment."

[75] Azharudin Latif, *Fiqh Muamalah*, UIN Jakarta Press, Jakarta, 2005, page 150.

QS. al-Maidah: 2 has the intention of helping those of you who please people and please Allah. If a human being can do that, then his happiness will be perfect. Accounts payable transactions are contained in noble values and very high social ideals, namely mutual help in goodness. Thus, basically giving debt to someone must be based on sincere intentions as an effort to help others in goodness. This verse also means that the giving of debt must be based on taking advantage of a job recommended by religion or there is no prohibition in doing so. Based on the text, it is clear that humans are given the widest possible opportunity to try in all aspects of life, as long as it concerns humans both in world affairs, namely in terms of debts and other things, as long as it does not conflict with Islamic law. Allah SWT provides signs in carrying out debts so that they run according to the principles of shari'ah, namely avoiding fraud and actions that are prohibited by Allah. The arrangement is a recommendation that every debt transaction be carried out in writing.[76]

The purpose and wisdom of allowing debts and credit is to provide convenience for mankind in social life, because there are human beings who have enough and there are those who are lacking. People who are deficient can take advantage of debts from parties who are affluent. Qard has pillars and conditions like other contracts in muamalah. There are three pillars and terms of accounts payable (qardh), namely as follows:[77]

[76] Teungku M. Hasbi, *Pengantar Fiqh Muamalah*, PT Pustaka Rizki, Semarang, 2001, page 103.

[77] Masadi Ghufron A., *Fiqh Muamalah Kontekstual*, PT RajaGrafindo Persada, Jakarta, 2002, page 173.

1. *'Aqid* is a person who owes debts, which consists of muqrid (creditor) and muqtarid (debtor).
2. *Ma'qud'alayh*, namely goods owed.
3. *Sighat al-'aqd*, namely the expression of consent and qabul, or an agreement between the two parties for the implementation of a contract.

Thus, in debt and credit is considered to have occurred if the pillars and conditions of the debt and credit have been fulfilled. Rukun itself is the most important element of something, while the conditions are the prerequisites of something. While the conditions that must be met in the implementation of accounts payable are as follows:[78]

1. ‘Aqid

People who owe and give debts can be said to be legal subjects. Because those who carry out the practice of debt and credit are both of them, for this reason, people who have the ability to carry out legal actions are needed. The conditions that must be owned by both parties (legal subject), namely the person who owes the debt and the debtor are as follows:

a. The person has reached the age (adult).
b. Reasonable.
c. That person can think.

A person can be seen as having the ability to carry out legal actions if he has reached the tamyiz period, has been able to use his mind to discriminate between good and bad things, useful and useless things,

[78] Gatot Supramono, *Perjanjian Hutang Piutang*, Kencana, Jakarta, 2003, page 12-16.

especially being able to distinguish male and female gender. Imam Syafi'i revealed that the four people whose contracts were not valid were young children (both mumayyiz and non-mumayyiz), crazy people, slaves, even mulattoes and blind people.

While in al-fiqh al-Sunnah it is said that the contract of a madman, drunken person, and a small child who has not been able to distinguish or choose between good and bad is not valid. Whereas for children who are able to distinguish or choose their contract is declared valid, only the validity depends on the permission of the guardian. Besides that, people who owe debts should be people who have freedom of choice, meaning that they are free to enter into contracts that are free from coercion and pressure. So that the principle of mutual consent can be fulfilled. Therefore, it is illegal to pay debts due to an element of coercion.Ma'qud'alayh

The object that is used as debt is one thing other than the pillars and conditions in the debt transaction, in addition to the consent and qabul and the parties who make the debt and credit, the debt is considered to occur if there is an object that is the purpose of the debt. For this reason, the object of debt must meet the following conditions:

a. It is an object of value that has something in common and its use results in the destruction of the debt object.
b. Can be owned.
c. Can be submitted to the debtor.
d. It existed at the time the agreement was made.

The debt contract was made because of an urgent need, of course the object that is used as an object is an object that is valuable (useful) and after the object is used up, the return is not the item that was received before, but with another object of the same type. Goods that are the object of accounts payable must be goods that can be owned. Of course, this can be owned by the debtor. Because in accounts payable there will be a transfer of property from giving debt to the debtor. Likewise, goods that are used as the object of debts must exist at the time the accounts payable occurs. Because if seen from the purpose of a person's debt is due to an urgent need, so if the item cannot be delivered (does not exist) then it is impossible for debts to occur.

2. Sighat al-aqd

Sighat contract is an agreement, the statement of the first party regarding the desired agreement while qabul is a statement of the second party to accept it. Sighat akad can be done orally, in writing or by gestures that give a clear understanding of the existence of consent and qabul, and can also be in the form of actions that have become a habit in ijab and qabul. Sighat contract is very important in the pillars of the contract. Because through this contract, the intent of each party that makes the transaction will be known. Sighat will be expressed through ijab and qabul as follows:

a. The purpose of the contract must be clear and understandable.
b. Between consent and qabul there must be compatibility.
c. Ijab and qabul statements must be in accordance with each other's wishes, and no one should doubt them.

The conditions that must be fulfilled in the contract (qard) are as follows:

a. The amount of the loan (qard) must be known in terms or amount.
b. The nature of the loan (qard) must be known if it is in the form of an animal.
c. Loans (qardh) come from people who deserve a loan. So it is not legal if it comes from someone who does not have something to borrow.
d. An abnormal person.

In addition to the terms and pillars of accounts payable, there are also provisions regarding adab or ethics that must be considered in matters of accounts payable (qardh), namely as follows:[79]

1. Debts must be written and witnessed.
2. Ethics for creditors (muqtarid) are as follows:
   a. The person who owes the loan is obliged to give a payment period for the borrower so that it is easy to pay.
   b. Do not charge before the specified payment time.
   c. Should charge with a gentle attitude and full of forgiveness.
   d. Give deferment to people who are having difficulty paying off their debts after they are due.
3. Ethics for people who owe are as follows:

[79] M. Ali Hasan, *Berbagai Macam Transaksi dalam Islam*, PT Raja Grafindo Persada, Jakarta, 2002, page 104.

a. It is obligatory for the person who is in debt to pay off his debt as soon as possible when he is able to pay it off. For a person who delays paying off a debt even though he is capable, then he is classified as a person who commits injustice.
b. The creditor (muqrid) may not take advantage or benefit from the debtor (muqtarid) in any form. In other words, that a loan that bears interest or brings any benefit is unlawful based on the Al-Quran and as-Sunnah. This prohibition includes all kinds of interest or benefits that are required by the person giving the debt (muqrid) to the debtor (muqtarid).
c. Debt with good intentions, in the sense that debt is not for bad purposes such as debt for spree (fun), debt with the intention of asking because if asking is not given, then the term debt is used so that you want to give and owe with the intention of paying it off.
d. If there is a delay due to financial difficulties, the debtor should notify the person giving the debt, because this is part of fulfilling the debtor's rights. Don't stay silent or run away from the lender, because it will change the debt that was originally a form of helping to become enmity.

The contract (qard) ends when the object of the contract (qard) is with the muqtarid (debtor) has been handed over or returned to the muqrid (creditor) in the amount of the principal amount of the loan, at the maturity or time agreed at the beginning of the agreement. And the return of qardh should be done at the place where the qardh contract took place. However, if the muqrid (creditor)

asks for qardh to be returned to the desired place, then it is permissible as long as it does not cause difficulties for the muqtarid (debtor).[80]

Accounts payable contracts (qardh) also end if canceled by the contracting parties for certain reasons. And if the muqtarid (debtor) dies, the qardh or loan that has not been repaid becomes the responsibility of the heirs. So the heirs are obliged to pay off the debt. But qardh can be considered paid off or ended if the muqrid (creditor) removes the debt and considers it paid off.[81]

[80] Abdul Madjid, *Pokok-pokok Fiqh Muamalah dan Hukum Kebendaan dalam Islam*, Rajawali Pers, Jakarta, 2006, page 10.

[81] *Ibid.*

CHAPTER III

SETTLEMENT OF LOSSES BY THE MANAGEMENT IN THE PROCESS OF DELAYING DEBT PAYMENT OBLIGATIONS FOR THE DEBTOR'S INABILITY TO PAY

A. Settlement of Losses by Management in the Process of Postponing Debt Payment Obligations due to the Debtor's Inability to Pay

All actions of the management that harm the debtor's assets place the management as the subject of Article 1365 of the Civil Code, where this article can be used as a legal basis for the injured debtor to ask for responsibility as well as compensation for their losses.[82] Article 1365 of the Civil Code can clearly be said to be a complement to Article 234 paragraph (4) of the UUK which regulates losses to debtors due to the actions of administrators.[83]

The initial process for management accountability can take place internally at PKPU, where the parties, namely the supervisory judge, management and debtors can mediate. Mediation is an effort to resolve disputes between parties by mutual agreement through a mediator or third person who is neutral, and does not make decisions or conclusions for the parties but supports the facilitator to carry out dialogue between parties in an atmosphere of openness, honesty and exchange of opinions to reach consensus.[84]

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[82] Code of Civil law.

[83] Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

[84] https://pn-surabayakota.go.id/kepaniteraan-perdata/mediasi/, last accessed on October 31 2023, at 13.26 WIB.

Mediation in PKPU is possible considering that the Supervisory Judge has the authority to supervise and examine the PKPU process and as a party who understands the PKPU process can be a third party who facilitates mediation if a problem occurs in PKPU. The mediation carried out internally by PKPU is considered as the first step for the debtor to hold the management accountable in a non-litigation manner, where in the mediation the supervisory judge, the management and the debtor can prove whether or not an act has violated the duties and authority of the management, violated legal provisions, and/or This action has a detrimental impact on the debtor's assets.[85]

Article 1365 of the Civil Code does not provide a formulation regarding unlawful acts, but rather regulates that if a person experiences loss due to an unlawful act committed against him, he can submit a claim for compensation for losses to the District Court.[86]

Article 1365 of the Civil Code has several elements. First, there is an unlawful act, namely an act or action of the perpetrator that violates/is against the law, is not in accordance with legal provisions, violates the subjective rights of other people, is contrary to obligations, and/or is not in accordance with the values of propriety in society. Second, there are two types of errors in this case, namely, they could be intentional or due to negligence. Intentional means there is awareness that a normal person would know that the consequences of his actions would be detrimental to other people. Meanwhile, negligence means an

[85]Joni Eemerzon, Contract Law: Theory and Practice, Mandar Maju, Jakarta, 2013, p. 27.
[86]MA Moegni Djojodirdjo, Acts Against the Law, Pradnya Paramita, Jakarta, 1979, p. 18.

act of ignoring something that should be done, or not being careful or thorough, causing harm to other people.

Third, there is a causal relationship between the actions carried out and the consequences that arise. Fourth, there is loss, namely the result of the perpetrator's actions causing loss. Losses here are divided into two, namely material and immaterial. Material, for example, losses due to car collisions, loss of profits, costs of goods, costs, etc. Immaterial, for example, fear, disappointment, regret, pain and loss of enthusiasm for life which in practice will be valued in the form of money.[87]

Debtors whose assets have been damaged due to the actions of the management in the PKPU process can file a civil lawsuit for compensation at the District Court to demand compensation for their assets based on the provisions of Article 1365 of the Civil Code which states that both debtors and administrators are legal subjects who can be sued or sued. Payment of compensation does not always take the form of money, Hoge Raad in his decision dated 24 May 1918 has considered that restitution in all circumstances is the most appropriate payment of compensation. Debtors who choose to settle compensation using litigation or legal means can file a lawsuit with the District Court on the legal basis of Article 1365 of the Civil Code.[88]

Article 1365 of the Civil Code provides for the possibility of several types of prosecution. Such things include compensation for losses in the form of

[87] https://konsultan Hukum.web.id/ Element-Perbuatan-melawan- Hukum/, last accessed on October 31 2023, at 13.33 WIB.

[88]MA Moegni Djojodirdjo, Op.cit, p. 102.

money; compensation for losses in kind or returning the situation to its original state; a statement that the act committed is unlawful; prohibition to carry out an action; eliminating something that was held unlawfully; and the announcement of a decision or of something that has been corrected.[89]

The procedures for filing a lawsuit for compensation are the same as filing a civil lawsuit in general. First, file a lawsuit by registering the lawsuit with the District Court based on the defendant's residence or domicile. Second, pay the down payment of court costs, which are usually temporary, the final of which will be calculated after a court decision is made. Third, case registration is recording the lawsuit in the Case Register Book to obtain a lawsuit number so that it can be processed further. Case registration is carried out after payment of the down payment of the case fee. Fourth, handing over the case files to the Chairman of the District Court after the court clerk assigns the case number based on the serial number in the Case Registration Book.

Fifth, the Chairman of the District Court determines the Panel of Judges who will examine and decide the case after the Chairman of the District Court examines the case files submitted by the Registrar. Sixth, the Panel of Judges will then set a trial date. This determination is stated in a letter of determination which is made immediately after the Panel of Judges receives the case file or no later than 7 days after the date of receipt of the case file. Seventh, after the trial

[89]*Ibid*.

day is determined, the Panel of Judges summons the parties, namely the Plaintiff and Defendant, to attend on the appointed trial day.[90]

In this way, debtors whose assets are harmed by the actions of the management in administering PKPU can use both non-litigation and litigation measures to resolve compensation for losses arising from the actions of administrators in administering PKPU.

B. Debtor's Legal Remedies to Postpone Debt Payment Obligations upon Creditor Application

In the process of resolving debt and receivable problems, whether through bankruptcy institutions or Postponement of Debt Payment Obligations, not always all parties can accept the results of the settlement gracefully. Sometimes there are parties who are not satisfied with the results of solving problems and try to change these results. For this reason, parties who are not satisfied with the results of resolving the problem can take legal action. Hartini stated that legal action is a method or path that needs to be taken by one of the parties in a case in question to obtain a fair decision (justice). In more detail, Ismet Baswedan stated that legal action is a step regulated in legal provisions as an effort for the parties to obtain a better decision to support their interests or as a way to fight the court's decision.[91]

The judicial process, both general and commercial, consists of 2 (two) stages, namely the application for acceptance of the case and the decision of the

[90] http://www.legalakses.com/tata-cara-mengajukan-angkatan-perdata-ke-pengadilan-negeri/, last accessed on October 31 2023, at 13.36 WIB.

[91] Ismet Baswedan, Civil Procedure Law for General Courts, Airlangga University Press, Surabaya, 2004, p. 52.

case. At these 2 (two) stages, trials are held which require the presence of the parties. The parties concerned can take legal action at both stages to defend their interests.[92]

During the examination stage of the bankruptcy application, the parties can take legal action in the form of exceptions and principal answers. These two legal remedies are regulated in Staatsblad 1941 Number 44 which is named Herzien Indlasch Reglement (hereinafter referred to as HIR) and are not specifically regulated in bankruptcy laws and regulations. However, in practice, the Commercial Court process provides an opportunity for the parties to take both legal measures to prove whether or not the debtor's requirements for bankruptcy have been fulfilled. Exceptions are filed as an effort to challenge the formal provisions on bankruptcy petitions, such as whether or not the authority to adjudicate related bankruptcy cases includes absolute competence and relative competence. The principal's answer is the defendant's legal effort to deny the plaintiff's claim. With these two legal remedies, debtors who are generally defendants have the opportunity to take legal action to prevent the bankruptcy petition from being accepted at the Commercial Court.[93]

At the stage of examining the request for Postponement of Debt Payment Obligations, there are no legal remedies that can be taken by the parties regarding the request for Postponement of Debt Payment Obligations. As is known, the conditions for a request for Postponement of Debt Payment

[92]*Ibid*.
[93]M. Hadi Subhan, Bankruptcy Law, Sinar Graphics, Jakarta, 2009, p. 32.

Obligations according to Article 222 UUKPKPU are simply the debtor's inability to pay debts that are due and collectible. The conditions for requesting a Postponement of Debt Payment Obligations are lighter when compared to the requirements for bankruptcy. This supports the ease of accepting requests for Postponement of Debt Payment Obligations. Regardless of the efforts that debtors can make to prove incompleteness or errors in the formal provisions of the application for Postponement of Debt Payment Obligations, creditors can still correct errors in the formal provisions of the application for Postponement of Debt Payment Obligations and resubmit the application for Postponement of Debt Payment Obligations to the Commercial Court. From this description, it can be understood that there is no legal effort that can be taken by debtors or creditors to reject the request for Postponement of Debt Payment Obligations.

There are several legal remedies that can be taken at the stage after the case decision is pronounced. In civil procedural law, there are two types of legal remedies, namely ordinary legal remedies and extraordinary legal remedies. According to Ismet Baswedan, ordinary legal measures are legal steps taken by related parties in order to fight or change decisions that do not yet have permanent legal force, while extraordinary legal measures are legal steps taken by related parties to fight or change decisions that already have legal force. remains valid. Ordinary legal remedies are divided into 3 types, namely resistance (verzet), appeal, and cassation. There are two types of extraordinary

legal remedies, namely judicial review and third party opposition (derden verzet).[94]

In bankruptcy cases, the ordinary legal remedy that can be taken against a bankruptcy case decision is only cassation as specified in Article 11 of the UUKPKPU. Legal action against resistance (verzet) in commercial cases is not the same as the provisions for legal action against resistance (verzet) in civil cases. Based on Article 58 paragraph (3) UUKPKPU, legal action against (verzet) can only be carried out against the appointment of a supervisory judge in the bankruptcy process. Legal remedies for appeals in bankruptcy cases, which were originally regulated in the UUK, have now been abolished in the UUKPKPU. Suyatno stated that the abolition of legal provisions for appeals in bankruptcy cases aims to help resolve bankruptcy cases quickly, effectively and efficiently.[95]

Postponement of Debt Payment Obligations is basically a period or period of time for debtors to discuss with creditors the methods and conditions for fulfilling their debts. However, postponing debt payment obligations does not always end with resolving debt and receivable problems between debtors and creditors. Sometimes failure to postpone debt payment obligations can result in the debtor experiencing bankruptcy.[96]

[94]*Ibid*, p. 52.

[95]R. Anton Suyatno, Utilization of Postponement of Debt Payment Obligations: As an Effort to Prevent Bankruptcy, Prenada Media, Jakarta, 2017, p. 25.

[96] https://mkri.id/index.php?page=web.Berita&id=9642, last accessed on October 31 2023, at 13.46 WIB.

Debtors who have been declared bankrupt and other parties who feel disadvantaged as a result of the debtor's bankruptcy, such as concurrent creditors, certainly tend not to be willing to simply accept the bankruptcy decision. For this reason, debtors or concurrent creditors try to take legal action against bankruptcy decisions resulting from delays in debt payment obligations. The obstacle that arises for concurrent debtors or creditors is the limited number of legal remedies that can be taken based on the provisions of the UUKPKPU.

If the debtor experiences bankruptcy as a result of the termination of the Postponement of Debt Payment Obligations arising from the debtor's error as intended in Article 255 paragraph (6) in conjunction with paragraph (1) UUKPKPU, the debtor can only take legal action in the form of cassation and judicial review in accordance with the provisions of Article 256 in conjunction with Article 255 paragraph (6) UUKPKPU. Article 256 UUKPKPU refers to the method for submitting cassation legal remedies and judicial review of cases of postponement of debt payment obligations which is in accordance with the method for submitting cassation legal remedies and judicial review of bankruptcy cases.

Apart from the legal action of cassation and review of the decision to declare bankruptcy as a result of terminating the Postponement of Debt Payment Obligations arising from debtor errors in accordance with the provisions of Article 255 paragraph (1) UUKPKPU in conjunction with Article 256 UUKPKPU, there are no legal efforts that can be taken by debtors or concurrent creditors against the statement bankruptcy due to postponement of debt

payment obligations. The absence of any legal remedy for declaring bankruptcy as a result of Postponement of Debt Payment Obligations is even regulated in Article 293 paragraph (1) of the UUKPKPU which states that there is no legal remedy whatsoever for the decision to Suspension of Debt Payment Obligations unless determined by the UUKPKPU, for example the provisions of Article 256 of the UUKPKPU.[97]

Whether it is true or not that there is a possibility that the debtor will still be able to make debt payments, of course, separate proof needs to be carried out. However, this is hampered by bankruptcy if the postponement of debt payment obligations results in bankruptcy only for the two reasons mentioned, namely failure to reach creditor agreement and refusal to ratify peace. In fact, Darminto Hartono firmly stated that an important factor in restructuring is an assessment of how much the debtor's economic condition is capable of internally in making debt payments. In this case, there needs to be a careful, accurate and thorough assessment process to prove the debtor's ability to make debt payments. This assessment process cannot be realized if the debtor has been declared bankrupt.[98]

Postponement of Debt Payment Obligations has been widely used as an institution for resolving debt and receivable problems. One of the cases of Postponement of Debt Payment Obligations was filed by PT Bank BNI Syariah as a creditor against Purdi E. Chandra as a debtor. The position of the case began

[97]Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

[98]Darminto Hartono, "Implementation of Sister City Cooperation between Semarang and Brisbane in the Field of Science and Technology", K Law, Vol. 1 No. 1, 2010, p. 12.

when Purdi E. Chandra agreed to form a debt and receivables agreement with PT Bank Syariah and other concurrent creditors. PT Bank BNI Syariah as the separatist creditor estimates that Purdi E. Chandra as the debtor will not be able to continue paying his debts which are due and can be collected according to the terms of the request for Postponement of Debt Payment Obligations as intended in Article 222 paragraph (3) UUKPKPU. With these conditions fulfilled, PT Bank BNI Syariah submitted a request for Postponement of Debt Payment Obligations for Purdi E. Chandra to the Central Jakarta District Court.[99]

After summoning the debtor to attend the hearing of the application for Postponement of Debt Payment Obligations and examination of the debtor's debt list, the Central Jakarta Commercial Court in accordance with the provisions of Article 225 paragraph (3) UUKPKPU gave a decision regarding the temporary Postponement of Debt Payment Obligations statement dated 15 April 2013 to the debtor along with the appointment of a supervisory judge and administrator to handle the case of Postponement of Debt Payment Obligations. After it is stated that the debtor is in a temporary Suspension of Debt Payment Obligations, the Management announces the decision to temporarily Suspension of Debt Payment Obligations to the State Gazette of the Republic of Indonesia and newspapers in accordance with the provisions of Article 226

[99] http://bangunan.mahkamahagung.go.id/main/pencarian/?q=pkpu, last accessed on October 31 2023, at 13.53 WIB.

paragraph (1) UUKPKPU to inform the general public as well as other creditors who have receivables from the debtor .

The debtor, in accordance with the provisions of Article 265 UUKPKPU, submits a peace plan to the creditor. Regarding the peace plan proposed by the debtor, the first creditor meeting was held on April 23 2013 which was attended by PT Bank BNI Syariah as a separatist creditor and several other concurrent creditors. At the verification meeting on May 8 2013, it was agreed that each part and amount of debt was recognized and verified by the debtor, namely creditor claims that had been permanently recognized and creditor claims that had been recognized temporarily. Creditor claims that are recognized permanently are separatist creditor claims in the amount of one separatist creditor and concurrent creditor claims in the amount of three concurrent creditors. Meanwhile, creditor claims that are temporarily recognized are claims from one concurrent creditor.

Based on creditors' verification, a voting meeting was held on the peace plan on May 28 2013. At the meeting, four concurrent creditors and one separatist creditor were present. The debtor's peace plan was approved by one separatist creditor and 3 concurrent creditors, while one concurrent creditor did not approve of the debtor's peace plan. After counting the votes, it turned out that approval from concurrent creditors did not represent 2/3 of the total amount of concurrent creditors' claims. Based on this, in accordance with the provisions of Article 230 paragraph (1) UUKPKPU, according to the supervisory judge, the debtor must be declared bankrupt.

Therefore, it was stated that the proposed peace plan did not reach a quorum or collective agreement and the debtor as the respondent for Postponement of Debt Payment Obligations was declared bankrupt. Based on the decision to declare bankruptcy, the debtor submitted a cassation request to the Supreme Court on June 18 2013. The Supreme Court then stated that the cassation request from the debtor as the cassation applicant could not be accepted on the grounds that the debtor had been legally and bound to declare a suspension of debt payment obligations for a period of time. within 45 days, peace is not achieved within the time limit for Postponement of Debt Payment Obligations so that it is declared bankrupt, and based on the provisions of Article 293 paragraph (1) UUKPKPU there is no legal remedy for court decisions regarding bankruptcy resulting from Postponement of Debt Payment Obligations.

Judging from the description of the case, it can be understood that the Postponement of Debt Payment Obligations was proposed by the creditor, namely PT Bank BNI Syariah. The application process for Postponement of Debt Payment Obligations is not problematic because it can include creditors who have receivables from debtors. Problems arise when an agreement cannot be reached between creditors. In this case, there was only one concurrent creditor who did not agree to the debtor's peace plan. It turns out that the number of concurrent creditors' votes that agreed did not represent 2/3 of the total amount of concurrent creditors' claims, so it was deemed that the conditions for approval of the peace plan had not been achieved. Therefore, the provisions of

Article 229 paragraph (1) letter a of the UUKPKPU were not fulfilled which resulted in the supervisory judge applying the provisions of Article 230 paragraph (1) of the UUKPKPU to recommend that the debtor go bankrupt.

The legal remedy that debtors and creditors should take to declare bankruptcy due to failure to reach agreement on the peace plan in the process of Suspension of Debt Payment Obligations is the legal remedy of cassation. Through cassation legal action, the debtor or creditor as the cassation applicant can submit a cassation memorandum which argues regarding efforts to prove the debtor's ability to fulfill the debt by reason of errors in the application of applicable legal provisions or negligence in fulfilling the requirements determined by law.

In this case, the debtor or concurrent creditor can use the excuse of misapplication of applicable legal provisions to request a cassation. The use of these two reasons is based on the fact that there was no effort to implement a permanent suspension of debt payment obligations from the creditors even though the creditors were aware that the 45 day period of suspension of debt payment obligations was not enough simply because the proposed peace plan was not approved by one of the concurrent creditors.[100]

It is true that the final decision in the case of Suspension of Debt Payment Obligations submitted by this creditor resulted in the bankruptcy of Purdi E. Chandra as debtor. This could have been avoided if debtors and creditors were

[100]*Ibid*.

willing to negotiate or negotiate regarding the fulfillment of debts to creditors without having to go through litigation.

CHAPTER IV

CLOSING

A. Conclusion

1. Basically, Article 1365 of the Civil Code regulates that if the management's actions harm the debtor's assets, the debtor can demand responsibility and compensation for the loss. The initial dispute resolution process can be carried out through internal PKPU mediation, involving supervisory judges, administrators and debtors. If internal mediation is unsuccessful, the debtor can submit a claim for compensation to the District Court based on Article 1365 of the Civil Code.
2. In the process of resolving debts and receivables, not always all parties can accept the results of the settlement, and this can trigger legal action. Legal action aims to reach a decision that is considered fair by the parties involved. Postponing debt payment obligations gives debtors time to negotiate with creditors regarding the fulfillment of their debts. However, failure to postpone debt payment obligations can result in bankruptcy. Legal remedies in this case are limited to cassation on the grounds of errors in the application of legal provisions or negligence in fulfilling the requirements determined by law.

B. Suggestion

1. The administrators should be more careful in managing the debtor's assets during the PKPU process. Administrators must also establish good relationships and communication with debtors in the process of assisting

PKPU debtors. Increase cooperation with debtors in order to achieve the PKPU goal, namely increasing the ability to pay debts of debtors. Administrators must also truly implement the mandate of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations properly and maintain the honor of their profession as administrators.

2. Article 234 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations should be clarified regarding what responsibilities can be held by the management, how the accountability process is and how far the management can be held responsible for their actions that result in harm to the debtor's assets.

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Submission date: 08-Nov-2023 08:46AM (UTC+0700)
Submission ID: 2221185415
File name: G_DEBT_PAYMENT_OBLIGATIONS_FOR_THE_DEBTOR_S_INABILITY_TO_PAY.pdf (994.52K)
Word count: 18196
Character count: 96364

SETTLEMENT OF LOSSES BY THE MANAGEMENT IN THE PROCESS OF DELAYING DEBT PAYMENT OBLIGATIONS FOR THE DEBTOR'S INABILITY TO PAY

THESIS

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LEGAL STUDY PROGRAM

FACULTY OF LAW

INDONESIAN ISLAMIC UNIVERSITY

YOGYAKARTA

2023

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