

**LEGAL PROTECTION AND REMEDIES OF THE UNVERIFIED
CREDITORS IN RECONCILIATION
(Case Study of PT Garuda Indonesia's Suspension of Debt Payment
Obligations)**

A BACHELOR'S DEGREE THESIS



By:

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Student Number: 17410526

**INTERNATIONAL PROGRAM
UNDERGRADUATE STUDY PROGRAM IN LAW
FACULTY OF LAW
UNIVERSITAS ISLAM INDONESIA
YOGYAKARTA**

2024

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Presented as the Partial Fulfillment of the Requirements to Obtain the Bachelor's
Degree at the Faculty of Law
Universitas Islam Indonesia
Yogyakarta

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2024



THESIS APPROVAL PAGE

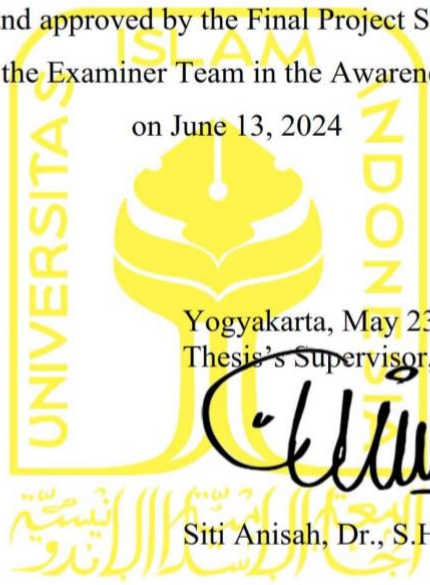
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OBLIGATIONS)**

It has been checked and approved by the Final Project Supervisor for submission
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on June 13, 2024

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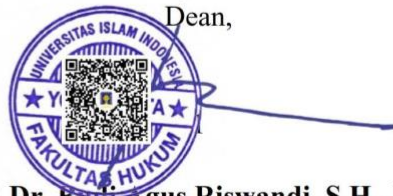
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ORIGINALITY STATEMENT

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untuk hadir, menjawab, membuktikan, dan melakukan pembelaan terhadap hak-hak saya serta menandatangani Berita Acara terkait yang menjadi hak dan kewajiban saya di depan Majelis atau Tim FH UII yang ditunjuk oleh pimpinan Fakultas, apabila tanda- tanda plagiat disinyalir/terjadi pada karya ilmiah saya ini oleh pihak Fakultas Hukum Universitas Islam Indonesia.

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MOTTO

“But they plan, and Allah plans. Surely, Allah is the best planners”

Q.S. Al-Al-Anfal: 30

“Whatever is taken away from you, will be replaced with something better”

- Imam Ali (As)

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4. **Dr. Aroma Elmina Martha, S.H., M.H.** as Secretary of International Program Undergraduate Study Program in Law FH UII, who provides motivation and support to complete studies at the Faculty of Law;
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PREFACE

Assalamualaikum Wr. Wb.

By mentioning the name of Allah SWT, the Almighty and Most Gracious who given me grace and enlightenment every steps until the writer complete this thesis with title “Legal Protection and Remedies for The Unverified Creditors in Reconciliation; Case Study of PT Garuda Indonesia’s Suspension of Debt Payment Obligations”.

This thesis was written in order to fulfill the final course assignment and as one of the academic prerequisites to receive the bachelor’s degree at Faculty of Law of Universitas Islam Indonesia. In addition, this thesis was also created as a form of implementation of the knowledge learned throughout the lecturer period.

The writer sincerely apologizes for any mistakes that may still exist and hopes this thesis will give a beneficial impact, be useful for the readers’ educational and practice aspect, and serve as a reference for development in further journals. May Allah SWT continuously provide His mercy and blessing on all of us.

Yogyakarta, May 23, 2024

Salwa Fitri Ariemurty

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ABSTRACT

This research arises from the issue of Boeing being an unverified creditor in Garuda Indonesia's reconciliation agreement of SDPO. As a result, Garuda Indonesia is completely sidelined and exempted from all Boeing debts. Therefore, the following issues are examined in this thesis: how is the legal protection for the unverified creditors in the reconciliation of Suspension of Debt Payment Obligation that has been ratified by the Commercial Court? Second, how are the legal remedies for the unverified creditors in the reconciliation of Suspension of Debt Payment Obligation that has been ratified by the Commercial Court? The research method used in this paper is normative legal research with a statutory approach and case-analytical approach, including descriptive-evaluative analysis. The findings of this study are: First, Boeing as the unverified creditor has lost its legal protection as stipulated in Garuda Indonesia's homologated reconciliation agreement. Second, Boeing has options to pursue legal remedies outside the court once the reconciliation plan reaches homologation – by conducting negotiations and holding a mediation procedure, by the approval of administrator and all creditors. Foreign creditors are strongly advised to be fully aware and adhere with the debtor's SDPO process to serve creditor's right and the substance of the reconciliation agreement should emphasize clear provisions for the legal protection and remedies of the unverified creditors specifically for the foreign creditors who intentionally neglect the SDPO process.

Keywords: *Unverified Creditors, Legal Protection, Legal Remedies, Reconciliation Plan, SPDO.*

CHAPTER I

INTRODUCTION

A. Background of Study

PT Garuda Indonesia (referred to as Garuda Indonesia) as a state-owned enterprise did not implement good management practices. Case by case, the truth is revealed that mismanagement has led Garuda Indonesia to start deteriorating. Casually, Garuda Indonesia seems well-maintained, yet upon comprehensive scrutiny, several issues have been uncovered. For example, in 2019, Garuda Indonesia's former President Director, Emirsyah Satar was found guilty of corruption during his tenure from 2005-2014.¹ In addition, debt from aircraft charters is largely attributed to poor management over several years.² Quoting the statement from the Ministry of State-Owned Enterprises, agreements for aircraft leases with values above market averages are considered the mismanaged transactions that have occurred. Furthermore, one of the inefficiency factors is allegedly due to the use of a fleet that is technically unfit for operation by Garuda Indonesia. It was eventually uncovered that the former management had engaged in corruption to operate the fleet, with values exceeding market rates.³

¹ Central Jakarta Domestic Court Decision Registration No.121/Pid.Sus-Tpk/2019/PN JKT.PST, <https://putusan3.mahkamahagung.go.id/direktori/putusan/ec50ff4d5578d1a1c08a13ed1b5d3c6d.html> (Accessed on 28 July 2022 at 10.33 WIB)

² Effnu Subiyanto, "Excessive investment failure corporate strategy: A case study of the bankruptcy of the state-owned Indonesia airline Garuda Indonesia", *Journal of World Conference on Transport Research Society*, Vol. 10, Issue 2, 2022.

³ Romsys Binekasri, "Cerita Lengkap Garuda Lolos dari Ancaman Kebangkrutan", *CNBC Indonesia*, 28 June 2022, <https://www.cnbcindonesia.com/market/20220628103058-17-350955/cerita-lengkap-garuda-lolos-dari-ancaman-kebangkrutan> (Accessed on 28 July 2022 at 10.49 WIB)

Such actions have led Garuda Indonesia into a state of decline. According to the 2020 annual report, the financial data of Garuda Indonesia indicates a gradual decline in performance every year. Reportedly, Garuda Indonesia lost 213 million USD in 2017.⁴ This situation is further exacerbated by the outbreak of the Covid-19 which was spreading around the world. To prevent further spread, the Indonesian government implemented regulations regarding self-isolation and social distancing. During 2020-2021, travel restrictions were imposed, resulting in a significant decline in passenger numbers,⁵ further exacerbating Garuda Indonesia's financial condition. As of September 2021, the loss amounted to USD 2.8 billion or IDR 40 trillion.⁶ Due to this loss, Garuda Indonesia was unable to pay its significant obligations, leading to a build-up of creditors and lessors.

Regarding this case, it is directly correlated to the definition of bankruptcy as regulated by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (referred to as the Bankruptcy Act). Bankruptcy is defined as a condition in which the debtor does not have the ability or willingness to settle their debts that are already overdue for payment.⁷ As a result, the Commercial Court may declare a debtor bankrupt if the debtor has two or more creditors and

⁴ *Annual Report of Garuda Indonesia in 2020*, [website], <https://www.garuda-indonesia.com/content/dam/garuda/files/pdf/investor-relations/report/ANNUAL%20REPORT%20GIA%202020%20-%2020210806.pdf> (accessed on 28 July 2022 at 11.21 WIB)

⁵ Alexandra Konig, Jan Grippenkovén, “The actual demand behind demand-responsive transport: Assessing behavioral intention to use DRT systems in two rural areas in Germany”, *Journal of World Conference on Transport Research Society*, vol.8, issue 3, 2020, p. 954.

⁶ *Annual Report of Garuda Indonesia in 2020*, *Loc.Cit.*

⁷ Ridwan Khairandy, *Pokok-Pokok Hukum Dagang Indonesia*, FH UII Press, Yogyakarta, 2013, p.457.

fails to make at least one payment that is overdue. Based on those criteria, it is evident that Garuda Indonesia has met the requirements for bankruptcy.

In line with this condition, Suspension of Debt Payment Obligations (referred to as SDPO) must be done as an initial step aimed at anticipating losses for all parties due to a bankruptcy decision.⁸ As stated by Munir Fuady, SDPO is a period during which debtors and creditors discuss the method to pay debts and are given the opportunity to restructure the debts through a court decision in the Commercial Court.⁹ Related to this case, Commercial Court through the Central Jakarta District Court received requests from numerous creditors and lessors regarding the application for an SDPO for Garuda Indonesia. One of the requests was filed by PT Mitra Buana Koorporindo with the register number 425/Pdt.Sus-PKPU/2021/PN Niaga Jkt.Pst, citing Garuda Indonesia's failure to fulfill contractual commitments related to domestic rental and managed service end-user computing. Thus, the lawsuit has been granted by the judges.¹⁰ Moreover, during the submission of SDPO, the debtor has the right to hold consensual meetings with the creditors to propose a debt reconciliation plan. As the ultimate goal of SDPO Garuda Indonesia has submitted a reconciliation plan.

⁸ Sherly Nelsa Fitri, Adi Sulistiyono, and Yudho Taruno Muryanto, "Effectiveness of Suspension of Debt Payment Obligations (Penundaan Kewajiban Pembayaran Utang or PKPU) to Avoid the Debtor's Bankruptcy (Law Number 37 of 2004)", *International Journal of Research and Innovation in Social Science (IJRISS)*, vol. III, issue II, 2019, p.274.

⁹ Munir Fuady, *Hukum Pailit Dalam Teori dan Praktek*, PT. Citra Aditya Bakti, Bandung, 2010, p. 177.

¹⁰ Monica Wareza, "Digugat PKPU Lagi, Jadi Berapa Utang Garuda Ke Mitra Buana?", *CNBC Indonesia*, 2021, <https://www.cnbcindonesia.com/market/20211028095209-17-287145/digugat-pkpu-lagi-jadi-berapa-utang-garuda-ke-mitra-buana> (accessed on 12 May 2023 21.29 WIB)

Being a State-Owned Enterprise, Garuda Indonesia is believed to have promising opportunities. Garuda Indonesia's business plan is expected to help creditors in making decision regarding the reconciliation plan vote which based on the Fixed Receivable List, Garuda Indonesia has a debt for verified creditors of around Rp 142 trillion. A meeting was held with 365 attendees, 326 creditors attending physically and the other 39 creditors participating virtually. Hence, the voting result yielded 95.07% or precisely 347 concurrent creditors who approved the reconciliation proposal representing 97.46% of all the total debt of the concurrent creditors present at the conference. Meanwhile, there were 15 creditors, or 4.11% of the total concurrent creditors present who rejected the proposal.¹¹ Considering Article 281 Paragraph (1) sub-paragraph a and b of the Bankruptcy Act, stated that:

“The requirements for the acceptance of the reconciliation proposal are:

- a. Approval by more than ½ of the total concurrent creditors whose rights are acknowledged or temporarily acknowledged and they are present at the creditors' meeting where the attending creditors represent at least 2/3 of the total debts acknowledged; and
- b. Approval by more than ½ of the total creditors whose receivables are guaranteed by liens, fiduciary guarantees, mortgages, or collateral rights over other objects who are present and represent at least 2/3 of the total creditor bills or their proxies present at the meeting”.

Based on the legal explanation above, the voting for the reconciliation proposal of Garuda Indonesia has been approved by the majority of concurrent creditors. After several delays, the homologation was officially announced on June 27, 2022.

¹¹Anitana Widya Puspa, “Proposal Perdamaian PKPU Garuda Disetujui; Ini Skema Pembayaran ke Kreditor”, *Ekonomi Bisnis*, 2022, <https://ekonomi.bisnis.com/read/20220617/98/1545045/proposal-perdamaian-pkpu-garuda-disetujui-ini-skema-pembayaran-ke-kreditor>, (accessed on 2 August 2022 at 09.17 WIB)

Based on the provisions of the Panel of Judges' decision, it is stated that the Garuda Indonesia SDPO case has ended and requires the parties to comply with and implement the contents of the reconciliation agreement.

In addition, there are still creditors that have not verified the debt yet, one of which is the Boeing Company (referred to as Boeing). The United States aircraft manufacturing company did not register its receivables amounting to 822 million US dollars or equivalent to Rp. 10 trillion to Garuda Indonesia.¹² According to the provisions in the Garuda Indonesia's reconciliation agreement Article 3.3 b, defined for the creditors who are identified and known by the company as creditors with claims against the company but do not participate or register their claims in the SDPO Process will be categorized as identified unverified creditors.¹³ Based on that article, Boeing falls within the criteria of identified unverified creditors in the SDPO process. In addition, until the homologation decision was made, Boeing still did not register its receivables.

In order to accommodate the creditor's interests, Garuda Indonesia provides an opportunity for creditors who have not yet registered their receivables to file their claims within a period of 30 days from the homologation, starting from June

¹² *"Boeing Tidak Ikut Voting PKPU Garuda Indonesia, Kenapa?"*, *Voi.id*, 17 June 2022, <https://voi.id/ekonomi/180278/boeing-tidak-ikut-voting-pkpu-garuda-indonesia-kenapa> (accessed on 28 March 2024 at 14.46 WIB)

¹³ PT Garuda Indonesia (Persero) Tbk ("Perseroan"), "Rencana Perdamaian (Dalam Perkara Penundaan Kewajiban Pembayaran Utang no. 425/Pdt.Sus PKPU/2021/PN.Niaga.Jkt.Pst)", 2022, p.16

27, 2022 until July 27, 2022.¹⁴ This is regulated in Article 3.3 b i (a) reconciliation agreement as follows:

- "i. For Identified Unverified Creditors, the following conditions apply:
 - (a) Each Identified Unverified Creditor may register its Claims with the Company for further verification at the Company's office within 30 Calendar Days after the Homologation Date, in accordance with the Post Homologation Registration Deadline procedures outlined below".

In order to reinforce the provision above, Garuda Indonesia has released The Consolidated Financial Statements dated December 31, 2022 and 2021. In accordance with the Note 49 (a) related to Aircraft Purchase Commitments, it is explained that:¹⁵

“Boeing is classified as an Identified Unverified Creditor as it did not participate in Garuda Indonesia’s SDPO. As a consequence, Boeing’s debt can be deemed fully non-existent and ignored, meaning that neither Garuda Indonesia nor Boeing has any responsibilities”.

From this condition, it can be assumed that after the Post-Homologation Registration Period has passed, Garuda Indonesia is legally entitled to be completely side-lined and exempted from the obligation to pay its debts to Boeing.

The debt restructuring has resulted in significant improvements in Garuda Indonesia’s financial performance through 2024, as proven by the stock exchange

¹⁴ Kiki Safitri, “Boeing Tidak Mengajukan Klaim PKPU, Garuda Tidak Perlu Bayar Utang?”, *Kompas.com*, 15 Agustus 2022, <https://money.kompas.com/read/2022/08/15/103700426/boeing-tidak-mengajukan-klaim-pkpu-garuda-tak-perlu-bayar-utang-> (accessed on 31 August 2022 at 16.17 WIB)

¹⁵ *PT Garuda Indonesia (Persero) Tbk and Subsidiaries: Consolidated Financial Statements dated 31 December 2022 and 2021*, p.90, <https://www.garuda-indonesia.com/content/dam/garuda/files/pdf/investor-relations/financial-report/FS%20GA%20Konsol%2031%20Desember%202022%20Audited.pdf> (accessed on 30 March 2024 at 11.20 WIB)

valuation of GIAA shares.¹⁶ It highlights the complete trust that the market has in Garuda Indonesia's capacity to resolve the debt matters as shown by partnership with strategic investors following the international access.¹⁷ In addition, the non-participation of Boeing gives a debt relief toward the burden of Garuda Indonesia. Furthermore, the performance of Garuda Indonesia has presented the perseverance and managerial reformation.¹⁸

The SDPO issue of Garuda Indonesia has attracted public attention. Especially, since the status of an unverified creditor prevents Boeing from claiming its enormous total bills receivables. Thus, this is an interesting issue to be analyzed. That is why the researcher is interested in investigating the issue by conducting research entitled **Legal Protection and Remedies of the Unverified Creditor in Reconciliation** according to the **Case Study of PT Garuda Indonesia's Suspension of Debt Payment Obligations**. This research study provides elaboration on some particular viewpoints, specifically the creditor's position, also Indonesian legal protection, and the legal remedies taken by the unverified creditors at the time of reconciliation of Suspension of Debt Payment Obligation concerning Garuda Indonesia's case.

¹⁶ Tasya Natalia, "Menang Gugatan Greylag, Saham GIAA Melesat 4,41% ke Rp.71", *CNBC Indonesia*, 27 February 2024, <https://www.cnbcindonesia.com/market/20240227105816-17-517874/menang-gugatan-greylag-saham-giaa-melesat-441-ke-rp-71/amp> (accessed on 21 May 2024 at 12.56 PM)

¹⁷ Romys Binekasri, "Soal Investor Strategis Gaurda, Ini Bocoran Erick Thohir", *CNBC Indonesia*, 26 May 2023, <https://www.cnbcindonesia.com/market/20230526080739-17-440770/soal-investor-strategis-garuda-ini-bocoran-erick-thohir/amp> (accessed on 21 May 2024, 12.58 PM)

¹⁸ Mentari Puspadini, *Sempat di Kondisi Terendah, Ini Cara Garuda Tetap Bertahan*, *CNBC Indonesia*, 30 May 2023, <https://www.cnbcindonesia.com/market/20230530171503-17-441911/sempat-di-kondisi-terendah-ini-cara-garuda-tetap-bertahan/amp> (accessed on 21 May 2024, 1.00 PM)

B. Problem Formulation

1. How is the legal protection of the unverified creditors in the reconciliation of Suspension of Debt Payment Obligation that has been ratified by the Commercial Court?
2. How are the legal remedies of the unverified creditors in the reconciliation of Suspension of Debt Payment Obligation that has been ratified by the Commercial Court?

C. Research Objectives

1. To analyze the legal protection of unverified creditors in the reconciliation of Suspension of Debt Payment Obligation that has been ratified by the Commercial Court.
2. To analyze the legal remedies of the unverified creditors in the reconciliation of Suspension of Debt Payment Obligation that has been ratified by the Commercial Court.

D. Originality of Research

Based on the searches conducted, the researcher discovered other studies that were related to this research, including:

No.	Writers	Problem Questions
1	Kunto Catur Pangestu, Tanggung Jawab Tim Pengurus Terhadap Penetapan Penundaan Kewajiban Pembayaran Utang (PKPU) dan Perlindungan Hukum Terhadap Kreditor yang Terlambat dan Tidak Mengajukan Tagihan Dalam Proses Penundaan Kewajiban Pembayaran Utang	<ol style="list-style-type: none">1. How is the responsibility of the SDPO supervisor toward SDPO determination?2. How is the legal protection for creditors who are late in submitting their debt claims in the process of SDPO and the legal protection for creditors

	(PKPU) (Studi Kasus: Putusan Pengadilan Niaga No. 52/Pdt.Sus-PKPU/2016/PN.Niaga.Jkt.Pst PT. Brent Ventura dalam PKPU), Postgraduate thesis, Universitas Pembangunan Nasional “Veteran” Jakarta, 2018.	who did not submit their debt claims in the process of SDPO?
2	Fariz Risvano Alamsyah, Perlindungan Hukum Terhadap Kreditor Yang Terlambat dan Tidak Mengajukan Tagihan Dalam Proses Penundaan Kewajiban Pembayaran Utang (PKPU) dan Homologasi; (Studi Kasus : Penetapan Pengadilan Niaga No.52/Pdt.Sus-PKPU/2016/PN.Niaga.Jkt.Pst PT Brent Ventura Dalam PKPU), Postgraduate Thesis, Universitas Indonesia, 2018.	<ol style="list-style-type: none"> 1. How is the legal protection for creditors who are late in submitting their claim in the SDPO and the homologation process? 2. How is the legal protection for creditors who do not submit claims in SDPO and the homologation process?
3	Dwi Setya Adiningrat, Perlindungan Hukum Terhadap Kreditor Konkuren yang Tidak Mendaftarkan Piutangnya dalam Penundaan Kewajiban Pembayaran Utang (PKPU) Berdasarkan Undang-Undang Nomor 37 Tahun 2004, Undergraduate thesis, Universitas Trisakti, 2018.	<ol style="list-style-type: none"> 1. What are the legal consequences for concurrent creditors who did not register the debts claims in the SDPO process? 2. What is the legal protection for concurrent creditors who did not register the debts claims during the debt matching in the SDPO process?

In the prior studies above, the subjects focus on the protection of creditors due to the late submission and not submitting the receivables in the process of Suspension of Debt Payment Obligations. Meanwhile in this research, the specific case being discussed occurred recently in 2021 – 2022, in which Boeing as the creditor of Garuda Indonesia did not verify their debt claims until the submission period had ended. Moreover, what makes this current research differ from prior

studies is the elements of case analysis, methodology, and approaches of the problem questions, thus assuring the originality of the research.

E. Literature Review

1. An Overview of Reconciliation in Suspension of Debt Payment Obligations

Under Articles 1851-1864 of the Indonesian Civil Code (referred to as ICC), mediation should be a priority to settle the bankruptcy.¹⁹ In the context of SDPO, reconciliation is known as an agreement between both parties for the transfer or seizure of an asset to settle disputes binding the parties involved.²⁰ It opens up opportunities for debtors and creditors to discuss debt repayment methods and debt restructuring.²¹ The reconciliation itself serves an important purpose in the process of SDPO, which is to allow the company to continue operating and keep its value.

Indonesia Bankruptcy Act recognizes two approaches of reconciliation - reconciliation proposed by the debtor before or after the debtor is declared bankrupt.²² Specific clauses of SDPO and reconciliation proposal are cited in Chapter III of the Indonesia Bankruptcy Act.

Reconciliation is specifically regulated under the second part of Chapter III Article 265-294 of the Indonesia Bankruptcy Act. Article 265 of the Bankruptcy Act identifies that the debtor has the right to propose the

¹⁹ Umar Haris Sanjaya, *Penundaan Kewajiban Pembayaran (Utang dalam Hukum Kepailitan)*, NFP Publishing, 2014, p.20.

²⁰ Indonesia Civil Code Article 1851.

²¹ Alfiaturohmaniah Nafaatin, "Putusan Homologasi Sebagai Upaya Preventif Terjadinya Kepailitan (Studi Kasus pada Perkara Nomor: 06/Pdt.Sus-PKPU/2017/PN Niaga Smg)", Undergraduate Thesis, Universitas Negeri Semarang, 2018, p.7.

²² Sutan Remy Sjahdeini, *Op.Cit*, p.453.

reconciliation at the same time as the submission of SDPO or specifically during the SDPO period. Thus, a copy of the reconciliation plan should be presented to the supervisory judge, administrator, and experts, if any.

The Supervisory Judge will set the deadline for creditors to submit receivables bills after the reconciliation plan is received by the Clerk. All creditors and debtors are required to file their claims to the administrator, with the aim of matching debts. All evidence of debt will then be documented in the account reconciliation meeting. The verification step is the most crucial stage for selecting which debts will be authorized and approved by the Supervisory Judge. It is intended for further discussion at the meeting of creditors regarding debt restructuring in the process of the reconciliation plan.²³

The reconciliation terms are based on the provisions made by the debtor in terms of providing benefits to creditors such as business prospects to enable debt repayment and other debt restructuring benefits.²⁴ Thus, the creditors and the debtor should hold a meeting to discuss the terms and make a decision on whether the reconciliation plan is suitable or not.

According to the Article 281 paragraph (1) sub-paragraphs (a) and (b) of the Bankruptcy Act, described that:

- “The vote on a reconciliation plan is considered acceptable, if:
- a. Approved by $\frac{1}{2}$ of concurrent creditor present at the voting meeting and representing at least $\frac{2}{3}$ of the total claims acknowledged by concurrent creditors present; and

²³ Sutan Remy Sjahdeini, *Op.Cit*, p.462-465.

²⁴ Sutan Remy Sjahdeini, *Op.Cit*, p.457.

- b. Approved by ½ of total creditors whose assets are secured by mortgage, fiduciary guarantees, pledges, and others, and representing at least 2/3 of total creditor's debts".

To prevent performance failure by the debtor, the voting result must be notified to the Commercial Court by the supervisory judges. The ratification of the reconciliation proposal was later determined by the homologation which binds to all agreed creditors and has permanent legal force to be carry out.²⁵

2. Legal Implication of Reconciliation in Suspension of Debt Payment Obligations

The homologation shall mark the termination of the SDPO. The previous contractual relation between the two parties will come to an end, and they are obligated to comply with the provisions in the ratified reconciliation plan. As a result, the reconciliation proposal serves as a guideline for debtors and creditors fulfilling the debtor's obligations.²⁶

On the other hand, if the debtor fails to comply with the terms of the reconciliation agreement, the creditors shall file for a cancellation that may lead to the declaration of bankruptcy against the debtor.²⁷

3. Legal Protection for Creditors In Reconciliation of Suspension of Debt Payment Obligation

The creditors under the Indonesia Bankruptcy Act are regulated and protected to assert the rights against the debtor. To understand creditor protection, it is worth knowing three types of creditors based on the structured

²⁵ Sutan Remy Sjahdeini, *Op.Cit*, p.469.

²⁶ Sutan Remy Sjahdeini, *Op.Cit*, p.478

²⁷ *Ibid.*

creditor's principles,²⁸ the separatist creditors, preferred creditors, and concurrent creditors have different positions in terms of claiming rights against the debtor.

The separatist creditors are those who are unaffected by the debtor's bankruptcy decision and have the right to execute as holders of property security rights such as mortgages, liens, and other collateral.²⁹ As creditors with a special position by law, preferred creditors have the right to receive advance payment, such as paying taxes and paying employee wages. According to the payment priority, concurrent creditors are listed in the last position after the payment of separatist creditors and preferred creditors, whose repayments are distributed based on *pari passu pro rata parte* basis with other concurrent creditors.³⁰

Creditors' rights have been more protected since the enactment of the Bankruptcy Act. One of the examples is the creditors have the authority to file for an SDPO application when the debtor is unable to meet its debts. The reconciliation plan also has to provide favorable clauses to ensure the creditors obtain their rights. In creditor meetings, creditors can even negotiate additional terms with debtors to adjust the reconciliation plan.

²⁸ M.Hadi Subhan, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan*, Kencana Prenadamedia Group, Jakarta, p. 32.

²⁹ *Ibid.*

³⁰ Litari Elisa Putri and St. Laksanto Utomo, "Sinkronisasi Hukum Utang Pajak Sebagai Kreditor Preferen dalam Proses Kepailitan", *Jurnal Penegakan Hukum Indonesia (JPHI)*, Vol. 2, issue 1, Universitas Pembangunan Nasional Veteran Jakarta, 2021, p.94.

A reconciliation agreement has a permanent legal force that requires the debtor to fulfill its obligations to the creditors. If the debtor defaults on its promise later on, Article 291 jo. Article 170 and Article 171 explains that creditors may terminate the reconciliation agreement through Commercial Court to declare the debtor bankrupt. Therefore, the curator may re-verify the creditor's receivables bills.³¹

4. Legal Remedies for Creditors in Reconciliation of SDPO

In compliance with Article 235 paragraph (1) and Article 293 paragraph (1) of the Bankruptcy Code, there is no legal remedy available in response to the SDPO decision, unless otherwise specified under this Law. Constitutional Court Decision Number 23/PUU-XIX/2021 was made in response to those articles, stating that the option to file a cassation application remains accessible if there are justifiable reasons. The application can be made on the condition that the creditor files for SDPO and rejects the debtor's reconciliation plan. Until then, the possibility of implementing legal action in the form of a judicial review is temporarily suspended in order to provide legal certainty and reduce the number of cases before the Supreme Court.³²

³¹ Suwardi and Erick Wiryadharna, "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, issue 1, Master of Law Universitas Narotama Surabaya, 2022, p.287.

³² Lumiere Rejeki Agustinus Pandiangan, Nyulistiowati Suryanti, and Ema Rahmawati, "Analisis Putusan Mahkamah Konstitusi Nomor 23/PUU-XIX/2021 tentang memperbolehkan upaya hukum kasasi terhadap PKPU", *Nautical: Jurnal Ilmiah Multidisiplin*, Vol.1, Universitas Padjadjaran, 2023, p. 1488.

F. Research Method

1. Type of Research

This research study is normative legal research using positive legal norms of Indonesia's regulatory framework. The Indonesia Bankruptcy Act regarding the reconciliation in Suspension of Debt Payment Obligations in analyzing Garuda Indonesia.

2. Research Approach

This research adopts a statutory approach and analytical-case approach. The statutory approach is a technique that relies on the use of statute to describe and resolve an issue if there are flaws in the implementation of a regulation.³³ Legal analysis is applied to the Garuda Indonesia case, from defining terms to explaining the answers of the research problems. On the other side, this research study makes use of an analytical-case approach that examines legal cases based on the concept of interpretation, investigates the relationship between case and laws; in this regard, the case of Garuda Indonesia is the limitation of discussion.

3. Focus of Research

The focus of this research is to study the reconciliation in Suspension of Debt Payment Obligations of Garuda Indonesia regarding the legal remedies as well as the legal protection of the unverified creditors, as well as to study the rule of the Indonesia Bankruptcy Act.

³³ Johni Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, 3rd Edition, Bayumedia Publishing, 2007, p. 300.

4. Sources of Data

This research study makes use of secondary data as the normative legal research' sources. Legal material of the data consists of:

a. Primary legal materials - the legally binding materials that are the focus of the research.³⁴ There are a few primary legal sources:

- 1) Indonesian Civil Code (*Burgelijk Wetboek*);
- 2) Law No. 37 of 2004 concerning Bankruptcy and Suspension Debt of Payment Obligations;
- 3) Law No. 4 of 2023 concerning Development and Strengthening of the Financial Sector;
- 4) Supreme Court of Republic of Indonesia issued Decree No. 109/KMA/SK/IV/2020 concerning the Guideline of the Bankruptcy and SDPO implementation
- 5) Constitutional Court Decision Number 23/PUU-XIX/2021; and
- 6) Central Jakarta Commercial Court Decision No. 425/Pdt.Sus-PKPU/2021/PN Niaga Jkt.Ps.

b. Secondary legal materials - the legal materials that support the explanation of primary legal materials.³⁵ The researcher acquires the data from doctrinal or experts' opinions, books regarding laws, legal journals, and electronic data; and

³⁴ Suteki and Galang Taufani, *Metodologi Penelitian Hukum (Filsafat, Teori dan Praktik)*, Rajawali Press, Depok, 2020, p.212.

³⁵ Suteki and Galang Taufani, *Op.Cit*, p.216.

- c. Tertiary legal materials - the legal materials that explain the primary legal materials and secondary legal materials in a broader sense,³⁶ which are Black's Law Dictionary, Encyclopedia of Legal System, and Indonesia Dictionary (KBBI).

5. Data Collection Method

To gain the secondary data, sources are collected through:

- a. Library search, a mechanism to gain primary data and secondary data by exploring the collection of library sources.
- b. Internet search, an approach to obtain primary data, secondary data, and tertiary data. It is suggested to search for information on the internet only from reliable sources such as Google Scholar to find the e-books and legal journals for the reconciliation in SDPO and also the e-news for the progress of Garuda Indonesia's case.

6. Data Analysis Methods

The descriptive-evaluative analysis is applied in this research study. The approach explains the correlation between legal events that are found in the field without altering any of the research variables.³⁷

The descriptive analysis provides systematic, factual, and precise illustrations concerning a legal phenomenon;³⁸ in this research, it correlates with the case of Garuda Indonesia's debt settlement. The approach being

³⁶ *Ibid.*

³⁷ Bagas Adisuharjo, "Pengelolaan Sumber Daya Manusia Pada PT Mulyareksa Jayasakti Semarang", Undergraduate Thesis, Unika Soegijapranata, Semarang, 2016, p.27

³⁸ Imam Suprayogo dan Tobroni, *Metode Penelitian Kualitatif*, PT Remaja Rosdakarya, Bandung, 2001.

applied by the researcher is then elaborated with an evaluative approach to provide appropriate implementation of law. The implementation applies in certain circumstances, whether it has already been appropriate with the law, or not.

The evaluative analysis is concerned with final results and recommendations of object evaluation. There are a few options that will be taken to develop the results in several terms.³⁹ The results can remain at the same point, be improved, corrected, or even dismissed.

Furthermore, the descriptive evaluative approach is linked with Garuda Indonesia's legal facts, for example, examining the cases concerning the implementation of the reconciliation settlement procedure.

G. Systematics of Writing

The systematics of the research writing is organized into four chapters.

Chapter I Introduction. This chapter presents the background of study, problem formulation, research objectives, literature review, research methodology, originality of research, and systematics of writing.

Chapter II Theoretical Review. This section discusses theories related to the topic - the general principles of bankruptcy, specifically on SDPO, reconciliation legal instruments, legal protection of creditors, legal remedies for creditors and also scholars' opinions. As the sources of analysis, the theoretical review guides the

³⁹ Arikunto, Suharsimi, *Prosedur Penelitian Suatu Pendekatan Praktek*, Rineka Cipta, Jakarta, 2001.

writing process to understand normative concepts of reconciliation in SDPO concerning Garuda Indonesia's case.

Chapter III Findings & Discussions. This chapter discusses the legal analysis based on the problem formulations. The questions are concerned with the legal protection and legal remedies for unverified creditors in the reconciliation of Suspension of Debt Payment Obligations that has been ratified by the Commercial Court based on Garuda Indonesia's case. The theories and viewpoints presented in the previous chapter serve as tools for the discussion in this chapter.

Chapter IV Conclusions & Recommendations. This section presents a summary of the analysis of the findings and discussion of the problem formulations. It also presents recommendations for further research studies.

CHAPTER II

THEORETICAL REVIEW OF SUSPENSION OF DEBT PAYMENT OBLIGATIONS, RECONCILIATION PLAN, LEGAL PROTECTION OF CREDITORS, AND LEGAL REMEDIES

A. Suspension of Debt Payment Obligations

The Bankruptcy Act regulates the SDPO in Chapter III Art 222-294. It provides two opportunities for debtors to avoid bankruptcy. First, the debtor files for SDPO. Second, the debtor files for a reconciliation⁴⁰ after the debtor is declared bankrupt.⁴¹ Furthermore, during the SDPO process, creditors cannot apply for bankruptcy.⁴²

1. Definition

As a country once colonized by the Netherlands, Indonesia has regulations regarding bankruptcy called *Faillissementsverordening* (bankruptcy regulations) (*Staatblad* 1905 Number 217). In the rules, SDPO is known as *surseance van betaling*. Due to the 1997 monetary crisis, the urge to collect debts from debtors led to the Dutch regulation being amended into Government Regulation No.1 of 1998 concerning Amendments to the Bankruptcy Law, which was subsequently enacted through Law No. 4 of 1998, regulating SDPO to provide legal protection for creditors. In providing fair protection to creditors

⁴⁰ Reconciliation cannot prevent the debtor from bankruptcy, since it has occurred. However, if the reconciliation is achieved, the bankruptcy will be terminated by the court. Cited in Sutan Remy Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan (Memahami undang-undang No. 37 of 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran)*, Kencana, 2016, p. 411.

⁴¹ Sutan Remy Sjahdeini, *Loc. Cit*

⁴² Jono, *Hukum Kepailitan*, Sinar Grafika, Jakarta, 2008, p. 170.

and debtors, the Bankruptcy Act was amended to Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.⁴³ Moreover, the provisions regarding SDPO are regulated in Chapter III Art 222-294.

The Bankruptcy Act does not directly explain the definition of SDPO. Essentially, based on the provision in SDPO, it is interpreted as the condition in which the debtor has been granted the right to propose a reconciliation plan with the purpose of paying all or part of its debts while insolvent.⁴⁴

SDPO is defined as a specified period determined by a court decision based on provisions, intended to provide an opportunity for debtors and creditors to discuss ways to settle debt, whether in part or in full, one of which is by restructuring debts in order to come to an agreement to carry out a reconciliation plan.⁴⁵

Another definition says SDPO is a legal procedure that can be taken by a debtor when they are unable and is estimated to be unable to continue paying their overdue debts that must be paid. The submission of SDPO can be proposed concurrently with the reconciliation agreement with the hope that the debtor can avoid bankruptcy.⁴⁶

⁴³ Sutan Remy Sjahdeini, *Op. Cit.*, p.22-26.

⁴⁴ Bagus Irawan, *Aspek-aspek Hukum Kepailitan, Perusahaan, dan Asuransi*, Alumni, Bandung, 2007, p. 23.

⁴⁵ Munir Fuady, *Hukum Pailit Dalam Teori dan Praktek*, PT. Citra Aditya Bakti, Bandung, 2010, p. 177.

⁴⁶ Sutan Remy Sjahdeni, *Op. Cit.*, p. 364

In addition to legal procedure, SDPO can be defined as an opportunity for the debtor to defer its payment of debt obligations by restructuring its debt as long as the company's assets are still held by the debtor and it continues its business activities with the aim of providing certainty regarding debt repayments.⁴⁷

It is also interpreted that SDPO is a legal moratorium to postpone debt payment obligations.⁴⁸ Meanwhile, others describe the moratorium as a requirement for creditors for an explicit and implicit period to delay the collection of rights, the impact of which will be given to both parties, debtors and creditors, clearly concerning the events that occur thereafter.⁴⁹

According to the theories above, it can be concluded that SDPO is a procedure of legal remedy from the process of collecting debts of debtors through commercial courts and providing the debtors opportunities to offer reconciliation plans including the need for debt restructuring.⁵⁰

⁴⁷ Kartini Muljadi, *Restrukturisasi Utang, Kepailitan dalam Hubungannya Dengan Perseroan Terbatas, Makalah Disampaikan Pada Seminar Penundaan Kewajiban Pembayaran Utang Sebagai Sarana Menangkis Kepailitan dan Restrukturisasi Perusahaan*, Kantor Advokat Yan Apul & Rekan, Jakarta, 200, p. 20 cited in Umar Haris Sanjaya, *Penundaan Kewajiban Pembayaran Utang dalam Hukum Kepailitan*, NFP Publishing, Yogyakarta, 2014, p.26.

⁴⁸ Siti Anisah, "Alternatif Penyelesaian Utang Piutang dalam Rangka Penundaan Kewajiban Pembayaran Utang" *Jurnal Magister Hukum Fakultas Hukum*, Universitas Islam Indonesia, Vol. 1. No. 1, 1999, p. 78.

⁴⁹ Rajeev Babel, *Moratorium under CIRP: Statutory Provision Under IBC & Judicial Interpretations*, The Resolution Professional, p.22, <https://www.iiipicai.in/wp-content/uploads/2022/07/22-28-Article-Moratorium-under-CIRP-Statutory-Provision-Under-IBC-Judicial-Interpretations-Rajeev-Babel-1.pdf> (accessed on 4 October 2022 at 10.34 WIB)

⁵⁰ Sherly Nelsa Fitri, *Loc. Cit.*

2. Purpose

The SDPO proposal may bring benefits to both debtors and creditors. For debtors, a bankruptcy declaration would result in a general confiscation of all the assets he owned.⁵¹ In addition, SDPO provides facilities for debt restructuring and enables the continuation of its business operations. In this case, SDPO provides the debtor an opportunity to fulfill its duty, thus being able to improve the economic condition and prevent the debtor from liquidation.⁵²

In the condition that the debtor shows good faith, SDPO holds more favorable value compared to declaring individuals/ companies bankrupt by emphasizing the necessity for an effective, efficient, and up-to-date approach.⁵³ If the bankruptcy declaration is issued, it will eliminate the debtor's rights to fulfill its obligations.⁵⁴ SDPO also serves as a notice to the debtor regarding overdue debts that must be paid.⁵⁵

For creditors, SDPO aims to ensure legal certainty for them regarding the debtors' fulfilment of obligations by proposing several appropriate debt

⁵¹ Lontoh, Rudhy A., Denyny Kailimang dan Benny Ponto, *Penyelesaian Utang Piutang melalui Pailit dan Penundaan Kewajiban Pembayaran Utang*, cited in Sutan Remy Sjahdeini, *Op.Cit*, p. 413.

⁵² Sutan Remy Sjahdeini, *Op. Cit*, p. 413.

⁵³ Krista Yitawati, "The Mechanism of Suspension of Debt Payment Obligations (PKPU) in the Indonesian Bankruptcy Law During the Covid-19 Pandemic", *International Conference on Law Reform (INCLAR)*, Universitas Sebelas Maret, 2021, p.29.

⁵⁴ The existence of PKPU has legal consequences for confiscation status and collateral execution. PKPU resulted in the suspension of all execution actions that had been started to obtain debt repayment. Cited in Wulan Wiryanthari Dewi and I Made Tjatrayasa, "Akibat Hukum Penundaan Kewajiban Pembayaran Utang Terhadap Status Sita dan Eksekusi Jaminan Ditinjau Dari Undang – Undang Nomor 37 Tahun 2004", *Kertha Semaya: Journal Ilmu Hukum*, Vol.5, No.1, Universitas Udayana, 2016.

⁵⁵ Alfiatulrohmaniah Nafaatin, *Op. Cit*, p.9.

payments offered in the reconciliation plan.⁵⁶ Therefore, SDPO protects creditors in obtaining their rights.

In principle, SDPO aims not only to restructure debt payments but also aims to be embodied in a reconciliation plan.⁵⁷ The purpose is to provide sufficient time for debtors to settle their obligations with creditors.

“The main objectives of SDPO are:⁵⁸

- 1.) Avoiding bankruptcy;
- 2.) The implementation of a reconciliation plan through restorative justice procedures;
- 3.) Providing creditors with legal certainty and legal protection in order to obtain their rights;
- 4.) Restoring the debtor’s company operations; and
- 5.) Preventing mass layoffs.”

3. Principle

In general, the principle of Bankruptcy Act is inseparable from the principle of civil law. It can be seen from Article 1131 of the ICC regarding the equality of the creditor’s position or *paritas creditorium*.⁵⁹ Article 1132 of the ICC states that unless there is a justifiable cause, all creditors have equal rights to the debtor's assets unless there is a valid reason to take precedence, or called *pari passu pro rata parte*.⁶⁰

Additionally, specific principles are outlined in the comprehensive explanation of the Bankruptcy Act, such as:

⁵⁶ Kartini Muljadi and Gunawan Widjaja, *Pedoman Menangani Perkara Kepailitan*, Raja Grafindo Persada, Jakarta, 2007, p. 3.

⁵⁷ Umar Haris Sanjaya, “Kewenangan Kantor Pelayanan Pajak Untuk Mengeksekusi Harta Debitor Setelah terjadinya Perdamaian Dalam Kerangka Penundaan Kewajiban Pembayaran Utang”, thesis, Universitas Islam Indonesia, 2012, p.17.

⁵⁸ Syamsudin M. Sinaga, *Hukum Kepailitan Indonesia*, PT. Tatanusa, Ciputat, 2012, p. 264.

⁵⁹ Gunawan Widjaja, “The Application and Implementation of “MOU” in Indonesia Business Practices”, *International Journal of Business, Economics and Law*, Vol. 13, Issue 4, 2017, p.60.

⁶⁰ Adrian Sutedi, *Hukum Kepailitan*, Ghalia Indonesia, Jakarta, 2009, p. 37.

a. Business going concern principle

The concept of SDPO is to provide debtors with the opportunity to restructure their obligations, either in full or in part, to be implemented effectively. Furthermore, debtor companies with high profitability may be able to continue operations.⁶¹ They are projected to sustain their activities in the long term rather than being liquidated in a short time; therefore, options of business continuity need to be effectively pursued.⁶² Essentially, executing SDPO is the application of the going concern of the business itself.

b. Good faith principle

One of the essential principles stipulated in Article 1338 paragraph (3) of the ICC states that every implementation of an agreement must be carried out based on good faith. This means that everything that has been agreed upon and mutually accepted, the implementation of achievements must be fully respected.⁶³

4. Parties entitled to file for SDPO

a. Debtors

Article 222 paragraphs (1) and (2) of the Bankruptcy Act states that the debtor is able to propose SDPO if it has met the requirements - there is more

⁶¹ Sutan Remy Sjahdeini, *Op.Cit.*, p.413.

⁶² Elisatris Gultom, Hita Disyon, "The Implementation of the Going Concern Principle in Bankruptcy and The Suspension of Payment to Protect the Economic Rights of the Parties", *Journal of Law Padjajaran*, Vol.9, No.3, Universitas Padjajaran, 2022, p.348.

⁶³ Gunawan Widjaja, *Memahami Prinsip Keterbukaan dalam Hukum Perdata*, RajaGrafindon Persada, Jakarta, 2006, p. 283.

than one creditor and the debtor cannot and is expected to be unable to continue paying its debts.⁶⁴ The statement "unable" entails a clear standard indicating the debtor's inability, whereas "estimated" lacks clarity in determining the debtor's capacity. The phrase "the debtor estimates" cannot solely rely on speculation, but must be supported by financial analysis from the debtor's financial statements. It provides legal certainty when filing for SDPO to the Commercial Court.⁶⁵

b. Creditors

The refinement of the previous Law, namely Law No.4 of 1998 has resulted in the addition of parties eligible to request SDPO, one of which is creditors.⁶⁶ Article 222 paragraph (3), the application of SDPO by creditors to Commercial Court can be done if the creditors can prove that the debtor is expected to be unable to continue repaying overdue debts that must be paid.⁶⁷ The purpose of this application is giving the debtor the opportunity to submit a reconciliation plan.⁶⁸ The application for SDPO to the

⁶⁴ Susanti Adi Nugroho, *Hukum Kepailitan di Indonesia (Dalam Teori dan Praktik Serta Penerapan Hukumnya)*, Prenadamedia Group, Jakarta, 2018, p.280-281.

⁶⁵ The public accountant from the debtor's company is sent to analyze the debtor's financial condition, in addition to that, the results of a financial audit from an independent public accountant are also needed. Cited in Sutan Remy Sjahdeni, *Op. Cit*, p. 416.

⁶⁶ Ulang Mangun Sosiawan, Sypranus Ariesteus and Nevey Varida Ariani, *Kepailitan dan Penundaan Kewajiban Pembayaran Utang (Studi Hukum Dalam Rangka Penyusunan Naskah Akademik Rancangan Undang-Undang Nomor 37 Tahun 2004)*, Badan Penelitian dan Pengembangan Hukum dan HAM Republik Indonesia, Jakarta, 2017, p. 6.

⁶⁷ Sutan Remy Sjahdeini, *Op.Cit*, p.415

⁶⁸ Hijratul Pahsyah, "Reconstruction of Bankruptcy Regulations and Suspension of Debt Payment Obligations Based on Islamic Legal Values", *Journal of Social Research*, Vol.2, No.9, Universitas Islam Sultan Agung, 2023, p. 1585.

Commercial Court aims to provide legal protection and legal certainty to creditors in achieving clarity regarding the receivables given.⁶⁹

c. Other Parties

Law No. 4 of 2023 concerning the Development and Strengthening of the Financial Sector revokes some of the provisions in the Bankruptcy Act. Changes made regarding the parties authorized to submit SDPO applications includes banks, securities companies, stock exchanges, clearing guarantee institutions, custodian and settlement institutions, insurance companies, reinsurance companies, and pension funds as stipulated in Article 223 jo. Article 2 paragraphs (3), (4), and (5) of the Bankruptcy Act have been revoked and declared no longer valid. As stipulated in Article 8B, the Indonesian Financial Services Authority (also known as OJK) has become a single applicant to the Commercial Court, especially in the financial sector. This provision also includes Sharia Insurance.⁷⁰

The creditors who are willing to submit SDPO applications should send the application through OJK, which will then relay the interest of the creditor to the Commercial Court.⁷¹ These changes are the result of streamlining previous mechanisms and aim to protect the stability of Indonesia's financial sector.

⁶⁹ Sutan Remy Sjahdeini, *Op.Cit*, p.419

⁷⁰ Law No. 4 Tahun 2023 concerning Development and Strengthening Financial Sectors

⁷¹ *Ibid.*

5. The Time of Filing for Suspension of Debt Payment Obligations

The submission of SDPO is a sign of good faith from a debtor to creditors. There are two-time conditions for debtors to submit an SDPO application:

- a. Before the declaration of bankruptcy (voluntary petition); and
- b. During the bankruptcy declaration examination (involuntary petition).⁷²

Article 229 paragraph (3) states that when both the petition of a bankruptcy declaration and the petition of SDPO are simultaneously filed, the SDPO application must be examined first. This provision only applies when a bankruptcy statement has not been declared by the Commercial Court judge.⁷³

6. Type of Suspension of Debt Payment Obligations

a. Temporary Suspension of Debt Payment Obligations

Once the requirements for submitting an SDPO application are fulfilled, the application can be filed to the Commercial Court. Then, the temporary SDPO will take effect from the date the SDPO application is approved.⁷⁴

For debtors who file SDPO applications, the court will provide a maximum of 3 (three) days to grant the application. The Commercial Court will appoint a supervisory judge and appoint an administrator to manage

⁷² Susanti Adi Nugroho, *Loc.Cit.*

⁷³ Sutan Remy Sjahdeini, *Op. Cit.*, p.421.

⁷⁴ Sutan Remy Sjahdeini, *Op. Cit.*, p.424.

the debtor's assets.⁷⁵ In submitting the application, it must be accompanied by a list of the debtor's assets and liabilities, and must provide the names and addresses of the creditors, including the amount owed by each creditor. In line with the objectives of the SDPO itself, the submission of the SDPO application can be accompanied by a reconciliation plan, if available.⁷⁶

Meanwhile, for creditors who file for SDPO, Commercial Court will approve no later than 20 days after the application is registered. Then the appointment of a supervisory judge and an administrator is made in order to manage the debtor's assets.⁷⁷

The temporary SDPO decision takes effect from the date it is pronounced and lasts until the SDPO hearing takes place. In other words, the temporary SDPO remains in effect until a permanent SDPO decision is made. This temporary SDPO will be terminated when:⁷⁸

- 1.) Creditors refuse to approve the permanent SDPO terms;
 - 2.) The extension period of SDPO has expired, there is no agreement on the proposed reconciliation plan by the debtor.
- b. Permanent Suspension of Debt Payment Obligations

After the temporary SDPO has ended, through the administrator, the debtor and creditors are expected to attend the court summons regarding

⁷⁵ Sriwijastuti, "Lembaga PKPU Sebagai Sarana Restrukturisasi Utang Bagi Debitor Terhadap Para Kreditor", Thesis Program Studi Magister Kenotariatan, Pascasarjana, Universitas Diponegoro, Semarang, 2010, p.35.

⁷⁶ Aria Suyudi, Eryanto Nugroho and Herni Sri Nurbayanti, *Analisa Hukum Kepailitan Indonesia*, Pusat Studi Hukum dan Kebijakan Indonesia, Jakarta, 2004, p. 192.

⁷⁷ Sutan Remy Sjahdeini, *Op. Cit*, p.425.

⁷⁸ *Ibid.*

the granting of the SDPO application. The presence of the debtor is mandatory, if the debtor fails to be present for the summons, then the judge of the Commercial Court will promptly declare the debtor bankrupt and SDPO will be considered terminated.⁷⁹

The trial is held with the purpose of conducting a vote to decide on the permanent SDPO for the debtor. If a reconciliation plan has been submitted along with the SDPO application, the SDPO decision will be immediately determined. If not, the debtor is given 270 days to reach an agreement with creditors.⁸⁰

Basically, only concurrent creditors have the authority to establish a permanent SDPO for debtors. On the other hand, Article 229 paragraph (1) point b of the Bankruptcy Act explains other provisions regarding the rights of other creditors, namely separatist creditors. Therefore, it can be interpreted that a separatist creditor can submit a permanent SDPO only if a concurrent creditor does not submit one.⁸¹

7. Legal Implication of Suspension of Debt Payment Obligations

The following are the legal consequences arising from the implementation of the SDPO:⁸²

- a. Legal implication toward legal actions of the debtor

⁷⁹ Umar Haris, *Op. Cit.*, p. 35.

⁸⁰ Sutan Remy Sjahdeini, *Op. Cit.*, p.433

⁸¹ Sutan Remy Sjahdeini, *Loc. Cit.*

⁸² Susanti Adi Nugroho, *Op.Cit.*, p.293.

All legal actions conducted after the initiation of the SDPO, such as actions by the administrator or the transfer of the debtor's rights to assets, must be approved by the assigned administrator. In addition, based on the administrator's approval, the debtor may obtain loans from third parties to supplement their income. It implies that legal implications regarding the debtor's authority and obligations remain in effect until the end of the SDPO period.

Aside from that, there are exceptions to the legal actions taken by the debtor. These are in cases where the debtor has ongoing litigation previously examined by the court and in new cases, the debtor does not need approval from the administrator. Thus, these cases do not hinder and terminate the SDPO.

b. Legal implication toward confiscation status and collateral execution

The legal implications result in the suspension of all execution actions taken place to obtain debt repayment. As a result, the debtor cannot be forced to fulfill their obligations during both temporary and permanent SDPO periods. Basically, the Commercial Court allows the debtor to propose a reconciliation plan to creditors thereby postponing debt repayment.

All executions of confiscated goods carried out to settle the debtor's debts should be suspended. Until the SDPO period ends, there is no retroactive effect for separatist creditors to execute their collateral.

c. Legal implications toward reciprocal agreement

When a reciprocal agreement arises during the SDPO period, the parties to the agreement may ask the administrator to provide certainty regarding the status of the agreement. If no agreement is reached and the parties are dissatisfied, they can assert their rights or act as concurrent creditors.

d. Legal implication toward assets transfer agreement

If the agreement arises due to the delivery of traded objects and before the delivery is made and the temporary SDPO has been declared, then the agreement must be terminated and the compensation is granted.

e. Legal implications toward a lease agreement

In the debtor's capacity as a lessee, the lease agreement must be terminated. Notice of lease termination can be given before the time of agreement ends according to the terms of agreement.

f. Legal implication toward employee agreement

Termination of employment for workers must be notified in advance in accordance with applicable labor laws and regulations. Payment of salaries and other costs arising from the employment relationship become liabilities included in the debtor's assets.

8. End of Suspension of Debt Payment Obligations

The termination of the SDPO can be carried out upon the request of the supervisory judge, attorney, one or more creditors, or even the initiative of the Commercial Court. Through the examination process, the debtor and the

administrators present strong and fundamental reasons why the SDPO should be terminated. This aims to determine whether the debtor has acted in bad faith or genuinely cannot continue with the SDPO.⁸³

As stated in Article 255 of the Bankruptcy Act,

“The following reasons may result in the termination of the SDPO process:

- a. The debtor, during the period of SDPO, acts in bad faith in managing their assets;
- b. The debtor has caused or attempted to cause harm to the creditors;
- c. The debtor undertakes management or ownership actions over all or part of its assets without the approval of the administrator;
- d. The debtor fails to perform the activities required by the Court at the time or after the SDPO is granted, or fails to take actions necessary for the interests of the debtor’s assets as required by the administrator;
- e. During the period of SDPO, if it is discovered that the status of the debtor’s assets no longer allows for the continuation of the SDPO process; or
- f. The current financial condition of the cannot be expected to meet obligations to creditors in a timely manner”.

Since point a and point e are the reasons why the SDPO ends, management must request the termination of the SDPO within 10 days of submission, and the application must be reviewed and completed. Furthermore, a decision will be made 10 days after the application is reviewed. Therefore, after the SDPO is terminated, the debtor must be declared bankrupt in the same decision.⁸⁴ On the other hand, if the reconciliation plan has been homologated, the SDPO will end immediately, and the debtor will not be declared bankrupt.⁸⁵

⁸³ Sri Wijastuti, *Op. Cit*, p. 49-52.

⁸⁴ Farih Romdoni Putra, “Reform of Plan Termination in the Suspension of Debt Payment Obligations (PKPU) in Indonesia”, *Journal Yuridika*, Vol. 36, No. 3, Fakultas Hukum Universitas Airlangga, 2021, p.624.

⁸⁵ Kintan Ayunindya, *Debitor yang Tidak Hadir Pada Hari Sidang Setelah PKPU Sementara Ditetapkan Langsung Dinyatakan Pailit Pada Dalam Sidang yang Sama, 2020* <https://bplawyers.co.id/2020/01/16/debitor-yang-tidak-hadir-pada-hari-sidang-setelah-pkpu-sementara-ditetapkan-langsung-dinyatakan-pailit-pada-dalam-sidang-yang->

B. Reconciliation in Suspension of Debt Payment Obligations

The bankruptcy issue is correlated with the private aspects of the ICC. Based on Supreme Court Decree No. 1 of 2016 on Mediation, there is an obligation for parties to undergo mediation as a part of the dispute resolution process between conflicting parties.⁸⁶ Mediation is defined as a legal dispute resolution process through a meeting to reach an agreement documented in a deed.⁸⁷ After the approval of the SDPO application, the debtor is given the opportunity to submit a reconciliation plan regarding the debt management. As a result of consensus among the parties, reconciliation becomes an important dispute resolution method in bankruptcy and SDPO.

The bankruptcy Act identifies two approaches to settlement through reconciliation. First, reconciliation is offered in the SDPO stage prior to the issuance of the bankruptcy statement. Second, reconciliation is offered after the debtor is declared bankrupt.⁸⁸

Furthermore, the provisions concerning reconciliation in SDPO are cited in Chapter III Article 265-294 of Law No. 37 of 2004 concerning Bankruptcy and SDPO.⁸⁹

[sama/#:~:text=Tahap%20PKPU%20sementara%20ini%20berlaku,pailit%20pada%20sidang%20yang%20sama.](#) (accessed on 22 October 2022 at 19.42 WIB).

⁸⁶ Yusna Zaidah, Mutia Ramadhania Normas, "Mediasi Online dalam Penyelesaian Perkara Perceraian di Era Pandemi", *Journal of Islamic and Law Studies*, Vol.7, No.1, Universitas Islam Antasari, 2023, p.336.

⁸⁷ Article 1 of Supreme Court Decree No. 1 of 2016 concerning Mediation

⁸⁸ Sutan Remy Sjahdeini, *Op. Cit.*, p.453.

⁸⁹ *Ibid.*

1. Definition

Article 1851 of the ICC elucidates reconciliation as a written agreement between at least two parties who agree to release, pledge, or withhold an item to terminate an ongoing case or prevent the emergence of a case.

Reconciliation is not specifically regulated in the Bankruptcy Act. However, based on Article 265 of the Bankruptcy Act, reconciliation is described as the debtor's right to submit a reconciliation plan to creditors simultaneously with the submission of a SDPO application, if the debtor is expected to be unable to continue payments or cannot pay overdue debts that must be paid.

A reconciliation plan becomes the initial possibility in matters of SDPO.

⁹⁰ Reconciliation in SDPO can be defined as a process in which the debtor offers an agreement to creditors regarding debt repayment mechanisms to be relieved from the remaining debt. ⁹¹ Additionally, a plan to restructure debt payments also becomes a priority in this regard.

In principle, reconciliation is an offer to repay the debt in part or in full, which is classified in the form of debt restructuring. ⁹² The concept of reconciliation in SDPO is concluded as a negotiation to settle debt disputes by

⁹⁰ Kezia Cessy Ananda Priscilla, "Composition in Bankruptcy that Comes from Suspension of Debt Payment Obligations in The Verdict of Indonesian Supreme Court No.667/Pdt.Sus-Pailit/2021", In *3rd Asia Pacific International Conference on Industrial Engineering and Operations Management*, Universitas Bina Nusantara, 2022, p.1951.

⁹¹ Rahayu Hartini, *Hukum Kepailitan*, UMM Press, Malang, 2007, p. 175.

⁹² Sutan Remy Sjahdeini, *Op.Cit.*, p.454.

providing rights and obligations to pay part or all of the restructured debts bound in a reconciliation plan.⁹³

2. Purpose

The purpose of a reconciliation plan is to achieve an agreement related to dispute resolution.⁹⁴ The result of the reconciliation process is the attainment of an agreement for the debtor to fulfill obligations to creditors.

The reconciliation process in SDPO is an essential aspect of the approval of SDPO applications. This is due to the debtor's debts being removed from the bankruptcy statement.⁹⁵ Moreover, it serves as a guarantee to secure the rights of concurrent creditors based on the principle of security, as well as legal protection in the distribution of the debtor's assets to its creditors.⁹⁶

The submission of a reconciliation plan is an approach to encourage and commend mutually beneficial peaceful settlement of win-win solutions between parties. The tendency to settle issues based on relatively amicable methods elevates reconciliation to uphold the convergence of thoughts among disputing parties.⁹⁷

⁹³ Rindy Ayu Rahmadiyah, "Akibat Hukum Penolakan Rencana Perdamaian Debitur Oleh Kreditor Dalam Proses Penundaan Kewajiban Pembayaran Utang", *Jurnal Universitas Diponegoro*, Vol. 8, No. 2, 2015, p. 260.

⁹⁴ The settlement reached with their assistance was sealed by an oath before the gods. It was of great importance for maintaining peace, and it could not be violated without endangering the entire way of life of the family and tribe. This was the mechanism for preventing conflicts and bloodshed. Cited in Davydenko, Dmitry. "Mediation and amicable dispute resolution in Russian legal and cultural traditions." Available at SSRN 3917808, 2021, https://www.ostinstitut.de/files/de/2021/Davydenko_Mediation_and_amicable_dispute_resolution_in_Russian_legal_and_cultural_traditions_OL_2_2021.pdf (accessed on 12 September 2022)

⁹⁵ Umar Haris Sanjaya, *Op. Cit.*, p. 4.

⁹⁶ Siti Anisah, *Perlindungan Kepentingan Kreditor dan Debitor dalam Hukum Kepailitan di Indonesia*, Total Media, Cetakan II, Yogyakarta, 2008, p.226.

⁹⁷ Anita Afriana and Rai Mantili, "Implementasi Perdamaian (Accord) Pada Pengadilan Niaga dalam Penyelesaian Perkara Kepailitan di Indonesia," *Jurnal Ilmiah Hukum De'Jure* 2, no. 2, 2017.

3. Submission of Reconciliation in Suspension of Debt Payment Obligations

a) Legal Subject

In order to achieve the objectives of the SDPO itself, the reconciliation plan's submission is an indication of good faith. As stated in Article 222 paragraphs (2) and (3) of Law No. 37 of 2004, it is explained that “in situations where the debtor is no longer and is estimated to be unable to pay its overdue and payable debts, only the debtor has the right to submit a reconciliation plan in the form of debt restructuring to its creditors during the SDPO period”. Followed by the Article 265 which defines “the debtor is given a chance to submit a reconciliation plan to the creditors, at the same time with the SDPO application or after”.⁹⁸

b) Process of Submission

Practically, a proposal of reconciliation contains a schedule for the debtor's repayment of debts to creditors in an agreed-upon manner, outlined in a legal document concluding the debts. There is a specific period for submitting the proposal, such as:⁹⁹

- a. At the same time as the submission of SDPO;
- b. After the submission of the SDPO application, which should be attached before the maximum 45 days prior to the temporary SDPO; and

⁹⁸ Sutan Remy Sjahdeini, *Op. Cit.*, p.455.

⁹⁹ Sutan Remy Sjahdeini, *Op. Cit.*, p. 453-454.

- c. Post-SDPO trial, during the temporary SDPO period, and no later than 270 days from the designated interim SDPO period.

When submitting the reconciliation plan to the Commercial Court, copies must be sent to the Supervisory Judge, administrators, and experts, if any. After receiving the reconciliation proposal, the date and time for its discussion will be immediately scheduled. The meeting will be chaired by the supervisory judge and attended by debtors, creditors, and administrators during the temporary SDPO period or within 45 days after the SDPO decision is received by the Judge.¹⁰⁰

4. Verification Process

Bankruptcy Act defines verification as the process of validating the rights of creditor's receivables in order to recognize and determine the receivables.¹⁰¹ In other words, verification is the procedure for identifying receivables bills after the matching.¹⁰²

The administrator has an important role in ensuring the efficiency and effectiveness of matching debts up to the verification stage by the Commercial Court.¹⁰³ Given full authority in carrying out their duties, the administrator has

¹⁰⁰ Zeffrianto Sihotang, "Duties and Authority of PKPU Management Based on Law No. 37 Of 2004 Concerning Bankruptcy and Suspension Debt Payment Obligations", *Journal of Law Science*, Vol.3, No.1, Universitas Sumatera Utara, 2021, p.20.

¹⁰¹ Sutan Remy Sjahdeini, *Op. Cit*, p.87.

¹⁰² Siti Soemarti Hartono, *Pengantar Hukum Kepailitan dan Penundaan Pembayaran*, Seksi Hukum Dagang Fakultas Hukum UGM, Yogyakarta, 1981, p. 50 -51.

¹⁰³ Elyta Ras Ginting, *Hukum Kepailitan Rapat-Rapat Kreditor*, Sinar Grafika, Jakarta, 2018, p.60.

to publish the determination of the time frame for creditors or their representative to submit their receivables bill rights through a courier to all known creditors.

Through the notification, creditors are urged to provide invoices as well as written evidence that will support the receivables matching process to the administrator, and creditors may request a letter of receipt. On the other hand, debtors are also required to provide the debt records and reports with the aim to match them with the creditors' receivables claims evidence. This is done to ensure that if the administrator disagrees with the amount of receivables submitted by creditors; negotiations can be carried out. The temporary matching of receivables claims is carried out by compiling a list containing the names and addresses of creditors along with the amounts of debt claimed by each creditor. Then a matching meeting is held to determine whether the debts claims are acknowledged or denied by the administrator.¹⁰⁴

All receivables claims including interest-bearing receivables as referred to in Article 273 paragraph (1) must be recorded in the list with interest calculated until the day of the SDPO is granted. According to Article 274 paragraph (1), receivables bills with delayed terms must be included in the list with the applicable value at the commencement of the SDPO as referred to in Article 272. Furthermore, as mentioned in Article 274 paragraph (2), if the administrator and the creditors do not reach an agreement on the amounts of receivables bill, then the entire creditor's receivables bills are accepted conditionally. Debt claims

¹⁰⁴ Sutan Remy Sjahdeini, *Op. Cit*, p. 463-468.

with indefinite collection periods or debts paid periodically must be included in the collection list with the value at the time the temporary SDPO is pronounced by the judge. Debts that can be collected within 1 (one) year after the temporary SDPO is decided can be collected at the time of decision. Debts that can be collected after (1) year from the issuance of temporary SDPO are also included in the list. In making calculations, Article 274 paragraphs (2) and (3) state the need to consider the timing and method of payment, the benefits earned, and the agreed-upon interest rate. A copy of the list as referred to in Article 272 must be placed in the office of the Clerk of Commercial Court by the administrator for free viewing by anyone who wishes to do so.

Essentially, the provisions in Article 275 paragraph (3) contrast with those in Article 225 paragraph (2) of the Bankruptcy Act, which stipulates that the judge has 3 (three) days from the date the SDPO application is registered to issue the interim SDPO. There is also a contradiction in Article 228 of the Bankruptcy Act, which states that the reconciliation plan must be decided within 270 days from the appointment of the Permanent SDPO. While still considering the SDPO period as referred to in Article 228 paragraph (4), it is possible to postpone the discussion and voting on the reconciliation plan requested by the administrator or Supervisory Judge due to their positions.¹⁰⁵

The following are some of the rules outlined in Article 278 paragraph (3), (4), (5), and (6) regarding:

“The submission of receivables claims:

¹⁰⁵ *Ibid.*

- (3) Claims exceeding the time limit as referred to in Article 268 paragraph (1) a, can be collected up to two days before the meeting and will be included to the list of debts.
- (4) Claims received after the specified date cannot be included in the list of receivables.
- (5) The time limit restrictions as referred to in paragraphs (2) and (3) do not apply if the Creditor is domiciled outside the Republic of Indonesia, which becomes an impediment to reporting in advance.
- (6) In filing objections as referred to in paragraphs (2) and (3), or in the event of a dispute regarding the existence of obstacles as referred to in paragraph (5), the Supervisory Judge issues a ruling after asking for the opinion of the meeting”.

In Article 279, paragraph (1), the administrator has the right to revoke recognition and objections. Continuing to Article 279 paragraph (2), creditors who are present are also allowed to respond to objections regarding debt claims in whole or in part, acknowledged by the administrator, which will then be documented in the debt reconciliation meeting.

The verification stage must be attended by all disputing parties, including the debtor, creditors, and other parties such as supervisory bodies and administrators. This is also to determine which receivables will be submitted and approved by the Commercial Court's Supervisory Judge.¹⁰⁶ Based on the provisions of Article 280 of the Bankruptcy Act, the Supervisory Judge regulates whether creditors with disputed claims are entitled to participate in the voting process and the number of votes that creditors can issue. After the verification process, a meeting of creditors regarding the reconciliation plan will begin,

¹⁰⁶ Mari Schihalejev, "Court Supervision of the Determination of the Votes at the First General Meeting of Creditors in Estonian Bankruptcy Law." *Juridica Int'l* 26, 2017, p. 79.

discussing the restructuring methods undertaken by debtors and voting will be carried out.¹⁰⁷

5. The acceptance of reconciliation

The decision to accept or reject a reconciliation plan heavily depends on the proposal's substance. Therefore, the proposal must be meticulously prepared by a team of experienced experts, including consultants such as public accountants, legal advisors, and financial consultants, also business management consultants to appraisal companies. This is done as a remedy to ensure that the reconciliation plan benefits both the debtor and the creditors. Moreover, creditors are convinced that the debtor's company still holds significant business prospects and will be able to fulfill its obligations through the restructuring agreement.¹⁰⁸

The debt restructuring discussions between the debtor and creditors are critical to the success of the reconciliation plan. "The parties will pursue one or more debt restructuring options, which are:¹⁰⁹

- a. Rescheduling;
- b. Reconditioning;
- c. Debt guaranteeing;
- d. Credit shifting;
- e. Haircut;
- f. Interest rate rescaling;
- g. Debt renewal;
- h. Interest rate devaluating;
- i. Converting debt into transferable debentures;
- j. Stapled bond;
- k. Debt for equity swap;
- l. Debt to assets swap;

¹⁰⁷ The degree of voting will determine the value of the decision on the procedure of reconciliation, due to the interest of the parties following the majority decision. Cited in Nicolae Stef, "Voting rules in bankruptcy law." *Review of Law & Economics*, Vol. 13, No.1, 2017.

¹⁰⁸ Sutan Remy Sjahdeini, *Op. Cit*, p.457-459.

¹⁰⁹ Sutan Remy Sjahdeini, *Op. Cit*, p.381

- m. Capital direct placement; and
- n. Assets disposal”.

Debt restructuring resolution must be followed with internal improvements to uphold “principles of good corporate governance, including: ¹¹⁰

- a. Changes in company vision;
- b. Improvements in corporate strategy;
- c. Recent shifts in the organizational structure;
- d. adjustments in corporate culture;
- e. Installation of technological hardware as long as the company does not use technological devices, such as computers; or make changes or replacements to the technology used;
- f. Replacement of members of the company's board of directors and commissioners;
- g. The revision or additions to the Company's Articles of Association;
- h. Establishment or change of company systems and procedures;
- i. Merger with other companies;
- j. Consolidation with other companies;
- k. Acquisition of shares by third parties; and
- l. Other actions aimed at improving the company's financial and business performance”.

All creditors are invited to attend meetings in order to participate in the decision-making process on the reconciliation plan. ¹¹¹ As a result, the conditions for accepting reconciliation in SDPO in the Bankruptcy Act based on Article 281 paragraph (1) point a and b are:

- “(1) The reconciliation plan is accepted based on:
 - a. Approval by more than $\frac{1}{2}$ of the total number of concurrent creditors whose rights are acknowledged or temporarily acknowledged and they are present at the creditors’ meeting where the attending creditors represent at least $\frac{2}{3}$ of the debts acknowledged; and
 - b. Approval by more than $\frac{1}{2}$ of the total number of creditors whose receivables are guaranteed by liens, fiduciary guarantees, mortgages, or collateral rights over other objects who are

¹¹⁰ *Ibid.*

¹¹¹ Maniah, Ramon Nofrial, “Legal Conception of Suspension of Debt Payment Obligations Through Homologation”, *Journal Unnisulla*, Universitas Islam Sultan Agung, 2022, p.193.

present and they represent at least $\frac{2}{3}$ of the total amount of creditors' claims or their proxies present at the meeting”.

6. Result of Creditors Meeting

The fulfillment of the above provisions indicates that the reconciliation plan will have a significant impact on the acceptance or rejection of the reconciliation proposal. The acceptance of the reconciliation plan by the majority of creditors does not necessarily mean that the contents of the agreement can be immediately implemented. Instead, it must go through the stages of ratification of the reconciliation agreement decision by the commercial court judge.¹¹²

In giving the approval decision for the reconciliation, Article 285 paragraph (2) of the Bankruptcy Act stipulates that:¹¹³

- “The commercial court must refuse the approval of the reconciliation, if:
- a. The debtor's assets are significantly higher than the sum agreed upon in the reconciliation;
 - b. The implementation of the reconciliation is not adequately guaranteed;
 - c. Done in bad faith between the parties; and
 - d. Administrative costs have not been paid”.

When the commercial court rejects the reconciliation plan, the judge should declare the debtor bankrupt. Furthermore, the acceptance of the reconciliation plan by the court should be notified to the chief judge for

¹¹² Sutan Remy Sjahdeini, *Loc. Cit.*

¹¹³ Article 285 verse (2) of the Bankruptcy Act.

validation. Thus, the validation of the reconciliation agreement or known as homologation legally terminates the SDPO.¹¹⁴

On the other hand, reconciliation in bankruptcy cases only adhere to the principle of single reconciliation, in which the debtor is only given one opportunity to submit a reconciliation plan. If the reconciliation plan is rejected, the reconciliation process will be dismissed and the debtor is immediately declared bankrupt by the Commercial Court.¹¹⁵

7. Legal implication

The SDPO ends due to homologation, enabling the implementation of the reconciliation plan to all creditors except separatist creditors who do not approve it. In addition, the debtor-creditor relationship is no longer governed by the previous agreement between the two parties, but by the rules of the homologated reconciliation plan.¹¹⁶ This provides the parties with legal force and legal certainty in carrying out the agreement. As cited in Article 1338 of the ICC, all legal agreements are binding as law upon the parties who make them.¹¹⁷ Debtor is required to perform his duties, including all debts owed to creditors, and creditors have the right to receive debt repayment from the debtor according to the agreed amount and repayment, typically through debt restructuring. If the

¹¹⁴ Karina Widyadhari A.A.P, "The Annulment of Homologation in the Case of PKPU Application of Intidana Savings and Loan Cooperative in Review of Law Number 37 of 2004", *Educational Journal of History and Humanities*, Vol.6, No.2, Universitas Padjajaran, 2023, p.643.

¹¹⁵ Munir Fuady, *Op.Cit.*, p.194-195.

¹¹⁶ Dino Irwin Tengkan, "Perdamaian pada Penundaan Kewajiban Pembayaran Utang menurut Undang-undang Kepailitan", Tesis, Universitas Indonesia, Depok, 2007, p. 72-74. Cited in Umar Haris Sanjaya, *Op.Cit.*p.120.

¹¹⁷ Pambudi, Lintang Ario, "Perjanjian Perdamaian Dalam Penundaan Kewajiban Pembayaran Utang Sebagai Bentuk Restrukturisasi Utang di Indonesia." *Jurnal Idea Hukum*, Vol. 7, No. 2, Universitas Jendral Soedirman, 2022.

debtor fails to fulfill its obligations as stipulated in the reconciliation plan, then legally, creditors can propose the revocation of the reconciliation plan through the Commercial Court and officially declare the debtor bankrupt. Additionally, the reconciliation plan will be null and void if before the SDPO decision has permanent legal force, the SDPO is terminated.¹¹⁸

C. Legal Protection of Creditors

A debt agreement arising between debtors and creditors creates another legal protection for creditors. All movable and immovable assets owned by the debtor mortgaged legally serves as collateral in repaying the debts to all creditors as obligations arising from the agreement in accordance with the Article 1131 of the ICC.¹¹⁹ This is also supported by the *Paritas Creditorium* principle which has been utilized for any kind of debt settlement between debtor and creditors, which places creditors' rights in the same position over all debtors' assets.¹²⁰

Generally, by law, creditors are divided into two types:

- 1.) Secured Creditors/ Preferential Creditors; and
- 2.) Unsecured Creditors.

The creditors are protected and regulated under the Indonesia Bankruptcy Act to assert their rights against the debtor. Following the protection of creditors,

¹¹⁸ Munir Fuady, *Op. Cit.*, p.56.

¹¹⁹ Sutan Remi Sjahdeini, *Op. Cit.*, p.17

¹²⁰ Fani Martiawan Kumara Putra, "Eksistensi Kreditor Separatis Sebagai Pemohon Dalam Perkara Kepailitan", *Kajian Masalah Hukum dan Pembangunan*, Fakultas Hukum Universitas Wijaya Kusuma Surabaya, Volume XIX No. 1, 2014.

there are three types of creditors that should be understood based on the principles of structured creditor's¹²¹:

1.) Preferent creditors

Special rights are the rights of state budget¹²², auction houses, and related government institutions that are prioritized for payment. The payment period is regulated in specific clauses. Government taxes are also included as the special rights instrument that should be fulfilled, following curator fees.

2.) Separatist creditors

The preferred creditors are those who are unaffected by the decision of debtor's bankruptcy and have execution rights as holders of property security rights such as mortgages, liens, fiduciary and other collateral.¹²³ As creditors with a special legal status, preferred creditors have the right to priority payment.¹²⁴

3.) Concurrent creditors.

Creditors without security rights still maintain a position to file claims against the debtor based on agreements.

Each creditor has a different legal position due to priority rights over debt repayment. As stated in Article 1132 of the ICC, every creditor has the same

¹²¹ M.Hadi Subhan, *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan*, Kencana Prenadamedia Group, Jakarta, p. 32.

¹²² Article 1137 verse (1) of the ICC

¹²³ *Ibid.*

¹²⁴ Litari Elisa Putri and St. Laksanto Utomo, "Sinkronisasi Hukum Utang Pajak Sebagai Kreditor Preferen dalam Proses Kepailitan", *Jurnal Penegakan Hukum Indonesia (JPHI)*, Universitas Pembangunan Nasional Veteran Jakarta, p.94.

rights to claim the debtor's pledged assets and to be reimbursed in an adequate amount unless the amount is regulated *mutatis mutandis* ¹²⁵ following the proportionality of the creditor's receivables bill. ¹²⁶

The payment priority between preferred creditors and separatist creditors is further determined in accordance with the applicable articles of the ICC clauses. Following the order of payment, concurrent creditors are listed as the last priority after the payment to separatist creditors and preferred creditors, whose repayments are distributed *pari passu pro rata parte* ¹²⁷ among other concurrent creditors. ¹²⁸ This is a critical step for concurrent creditors since the basis of the receivable's identification stage in the SDPO and bankruptcy procedure is the debtor's acknowledgment of its debts to the creditors. ¹²⁹

After the enactment of the Bankruptcy Act, the protection of creditors' interests is increasingly guaranteed. It is reinforced by Article 222 paragraph 3 of the Bankruptcy Act which stipulates that creditors are allowed to propose SDPO concerning the debtor's inability to fulfill its debt.

During the SDPO process, Article 265 of the Bankruptcy Act allows debtors to offer reconciliation as a form of settlement. Debtors are expected to comply with most of the contents of a reconciliation proposal, which can benefit and

¹²⁵ The creditor has compelling reasons to be granted legal standing. Cited in Sutan Remy Sjahdeini, *Op. Cit.*, p.13

¹²⁶ *Ibid.*

¹²⁷ The principle is applied to concurrent creditors in order to regulate the proportionality of the debt settlement.

¹²⁸ Sutan Remy Sjahdeini, *Op. Cit* p.16.

¹²⁹ Muhamad Zulfikar, "Postponement of Debt Payment Obligations as A Remedies to Save Concurrent Creditors' Rights to Debtors Engaged in Investment", *Devotion Journal of Community Service*, Vol.4, No.4,2023, p.1266.

ensure creditors receive payments of their debts, as one of the legal protections for creditors.¹³⁰

In achieving a resolution, legally all creditors are given an opportunity to participate in voting on the reconciliation plan to safeguard the creditor's interests. Creditors may even engage additional negotiations with debtors to tailor the reconciliation plan. Thus, the process of reconciliation is determined by the creditor's vote and negotiation.

Whenever the separatist creditors reject the reconciliation plan. Article 281 paragraph (2) jo. Article 286 of Bankruptcy Act ensures that such action will not have an impact on the process of reconciliation. These creditors shall obtain the lowest payment for the receivables compared to the actual value stipulated in the previous agreement.¹³¹

The ratified reconciliation agreement holds binding legal force that requires the debtor to fulfill its obligations to creditors. In the event of debtor default, Article 291 jo. Article 170 and Article 171 explain that creditors may terminate the reconciliation agreement through the Commercial Court to declare bankruptcy to the debtor. Therefore, the curator may re-verify the creditor's receivables bill.¹³²

¹³⁰ Irfan Idham, Syahrudin Nawi and Hamza Baharuddin, "Perlindungan Hukum Kreditor Konkuren dalam Kepailitan: Studi Putusan Nomor.04/Pdt.Sus-PKPU.Pailit/2018/Pn.Niaga Mks", *Journal of Lex Generalis (JLS)*, Vol.1, No.5, Universitas Muslim Indonesia, 2020, p.754.

¹³¹ Sutan Remi Sjahdeini, *Op.Cit.*, p.468.

¹³² Suwardi, Erick Wiryadharma, "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, issue 1, Universitas Narotama Surabaya, 2022, p.287.

D. Legal Remedies

According to Prof. Sudikto Mertokusumo, legal remedies means a method for preventing and correcting errors in a court judgement.¹³³ In addition, legal remedy is known as an approach given by law to a person or legal entity in certain circumstances to challenge a judge's decision.¹³⁴ In conclusion, legal remedy is a procedural mechanism granted by the law to individuals or legal entities to oppose dissatisfaction with a judge's decision, which is considered inconsistent with expectations and fairness.¹³⁵

The Bankruptcy Act does not recognize legal remedy through appeals to the High Court. This is due to the aim of the bankruptcy and SDPO decision which prioritizes the implementation of decisions quickly and effectively. Therefore, regarding the judge's decision, the parties may immediately submit a legal remedy in the form of a cassation petition to the Supreme Court.¹³⁶

The provisions on legal remedies based on SDPO states that if the SDPO period expires and the reconciliation plan is rejected, bankruptcy will immediately be declared and there will be no longer the right to file a cassation as explained in Article 230 paragraph (1) of the Bankruptcy Act. Other

¹³³ Sudikno Mertokusumo, 2009, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, p.234.

¹³⁴ Retnowulan Sutantio dan Iskandar Oeripkartawinata, , *Hukum Acara Perdata dalam teori dan Praktek*, Mandar Maju, Bandung, 1995, p. 143.

¹³⁵ Kementerian Keuangan Republik Indonesia, *Upaya Hukum dalam Hukum Acara Perdata*, 2021, [website], <https://www.djkn.kemenkeu.go.id/artikel/baca/2296/Upaya-Hukum-dalam-Hukum-Acara-Perdata.html> (accessed on 16 April at 20.13WIB)

¹³⁶ Sutan Remy Sjahdeini, *Op. Cit*, p.270.

conditions apply if the permanent SDPO is revoked, creditors cannot file a cassation lawsuit.¹³⁷

No possible legal remedies can be pursued against the SDPO decision according to Article 235 paragraph (1) of the Bankruptcy Code. It is followed by the Article 293 paragraph (1) of the Bankruptcy Act stating that no legal remedy can be brought against the court verdict based on the provisions in Chapter III, unless otherwise specified in this Law. If the two articles are properly understood and basically have the same intent, the distinctions only meet in the substance which have limited characteristics and legal consequences. In Article 235 paragraph (1), the decision provisions before the SDPO process apply for a maximum of 20 days. Meanwhile, Article 293 paragraph (1) does not open to legal action after the SPDO process has been running for a maximum of 270 days.¹³⁸

In response to these two articles, the issuance of Constitutional Court Decision Number 23/PUU-XIX/2021 indicates the possibility to file a cassation petition remains available as long as there are justifiable reasons. This petition can be made on the condition that the SDPO application is submitted by the creditor and the reconciliation plan offered by the debtor is rejected by the creditor. In the meantime, in order to achieve legal certainty and minimize the number of cases in the Supreme Court, the Commercial Court's consideration of

¹³⁷ Sutan Remy Sjahdeini, *Op. Cit*, p.444.

¹³⁸ Krista Yitawati, Pujiyono and Adi Sulistiyono, "Constitutional Court Decision Number 23/PUU-XIX/2021: Analysis of Judges' Considerations Is It Permissible to Take Cassation Against Decisions to Postpone Debt Payment Obligations?", *Jurnal Jurisprudence*, Vo.12 No.1, 2022, p.27.

the Article 295 paragraph (1), Judicial Review as a legal remedy against SDPO's decision is not justified.¹³⁹

E. Islamic Perspective of Reconciliation

In relation to Islamic teachings, the scope of Islamic law does not unequivocally differentiate private law and public law. Every action that Muslims do should be based on Al-Quran, hadith, or *ijtihad*.¹⁴⁰ Nevertheless, activities related to business are subject to Islamic law, including bankruptcy matters.

From the perspective of Islamic Law, debt is a human conduct to gain benefit in the world but it also comes with consequences in the afterlife.¹⁴¹ As an economic activity in Islam, the Quran¹⁴² encourages Muslims to lend to those in need without seeking personal gain or interest, and to give just to glorify Allah. At some point, debt is only permitted if only it is necessary and the debtor shall repay it.¹⁴³

Bankruptcy is known as *al-taflis*. The phrase *al-taflis* originates from the word *al-fals* which means to have the least amount of assets. *Al-taflis* could be defined as a state of a person who has nothing left of assets and is unable to pay

¹³⁹ *Ibid.*

¹⁴⁰ Rohidin, *Pengantar Hukum Islam (Dari Semenanjung Arabia hingga Indonesia)*, Lintang Rasi Aksara Books, Yogyakarta, p.13.

¹⁴¹ D.Yunus and J.M Muslimin, "Debt in The Perspective of Islamic Law", *Jurnal Syarikah*, Vol.6 No.1, UIN Syarif Hidayatullah Jakarta, 2020, p.26.

¹⁴² Verses of the Holy Quran Al-Baqarah 1:245

¹⁴³ A. Sobian, S.F.A Rahman, *Pinjaman Peribadi Hasil Kajian Terhadap Masyarakat Malaysia*, IKIM, Kuala Lumpur, 2010.

his obligations.¹⁴⁴ Bankruptcy issues could be settled by litigation or non-litigation methods, such as reconciliation.¹⁴⁵

Al-shulhu is the Islamic concept of reconciliation. *Al-shulhu* itself has been specified in the Quran as a perfected step in settling conflicts.¹⁴⁶ Moreover, the dispute resolution must be in compliance with *aqad* or the contract between parties. As one of the sources of Islamic Law, *al-shulhu* is divided into two kinds. First, *al-shulhu* adheres to denial (*inkaar*), the creditors' accusations are not supported with strong evidence and the debtor denies the existence of the debt. Second, *al-shulhu* adheres to the sworn statement, the obligation to swear or the debtor's acknowledgement in admitting the debt.¹⁴⁷

According to Surah Al-Baqarah verse 280, it recites:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۗ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ

“If he (the person who owes a debt) is in distress, allow him a grace period until he finds relief. Giving alms (forgiving debt) is beneficial if you are cognizant of it.”¹⁴⁸

¹⁴⁴ A. B. J. Al Jazairi, Muslim Encyclopedia. Islamic Book Publisher Kaffah, Jakarta, 2005. Cited in Lucky Dafira Nugroho, “Comparison of At Taflis Wal Hajr in Islamic Law and Bankruptcy in Positive Law”, *Advances in Social Science, Education, and Humanities Research*, volume 383, Atlantis Press, 2019.

¹⁴⁵ Muhamad Subhi Apriantoro, “Penyelesaian Sengketa Kepailitan Ekonomi Syariah Perspektif Ibnu Rusyd Al-Qurthubi Dalam Bidayatul Mujtahid Wa Nihayatul Muqtashid”, *Jurnal Ilmiah Ekonomi Islam*, Universitas Muhammadiyah Surakarta, 2021, p.2.

¹⁴⁶ Nur Syasya Binti Rossiman, “The Significant of Suhl in The Syariah Court”, *Journal Pemikiran Hukum dan Hukum Islam*, Vol. 11, Sharif Ali Islamic University (UNISSA), 2020, p.142

¹⁴⁷ Siti Anisah, *Loc. Cit.*

¹⁴⁸ Verses of the Holy Quran Al-Baqarah 1:280

Islamic law explains *al-shulhu* is a condition where the debtor faces difficulty in paying debt, then the debtor should be given the opportunity to defer part or all of the debt. Considering the good intention of the debtor, the creditors shall defer some of the debt and receive the rest of the payment. It is followed by the statement of Imam Ahmad bin Hambal, who defines the recommendation of reconciliation as obligatory and valid.¹⁴⁹

¹⁴⁹ Ibnu Qudamah, Holy Book *Al-Mughniy*, vol.4, p. 472-473. Cited in Siti Anisah, *Loc.Cit.* p.392.

CHAPTER III

ANALYSIS OF LEGAL PROTECTION AND REMEDIES OF THE UNVERIFIED CREDITORS IN RECONCILIATION

(CASE STUDY OF PT GARUDA INDONESIA'S SUSPENSION OF DEBT PAYMENT OBLIGATIONS)

Case Position

PT Mitra Buana Koorporindo (referred to as MBK) submitted an application for SDPO against PT Garuda Indonesia in the Commercial Court of the Central Jakarta District Court on October 22, 2021. Furthermore, the application was registered under case number 425/Pdt.Sus-PKPU/2021/PN Niaga Jkt.Pst. The lawsuit was filed by MBK because Garuda Indonesia failed to pay its obligation amounting to IDR 4.16 billion to the petitioner by the due date of July 14, 2021. According to the terms of the agreement, Garuda Indonesia appointed MBK for cooperation in providing leasing services and managing domestic end-user computing services.¹⁵⁰

After the Commercial Court granted MBK's SDPO petition, the Panel of Judges issued a temporary SDPO on Garuda Indonesia on December 9, 2021. Therefore, no later than 45 days after the decision was made, Garuda Indonesia should draft a comprehensive restructuring plan for its business obligations towards creditors.¹⁵¹

¹⁵⁰ Monica Wareza, *Loc. Cit.*

¹⁵¹Yohanes Mega Hendarto, "Dua Dekade Sayap Garuda Keropos", *Kompas*, 14 December 2021, <https://www.kompas.id/baca/riset/2021/12/14/dua-dekade-sayap-garuda-keropos> (accessed on 26 March 2024 at 15.22 WIB)

To achieve optimal results, the Panel of Judges several times received requests for extension of the SDPO process, each for 60 days, until March 21, 2022 and another 60 days until May 20, 2022. Considering the ongoing discussions with creditors and lessors, Garuda Indonesia has filed a request for a 30-day extension of the SDPO process to the Commercial Court at the Central Jakarta District Court until June 20, 2022.¹⁵² This decision was made to complete the administrative aspects, verify documentation, and calculate debts owed to all stakeholders by coordinating with the management team to provide a Fixed Receivables List (referred as FRL) as the basis for voting.

According to FRL as of June 14, 2022, Garuda Indonesia reported that the claimed amount is IDR 142.21 trillion. This claim value includes debts owed by Garuda Indonesia to 501 creditors, lessors, non-lessors and preferred creditors. The breakdown of the total debt is IDR 104.371 trillion to 123 lessors, IDR 34.09 trillion to 300 non-lessors, and IDR 3.9 trillion to non-preferred creditors.¹⁵³

The voting stage on the SDPO reconciliation proposal submitted by Garuda Indonesia was held on June 17, 2022. A total of 365 concurrent creditors participated in the voting process, with 326 creditors attending in person, and 39

¹⁵² *Paparan Publik Insidentil PT Garuda Indonesia (Persero) Tbk (20 Oktober 2022)*, [website], https://www.garuda-indonesia.com/content/dam/garuda/hubungan-investor/keterbukaan-informasi/Materi_Pubex%20Insidentil_October%202022_18102022_Final%20PUBLISHED.pdf (accessed on 26 March 2024 at 15.36 WIB)

¹⁵³ Anintana Widya Puspa, "Terungkap! Ini Total Tagihan Garuda Indonesia saat Proses PKPU", *Bisnis.com*, 16 June 2022, <https://ekonomi.bisnis.com/read/20220616/98/1544496/terungkap-ini-total-tagihan-garuda-indonesia-saat-proses-pkpu> (accessed on 26 March 2024 at 15.51 WIB)

other creditors participating virtually. A total of 12,479,432 voting rights were collected.¹⁵⁴

“The voting of reconciliation proposal resulted in:¹⁵⁵

- 1.) The reconciliation plan was approved by 347 concurrent creditors, equivalent to 95.07% of the total votes cast, with a total of 12,162,455 votes. In addition, in terms of the amount of debt, it represents 97.46% of the verified debt amount in the FRL.
- 2.) 15 concurrent creditors or 4.11% of the total concurrent creditors rejected the reconciliation plan, representing 2.424% of the total debt amount from all votes cast.
- 3.) 3 concurrent creditors or 0.82% of the total concurrent creditors declared their abstention from this reconciliation plan, with a total of 14,449 votes against, representing 0.116% of all concurrent creditors votes cast”.

This marks the official approval of the reconciliation agreement by the majority of concurrent creditors. With this result, the approval decision hearing of Garuda Indonesia’s reconciliation proposal stipulates that the reconciliation agreement between Garuda Indonesia and its creditors is valid and legally binding. Through the Panel of Judges at the Commercial Court of the Central Jakarta District Court, the homologation of the reconciliation agreement was approved on June 27, 2022.

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“SDPO Case Decision Number: 425/PDT.SUS-PKPU/2021/PN.Niaga.Jkt.Pst issued by the Commercial Court of the Central Jakarta District Court on June 27, 2022, ruled as follows:

1. Declares valid and legally binding the Reconciliation Agreement dated June 17, 2022 between PT Garuda Indonesia and its creditors;

¹⁵⁴ "Voting PKPU: Proposal Perdamaian Utang Garuda Rp 142 T Disetujui", *Detik Finance*, 18 June 2022, <https://www.detik.com/jateng/bisnis/d-6133884/voting-pkpu-proposal-perdamaian-utang-garuda-rp-142-t-disetujui>, (accessed on 26 March 2024 at 22.21 WIB)

¹⁵⁵ *Ibid.*

¹⁵⁶ Teti Purwanti, “Tok! Proses PKPU Selesai, Garuda Lolos dari Jerat Pailit”, *CNBC Indonesia*, 22 June 2022, <https://www.cnbcindonesia.com/market/20220627110053-17-350617/tok-proses-pkpu-selesai-garuda-lolos-dari-jerat-pailit> (accessed on 26 March 2024 at 23.23 WIB)

2. Requires PT Garuda Indonesia, its creditors, and the parties mentioned in the agreement to comply with and implement the contents of the Reconciliation Agreement;
3. The remuneration for Management handling services during the Suspension of Debt Payment Obligations process will be determined separately and PT Garuda Indonesia is obliged to comply with the determination;
4. Declares that SDPO No.425/Pdr.Sus-PKPU/2021/PN.Niaga.Jkt. Pst. is legally terminated; and
5. Sentences PT Garuda Indonesia to pay court costs amounting to IDR 9,870,000.00 (nine million eight hundred and seventy thousand Rupiah)”.

Based on the statement of the provisions of the Panel of Judges' decision above, it is declared that the Garuda Indonesia SDPO case has ended and requires the parties to comply with and implement the contents of the reconciliation agreement.

However, not all of Garuda Indonesia's creditors followed the debt verification procedure, one of which was Boeing. The United States aircraft manufacturing company did not register its receivables amounting to 822 million USD or equivalent to Rp. 10 trillion to Garuda Indonesia.¹⁵⁷ According to the provisions in the reconciliation proposal article 3.3 b, it is stated that:

“The Company's creditors who (1) are identified and known by the Company as creditors with Claims against the Company but do not participate or register their Claims in the SDPO Process or whose Bills are not verified because they do not meet the formality requirements to submit claims in the SDPO process in accordance with the statutory regulations are classified as Identified Unverified Creditors”.

Based on that article, Boeing falls within the criteria of identified unverified creditors in the SDPO process. In addition, until the homologation decision was made, Boeing still did not register its receivables.

¹⁵⁷ “Boeing Tidak Ikut Voting PKPU Garuda Indonesia, Kenapa?”, *Voi.id*, 17 June 2022, <https://voi.id/ekonomi/180278/boeing-tidak-ikut-voting-pkpu-garuda-indonesia-kenapa> (accessed on 28 March 2024 at 14.46 WIB)

In order to accommodate the creditors' interests, Garuda Indonesia provides an opportunity for creditors who have not yet registered their receivables to file their claims within a period of 30 days from the homologation, starting from June 27, 2022 until July 27, 2022.¹⁵⁸ This is regulated in article 3.3 b i (a) reconciliation proposal as follows:

- "ii. For Identified Unverified Creditors, the following conditions apply:
 - (a) Each Identified Unverified Creditor may register its Claims with the Company for further verification at the Company's office within 30 Calendar Days after the Homologation Date, in accordance with the Post Homologation Registration Deadline procedures outlined below”.

It has been reported that Boeing did not file the invoice by the post-homologation registration deadline, which passed on July 27, 2022. Moreover, this has been explained in article 3.3 b i (d) of the reconciliation proposal that:

“Identified Unverified Creditors who do not register their Claims with the Company or provide such supporting documents by the Post-Homologation Registration Deadline, and as a result or subsequently fail to prove the validity of their respective Claims within the period specified in this Article, will no longer have any Claims against the Company and their Claims will be deemed to be fully waived and finally discharged, and the Company will no longer have any claims”.

In order to reinforce the provision above, Garuda Indonesia has released Notes to The Consolidated Financial Statements dated December 31, 2022 and 2021. In accordance with the Note 49 (a) related to Aircraft Purchase Commitments, it is explained that:¹⁵⁹

¹⁵⁸ Kiki Safitri and Erlangga Djumena, *Loc. Cit.*

¹⁵⁹ *PT Garuda Indonesia (Persero) Tbk and Subsidiaries: Consolidated Financial Statements dated 31 December 2022 and 2021*, p.90, <https://www.garuda-indonesia.com/content/dam/garuda/files/pdf/investor-relations/financial-report/FS%20GA%20Konsol%2031%20Desember%202022%20Audited.pdf> (accessed on 30 March 2024 at 11.20 WIB)

“Boeing is classified as an Identified Unverified Creditor as it did not participate in Garuda Indonesia’s SDPO. As a consequence, Boeing’s debt can be deemed fully non-existent and ignored, meaning that neither Garuda Indonesia nor Boeing has any responsibilities.”

It can be stated that after the post-homologation registration period has passed, Garuda Indonesia is legally entitled to totally lay aside and be released from any form of debt to Boeing.

A. Legal Protection of the Unverified Creditors in The Reconciliation of Suspension Debt of Payment Obligations that has been Ratified by the Commercial Court

Regarding the approval of the SDPO, the administrator authorized by the Supervisory Judge is obliged to determine the deadline for submitting claims and to specify the date and time of the creditors’ meeting until the reconciliation proposal is ratified. Although in practice, extensions are often granted according to the time limits stipulated by the Bankruptcy Act. Furthermore, the administrator is required to release announcements in newspapers and send invitation letters to creditors to attend the SDPO process.

¹⁶⁰ Once the creditors receive this information, they are expected to follow all the schedules set by the administrator.

Matching receivable aims to examine the validity of the creditor’s receivables submitted to the administrator. This step involves checking, comparing creditors’ records of receivables with the debtors’ debt reports in

¹⁶⁰ Sutan Remy Sjahdeini, *Loc. Cit.*

order to validate the claims submitted to the administrator.¹⁶¹ The legal basis for this process is based on the consideration of the order of creditors' rights. Thus, the report must align with calculations and written statements showing the classification and amount of receivables based on actual evidence.

In accordance with Article 272 of Bankruptcy Act, after the parties submit their bills, the administrator is required to create a list of all the details concerning each claim which will be presented at the creditors' meeting. In the actual application, a time extension to postpone the discussion and voting on reconciliation plan in order to reach a mutual agreement may be granted, as long as it remains within the time restriction stipulated by the Bankruptcy Act.

As stated in Article 278 paragraph (5) of the Bankruptcy Act, which provides no limitation on time period for the creditor who domiciled outside the Republic of Indonesia which is an impediment to reporting the receivables claims as referred in paragraphs (2) and (3). However, whether there is or not about the obstacles as mentioned in paragraph (5), the Supervisory Judge will give a determination after asking for the opinion of the meeting.

In the follow-up creditors' meetings, the administrator is obliged to report the progress result of the debt reconciliation and notify the debtor's financial conditions to the creditors. It is possible for the disagreements to occur over which debts are acknowledged and become a dispute throughout this

¹⁶¹ Ridwan Khairandy, *Op. Cit.*, p.485

procedure. Therefore, debtor and creditors are given the opportunity to respond concerning the administrator's report.¹⁶²

After the deadline for submitting claims is deemed closed, the Supervisory Judge will convene a debt verification meeting. At this stage, the debtor is required to attend without representation. By attaching written evidence and minutes from the administrator, the Supervisory Judge will explain which claims are acknowledged as well as the creditor's objections towards the claim. These will then be recorded into the receivables list and legally acknowledged as considerations for the Reconciliation Plan Voting Meeting.¹⁶³

The verification of claims by creditors shows the good faith to achieve a reconciliation plan. Moreover, this procedure is one of the most important stages in getting acknowledgement of the existence of receivables and also the amount owed by the debtor. The debt verification meeting is also directly related to determining the status of creditors and their receivables.¹⁶⁴ Therefore, creditors either in person or by a power of attorney are expected to verify their receivables to the administrator as mandated by Article 270 paragraph (1) of the Bankruptcy Act.

The provision above implies that creditors must verify their receivables in accordance with the procedures outlined in the Bankruptcy Act. In line with

¹⁶² Sihabudin and Eko Adhitama, "Hak Kreditor dengan Tagihan Piutang Tertolak dalam Proses Penundaan Kewajiban Pembayaran Utang", *Jurnal Ilmu Hukum*, Vol. 16 No 1, Fakultas Hukum Universitas Brawijaya, 2023, p.90.

¹⁶³ *Ibid.*

¹⁶⁴ Audika Vania Ardini, "Renvoi Prosedur Sebagai Upaya Hukum Untuk Menentukan Kedudukan Kreditor Dalam Sengketa Pailit (Studi Kasus: Putusan Mahkamah Agung No. 645K/Pdt.Sus-Pailit/2017)", Undergraduate Thesis, Universitas Indonesia.

the objectives of the Bankruptcy Act, ensuring the accuracy of the amount and the validity of creditors' receivables through verification is an attempt to prevent actions that could harm verified creditors from other creditors.¹⁶⁵ By participating in the receivable's verification process, the legal protection for creditors will emerge.

In practice, it is common to find creditors who do not use their verification right including not participating in the reconciliation process in SDPO procedure, either intentionally or unintentionally, even though the administrator has announced the information in the State Gazette of the Republic of Indonesia and at least 2 (two) daily newspapers, also has notified it through written invitations to all creditors to take part in the SDPO process.¹⁶⁶ To address this issue, the Bankruptcy Act has accommodated the possibility for creditors to obtain their rights in accordance with the provisions in SDPO.

Throughout the SDPO procedure, a reconciliation proposal that has been approved and homologated, will be binding on all parties taking part in the agreement, except for separatist creditors who do not approve it. It is evident that the clauses of the reconciliation plan based on the Reconciliation Decision by the Panel of Judges must be implemented by all creditors regardless of whether they verified their claims or not through the SDPO process. Therefore, the regulations concerning payment settlement procedures for all creditors who do not verify their claims until the reconciliation agreement is ratified, will

¹⁶⁵ Sutan Remy Sjahdeini, *Op. Cit*, p.6.

¹⁶⁶ Article 269 verses (1) and (2) of the Bankruptcy Act.

further refer to the regulations based on the contents of the reconciliation agreement which still consider the classification of creditors.¹⁶⁷

In addition, the lack of awareness about the implementation of SDPO is a significant factor contributing to the lack of verification. The factor of creditor negligence results in no opportunities for the creditor to negotiate the procedures for resolving receivables with the debtor. This is due to the content of the reconciliation plan that has been drafted in such a way and approved by the majority of creditors throughout the SDPO process.¹⁶⁸

Supreme Court of Republic of Indonesia issued Decree No. 109/KMA/SK/IV/2020 concerning the Guideline of the Bankruptcy and SDPO implementation, which outlines in detail the publicity principle along with the time period for the reporting receivable claims.¹⁶⁹ In the ICC, *rechtverwerking* is a legal doctrine, a circumstance in which a person or *rechtspersoon* relinquishes their rights due to not performed certain legal acts to protect their rights within that time period. The classification of unverified creditors indicates the creditors has lost their authority to exercise certain right. As a result, the unverified creditor's opportunity to reclaim its legal entitlements is completely dismissed.¹⁷⁰

¹⁶⁷ Sutan Remy Sjahdeini, *Op. Cit*, p.476

¹⁶⁸ Alfin Sulaiman, *Jika Nama Kreditor Tak Terdaftar dalam Putusan Perdamaian PKPU*, [website], 2016, <https://www.hukumonline.com/klinik/a/jika-nama-kreditor-tak-terdaftar-dalam-putusan-perdamaian-pkpu-lt57d110ea03f49/> (accessed on 6 April 2024 at 17.28 WIB)

¹⁶⁹ Supreme Court of Republic of Indonesia issued Decree No. 109/KMA/SK/IV/2020 concerning the Guideline of the Bankruptcy and SDPO implementation

¹⁷⁰ Joseph Noviandri and Togi Marolop Pangaribuan, "Perbandingan *Rechtsverwerking* sebagai Doktrin Hukum di Indonesia dan Doktrin *Estoppel* di Amerika Serikat pada Bidang Hukum Perjanjian", *Lex Patrimonium*, Vol.2 Issue No.2, Universitas Indonesia, 2023, p.4.

In fact, SDPO is used by debtors to provide a legal assurance for creditors throughout its implementation by presenting various debt payment proposals in the reconciliation plan. Regarding whether or not there is legal protection for creditors who do not verify their claims in the SDPO reconciliation process, it is important to review the specific clauses agreed upon by the parties in the reconciliation agreement. Then, because of the creditor's own negligence, there are no special treatments other than the creditors losing their rights. Consequently, their entitlement to legal protection is likewise eliminated.¹⁷¹

Boeing's case has attracted significant public attention. The United States aircraft manufacturing company has been classified as an Identified Unverified Creditor under Article 3.3 b of the Reconciliation Proposal¹⁷² ratified by Garuda Indonesia. This is due to Boeing's failure to verify its receivables until the homologation decision was determined. As a form of good faith, Garuda Indonesia has provided an opportunity for unverified creditors through article 3.3 b i (a) of the Reconciliation Proposal¹⁷³ to submit their claims by granting an additional period of 30 calendar days from the homologation date starting

¹⁷¹ Zeto Bachri et.al., "Legal Protection for Debtors in Determining the Application Requirements for Suspension of Debt Payment Obligations", *International Journal of Research in Business and Social Science*, Vol. 10, No.6, Brawijaya University, 2021, p.397.

¹⁷² Article 3.3 b of Reconciliation Proposal, stated that:

"The Company's creditors who (1) are identified and known by the Company as creditors with Claims against the Company but do not participate or register their Claims in the PKPU Process or the Bills are not verified because they do not meet the formality requirements for submitting claims in the PKPU process in accordance with the statutory regulations are classified as Identified Unverified Creditors".

¹⁷³ Article 3.3 b i (a) of the Reconciliation Proposal, as intended:

"i. For Identified Unverified Creditors, the following conditions apply:
(a) Each Identified Unverified Creditor may register its Claims with the Company for further verification at the Company's office within 30 Calendar Days after the Homologation Date, in accordance with the Post Homologation Registration Deadline procedures outlined below".

from June 27, 2022 until July 27, 2022 ¹⁷⁴ along with concrete evidence. Despite the fact that the publicity principle has been adequately fulfilled such as the administrator has announced the status of Garuda Indonesia's SDPO in the State Gazette of Republic of Indonesia and many daily newspapers until the SDPO decision was made on June 27, 2022 and Garuda Indonesia directly invited Boeing to submit the receivable claims in Post-Homologation Registration Deadline. Yet, Boeing as Garuda Indonesia's creditor still has not taken any action, either submitting a claim or following other SDPO processes to restore its rights. ¹⁷⁵

This case is more interesting to discuss since Boeing's claim rights are recorded with a significantly large amount, totalling 822 million US dollars or equivalent to Rp. 10 trillion.¹⁷⁶ If Boeing were to submit the claim during the SDPO stage, its vote should have been decisive in the voting decision regarding whether the reconciliation plan proposed by Garuda Indonesia can be accepted or not. In fact, Boeing did not proceed with the claim, resulting in significant disadvantage. As a result, that receivable claim loses its permanent legal force to obtain settlement from Garuda Indonesia.

It can be concluded that SDPO aims to defer debt payments, by proposing it through debt restructuring which is in accordance with the clauses of the ratified reconciliation proposal. Supported by article 3.3 b i (d) of the

¹⁷⁴ "Boeing Tidak Mengajukan Klaim PKPU, Garuda Tak Perlu Bayar Utang?", *Loc. Cit.*

¹⁷⁵ "Boeing Tak Mendaftar Selama 30 Hari Pasca Putusan PKPU Garuda, Piutang Hangan?", *Loc. Cit.*

¹⁷⁶ *Ibid.*

Reconciliation Proposal ¹⁷⁷ and Note 49 (a) related to the Commitments of Purchasing of Aircraft, ¹⁷⁸ such actions have resulted in consequences for Boeing in claiming the legal rights. Thus, Garuda Indonesia is legally entitled to completely lay aside and be released from all debts owed to Boeing. Since Boeing as a creditor has been deemed negligent by not conducting the verification, Boeing will not be regarded in the same manner as the creditors who have verified their claim. Furthermore, Boeing has legally forfeited its claim under the Bankruptcy Act. As a result, it can be stated that Boeing has lost any legal protection as a creditor who did not verify its receivable bills as stipulated in the reconciliation agreement with Garuda Indonesia.

B. Legal Remedies of the Unverified Creditors in the Reconciliation of Suspension of Debt Payment Obligations that has been Ratified by the Commercial Court

SDPO is defined as an opportunity to postpone payment of debts owed by the debtor based on the approval of the Commercial Court. This aims to avoid

¹⁷⁷ Article 3.3 b i (d) of the reconciliation proposal that:

“Identified Unverified Creditors who do not register their Claims with the Company or provide such supporting documents by the Post-Homologation Registration Deadline, and as a result or subsequently fail to prove the validity of their respective Claims within the time period specified in this Article, will no longer have any Claims against the Company and their Claims will be deemed to be fully waived and finally discharged, and the Company will no longer have any”.

¹⁷⁸ Note 49 (a) related to the Commitments of Purchasing of Aircraft, it describing that:

“Boeing was classified as an Identified Unverified Creditor as a result of not participating in Garuda Indonesia’s SDPO. As a consequence, Boeing’s debt can be deemed fully ignored and dismissed, meaning that neither Garuda Indonesia nor Boeing had any responsibilities”.

the bankruptcy declaration and reach an agreement for debt restructuring through a reconciliation plan.¹⁷⁹

In principle, to submit an SDPO application, certain requirements outlined in Article 222 of the Bankruptcy Act must be met, namely there are more than 1 (one) creditor and the debtor cannot or is expected to be unable to continue their debt payment obligations, the debtor or creditor can submit SPDO application to the Commercial Court. If the application is proven, the court should grant the SDPO status to the debtor.¹⁸⁰

As a form of carrying out the main objectives of the SDPO, creditors with a good faith are encouraged to take part in the entire reconciliation process underway, starting from the determination of the SDPO decision, the process of verifying receivables, creditors' meetings, voting, and ratifying the reconciliation plan.

On the basis of Article 281 paragraphs (1) point a and b of the Bankruptcy Act, a reconciliation plan may be accepted if there is an approval from more than $\frac{1}{2}$ of the present concurrent and at least representing $\frac{2}{3}$ of the total debts acknowledged. Moreover, the approval of more than $\frac{1}{2}$ of the present creditors whose receivables are guaranteed by liens, fiduciary guarantees, mortgages, or collateral rights over other objects representing at least $\frac{2}{3}$ of the total amount of claims of the creditors or their proxies present at the meeting is required.

¹⁷⁹ Krista Yitawati, Adi Sulistiyono, and Pujiyono, "Reconstructing the Debt Restructuring Mechanism in the Indonesian Law on Bankruptcy and Suspension of Debt Payment Obligations", *Wseas Journal*, Vol.1, Financial Engineering Universitas Sebelas Maret, 2023, p.88.

¹⁸⁰ Zeffrianto Sihotang, *Op. Cit.*, p.16.

This quorum must be reached for the Commercial Court to approve the reconciliation plan. As a result, the process of reconciliation is determined by the creditor's vote and negotiations.

Once the debtor has met the voting requirements and received the approval of the majority of creditors, then the reconciliation will subsequently be ratified. The relationship between the debtor and all its creditors will no longer be governed by the previous bilateral agreements, but will be regulated in a new reconciliation agreement. This has strong legal consequences for its parties involved, including unverified creditors.¹⁸¹

In practice, creditors who object to the homologation decision can still be found. Generally, objections to a judge's decision can be made using ordinary legal remedy or extraordinary legal remedy. Legal remedy is essentially an attempt done by individuals or legal entities to ensure correctness due to the probability of errors while decision-making.¹⁸² The main value of legal remedy is to provide legal certainty and serves as necessary steps to reach a verdict based on the principles of justice.¹⁸³ However, the provisions of the Bankruptcy Act state that all SDPO decisions are not subject to any legal actions, regardless cassation or judicial review as can be proven in Article 235 paragraph (1) which defined the no legal remedy may be taken to any SDPO's verdict and unless otherwise specified in this Law, there is no legal remedy available against court

¹⁸¹ Sutan Remy Sjahdeini, *Loc. Cit.*, p.476.

¹⁸² Kementerian Keuangan Republik Indonesia, *Upaya Hukum dalam Hukum Acara Perdata, 2011*, [website], <https://www.djkn.kemenkeu.go.id/artikel/baca/2296/Upaya-Hukum-dalam-Hukum-Acara-Perdata.html> (accessed on 16 April 2024 at 12.08)

¹⁸³ Rahayu Hartini, *Hukum Kepailitan*, (Malang: UMM Press, 2022), 60.

decisions based on Chapter III's provisions as stated in Article 293 paragraphs (1).

The Constitutional Court then issued Constitutional Court Decision Number 23/PUU-XIX/2021 in response to Article 235 paragraph (1) and Article 293 paragraph (1) of the Bankruptcy Act. Based on legal considerations, the prohibition on carrying out legal remedies against SDPO decisions contradicts the 1945 Constitution. There will always be a possibility of controversy over the interests of the parties against the judge's decision. Therefore, the issuance of this Constitutional Court Decision creates opportunities for parties that intend to take legal remedy considering the application procedures are fulfilled. To ascertain the SDPO, there is only one type of legal remedy that can be pursued, namely cassation. Cassation may be taken if the SDPO application submitted by the creditor and the reconciliation plan offered by the debtor is rejected by the creditor. It can be justified as long as there is justifiable reason as to the potential that judges erred while implementing the law. This is in line with the essence of SDPO application which is to resolve debt concerns fair, quick, open, and effectively, then the implementation of cassation is perfectly appropriate.¹⁸⁴

Meanwhile, as explained in Article 295 paragraph (1) of the Bankruptcy Act which states that an application for judicial review can be submitted to the

¹⁸⁴ Mahkamah Konstitusi Republik Indonesia, *MK Bolehkan Upaya Hukum Kasasi bagi Putusan PKPU*, [website], 2021, <https://www.mkri.id/index.php?page=web.Berita&id=17869&menu=2> (accessed on 5 February 2024 at 13.11 WIB)

Supreme Court once a verdict has been obtained permanent legal force, unless otherwise specified by law. Yet, the consideration of the Commercial Court regarding judicial review as a form of SDPO's ratification cannot be justified.

¹⁸⁵ This statement is issued to avoid an increase in the number of cases at the Supreme Court and as a form of providing legal certainty in the continuity of the business activities with speedy trials. ¹⁸⁶

In the specific case of Garuda Indonesia's SDPO reconciliation plan, the meeting has achieved the minimum quorum requirement, which is 95,07% or precisely 347 concurrent creditors approving the reconciliation proposal that was represented by 97.46% of all concurrent creditors present at the conference. ¹⁸⁷ It can be concluded that the reconciliation plan has been approved through voting. Supported by Constitutional Court Decision Number 23/PUU-XIX/202, the Garuda Indonesia's SDPO application is submitted by the creditors and the concurrent creditors accepting the Garuda Indonesia's reconciliation plan, there is no longer any relevance for the debtor or creditors in taking legal remedies. As explained in Article 288 of the Bankruptcy Act, when the reconciliation plan has reached the ratification stage then the SDPO process can be considered ended. Thus, Garuda Indonesia's reconciliation plan has permanent legal force.

¹⁸⁵ *Ibid.*

¹⁸⁶ Gede Aditya Pratama, Nina Zainab, and Heru Siswanto, "Legal Remedies Against Bankruptcy Decision Following Constitutional Court Decision Number 23/PUU-XIX/2021", *Jurnal Bina Mulia Hukum*, Vol.7 No.2, Universitas Bhayangkara Jakarta Raya, 2023, p.224.

¹⁸⁷ Anita Widya Puspa, *Loc. Cit.*

Boeing's action by not participating and registering its receivables claim in the SDPO process has led to several legal consequences that would disadvantage Boeing itself. Classified as the identified unverified creditor as stated in Article 3.3 b of the Garuda Indonesia's Reconciliation Proposal,¹⁸⁸ which causes Boeing to have no right to claim its legal protections. Consequently, Boeing does not have any chance of filing any legal remedies against the ratified Garuda Indonesia's reconciliation agreement. This determination is intended to upholding the best interest of verified creditors and fulfill the objectives of the Bankruptcy Act to protect the interests of parties involved in Garuda Indonesia.¹⁸⁹

In the provision of the Bankruptcy Act, there is no interdiction that prohibits the creditors to perform the legal remedies outside the court after the reconciliation plan reaches homologation. Such negotiation and mediation procedures are possible as in its implementation things may occur beyond expectations that are not anticipated when creating the reconciliation proposal. These legal remedies can be carried out in consideration of the administrator and all creditors involved agree to make changes or addendum to the clauses of the reconciliation proposal as the fulfillment of the condition in SDPO which

¹⁸⁸ Article 3.3 b of the Reconciliation Proposal, it is stated that:

“The Company's creditors who (1) are identified and known by the Company as creditors with Claims against the Company but do not participate or register their Claims in the PKPU Process or the Bills are not verified because they do not meet the formality requirements for submitting claims in the PKPU process in accordance with the statutory regulations are classified as Identified Unverified Creditors”.

¹⁸⁹ Siti Anisah, *Perlindungan Kepentingan Kreditor dan Debitor dalam Hukum Kepailitan di Indonesia*, Total Media, Yogyakarta, 2008, p. 226.

is approval of quorum. Furthermore, due to the end of the SDPO process, changes to the contents by the negotiation and mediation procedure cannot be re-ratified by the Commercial Court.¹⁹⁰

Therefore, Boeing may be entitled to directly request Garuda Indonesia as the debtor or through administrator to amend the specific clause of the Garuda Indonesia's reconciliation agreement with the aim of having them included in the agreement and Boeing's receivables claim recognized to obtain payment for its claims as per Boeing's right. Any additions or changes to the provisions arising from these negotiation and mediation procedures can be implemented if the administrator and all Garuda Indonesia creditors bound by the agreement agree to it.

¹⁹⁰ Valentino Revol Korompis, *Perubahan atas Perjanjian Perdamaian yang Telah Disahkan oleh Pengadilan Niaga*, [website], 2020, <https://kcaselawyer.com/perubahan-atas-perjanjian-perdamaian-yang-telah-disahkan-oleh-pengadilan-niaga/> (accessed on 15 April 2024 at 13.36 WIB)

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

Based on the analysis and discussion in previous chapter, a few conclusions can be drawn that:

1. The legal protection for unverified creditors in reconciliation of SDPO should refer to the clauses stated in the ratified reconciliation proposal. Due to the creditors' negligence, the unverified creditors receive no special treatment other than the loss of claim rights. Consequently, they are no longer entitled to legal protection. Since Boeing has legally abandoned its claim, it can be stated that Boeing as unverified creditors loses any legal protection as stipulated in the reconciliation agreement with Garuda Indonesia.
2. According to the Bankruptcy Act, there are no legal remedies against SDPO decisions and reconciliation, unless otherwise stipulated by law. However, with the issuance of Constitutional Court Decision Number 23/PUU-XIX/2021, it specifies that if there is a justifiable reason, a cassation legal remedy can be filed against SDPO judgement, with the condition that the SDPO application submitted by the creditor and the reconciliation plan offered by the debtor is rejected by the creditor. Furthermore, the judicial review is not justified. As Boeing is classified as an identified unverified creditor, the company has no opportunity of filing legal remedies against

Garuda Indonesia's ratified reconciliation agreement. However, Boeing still has possibilities to seek its legal remedies outside the court after the reconciliation plan has reached homologation. Engaging in negotiation and mediation procedure by amending clauses in the proposal so that Boeing can be included in the agreement and its receivables claims become recognized to obtain payment for Boeing's claims.

B. Recommendations

There are a few suggestions that arise from the research findings:

1. Foreign creditors are strongly advised to be fully aware and adhere with the debtor's SDPO process after the fulfilment of the publicity principle by the administrator, as intentional neglect of the notification may impact in the loss of creditor's rights.
2. Debtor should emphasize clear provision in the reconciliation agreement regarding the legal protection and remedies of the unverified creditors specifically for the foreign creditors who intentionally neglect the SDPO process, in order to provide justice and give legal certainty.

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