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Submission date: 05-May-2023 03:59PM (UTC+0700)

Submission ID: 2656832695

File name: ment_Obligations_PKPU_Under_Law_No_37_of_2004_on_Bankruptcy.pdf (668.4K)

Word count: 4778

Character count: 26504

by Library Referensi

Exploring Business Opportunities in the Postponement of Debt Payment Obligations (PKPU) under Law No. 37 of 2004 on Bankruptcy

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Abstract. This research explores the impact of strict time limits for Postponement of Debt Payment Obligations (PKPU) based on the Bankruptcy Law and Postponement of Debt Payment Obligations (UUK-PKPU) in Indonesia. PKPU aims to help debtors overcome financial problems and prevent bankruptcy by restructuring debt. However, the short time limit in the UUK-PKPU hampers the debtor's ability to reach a peace agreement with creditors. Using normative legal research methods, this research analyzes the PKPU process, the time limits set, and the factors that influence the success or failure of peace efforts. Research findings show that while time limits aim to provide legal certainty, they often hinder the peace process and the achievement of PKPU objectives. This research underscores the need to adjust the time limits in the UUK-PKPU to better enable successful peace efforts and prevent PKPU failure. This provides important insights for policy makers and legal practitioners in efforts to increase the effectiveness of PKPU in dealing with corporate financial problems.

Keywords: Legal Protection, Debtors, Creditors, UUK-PKPU, Peace Efforts

1. INTRODUCTION

The general objective of a company's operations is to maximize profits while considering long-term growth. The hope is that companies can provide goods and services needed by society, improve worker welfare, and open up job opportunities. Apart from that, it is hoped that the company's existence will advance national development through social responsibility and tax payments. However, not all businesses are able to achieve these goals. Many businesses experience losses that can result in cash flow problems, making them unable to continue business as usual and forced to end relationships with employees. One of the contributing problems is that management has not been able to secure, manage and use financial resources quickly through effective policy formulation.¹

Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK-PKPU) provides two options for business actors or debtors who are

¹ Ha-Joon Chang and Antonio Andreoni. "Industrial policy in the 21st century." *Development and Change* 51, no. 2 (2020): 324-351.

facing serious financial problems.² Debtors may attempt to avoid liquidation of assets by trying to reconcile with their creditors after being declared bankrupt by a court. In this case, the debtor attempts to settle obligations to creditors in a way that is most beneficial for both parties, and to retain most or all of the assets. The second option is to submit a request for Postponement of Debt Payment Obligations (PKPU). This process is regulated in Chapter III UUK-PKPU Articles 222 to 294. By submitting a PKPU, the debtor hopes to get protection from creditor demands while the debtor tries to improve the financial situation. This gives debtors time to devise restructuring or debt repayment plans that allow them to remain operational or regain their financial health without having to face looming liquidation or bankruptcy. Both of these options provide room for debtors to improve their financial situation in a way that is most beneficial to all parties involved, while providing an opportunity for struggling businesses to survive or revive.³

²⁴ Postponement of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang*/PKPU) refers to a situation where a debtor is unable or anticipates being unable to continue paying overdue and demandable debts. In this circumstance, the debtor can file a request for the postponement of debt payment obligations to concurrent creditors. Similar to a bankruptcy petition, a PKPU request must be submitted by the debtor to the court and signed by the debtor along with their legal counsel.⁴ In the UUK-PKPU, there are two types of PKPU known as temporary (*temporary* PKPU) and permanent (*remains* PKPU), each having specific stages and time limits. Temporary PKPU is regulated in Article 225 paragraph (4) of the UUK-PKPU, which states that after the court issues a temporary postponement of debt payment obligations, the debtor and creditors must be invited to attend a hearing within 45 days from the issuance of the decision. It is further mentioned that if the permanent postponement of debt payment obligations is approved, the extension cannot exceed 270 days after the temporary PKPU decision is pronounced.⁵

In addition to helping debtors avoid bankruptcy, the PKPU mechanism is seen to have a good social and economic impact on stakeholders such as employees. The debtor's business can continue to operate as a result of the successful debt restructuring under the PKPU process, guaranteeing that employees will not lose their jobs or income.⁶ However, in reality, there are cases where PKPU applications by debtors are not accepted or rejected by the court. Debtors who file for PKPU may end up bankrupt after failing to reach an agreement on a reconciliation plan with their creditors within the specified timeframe (as regulated in Article 225 paragraph (4) and Article 228 paragraph (5) of

² Zeffrianto Sihotang. "Duties And Authority Of PKPU Management Basen On Law No. 37 Of 2004 Concerning Bankruptcy And Suspension Debt Payment Obligations." *Journal of Law Science* 3, no. 1 (2021): 17.

³ Novitasari. "Tinjauan Yuridis Pembatasan Jangka Waktu Penundaan Kewajiban Pembayaran Utang Terhadap Debitor." *Kertha Patrika* 39, no. 2 (2017): 92.

⁴ Zeto Bachri, Suhariningsih Suhariningsih, Sukarmi Sukarmi, and Iwan Permadi. "Legal protection for debtors in determining the application requirements for suspension of debt payment obligations." *International Journal of Research in Business and Social Science* (2147-4478) 10, no. 6 (2021): 396.

⁵ Madayuti Pertiwi, Efa Laela Fakhriah, Isis Ikhwansyah, Bernard Nainggolan, and Agus Budiman. "The Function of Peace in Delay in Obligations Debt Payment to Prevent Bankruptcy in the Settlement of Company Debt Disputes in Indonesia." *Review of International Geographical Education Online* 11, no. 9 (2021).

⁶ Dini Syakina Siregar. "Settlement Of Bad Loans Through Debt Payment Obligation Submitting Institutions (PKPU)." *Journal of Law Science* 3, no. 3 (2021): 96.

5 Law Number 37 of 2004 concerning Bankruptcy and PKPU). This research examines three legal issues: first, why does the UUK-PKPU regulate a short time limit for PKPU; second, whether the provision of a short time limit in the UUK-PKPU causes the failure of reconciliation efforts between the debtor and its creditors; and third, whether the time limit for PKPU regulated in the UUK-PKPU has provided legal protection for the debtor's interests in preventing bankruptcy.

2. RESEARCH METHODS

This research adopts a normative legal research method relying on secondary data and literature studies. The approach applied in normative research views law as a system of norms. This normative system includes principles, norms, rules from legislation, court decisions, agreements, and doctrines representing the views or teachings of legal scholars. Throughout the research, all obtained data is qualitatively organized using an analytical method that explicates legal materials or data. The legal materials used as sources in this research include Law No. 1 of 1998 concerning Bankruptcy and Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. The analysis process is carried out deductively, where the results are organized in well-structured, coherent, logical sentences, free from overlaps. This approach aims to facilitate the interpretation of data and obtain a clear understanding of the analysis results. Thus, this research aims to contribute to a profound understanding of legal aspects related to the examined phenomenon.

3. RESULTS AND DISCUSSION

3.1. Time Limits for Postponing Debt Payment Obligations

1 A debtor who wishes to postpone paying their debts for a little amount of time in the hopes of earning enough money to pay off all of them is given a Delay of Payment Obligation (*Penundaan Kewajiban Pembayaran Utang*/PKPU). The Bankruptcy and Delay of Payment Obligation Law (UUK-PKPU) explains that PKPU is a legal procedure that grants the right to a debtor who is unable or estimates that they cannot continue paying overdue debts to file for PKPU.⁷ The purpose of this application is to formulate a peace plan that includes an offer to pay all or part of the debt to concurrent creditors. PKPU can be filed voluntarily by a debtor who has estimated their inability to pay the debt. The *Fallissemnt veordening* determines that the duration of PKPU is one and a half years, extendable for the same period. This time starts from the day the temporary PKPU is granted by the District Court. Although *Fallissemnt veordening* does not specify how long the immediate limit of temporary PKPU is, the total PKPU period can exceed three years, giving debtors sufficient time to overcome their financial limitations.⁸

The period for Delay of Payment Obligation (PKPU) has been further limited with the passage of Law No. 4 of 1998 concerning Bankruptcy, not to exceed 270 days including extensions, beginning from the determination of the provisional PKPU decision. Nevertheless, the regulation does not stipulate how long the immediate limit of granting

⁷ Bicar Franki Leonardo Manurung, Elza Syarif, and Rina Shahriyani Shahrullah. "Legal Consequences of Bankruptcy and Postponement of Debt Payment Obligations: Are They Similar?." *Journal of Law and Policy Transformation* 7, no. 1 (2022): 87.

⁸ Pebry Dirgantara. "Debt Forgiveness Principle In Business Legal Representatives." *NOTARIAL Jurnal Kenotariatan* 4, no. 1 (2019): 4.

temporary PKPU is, providing flexibility to the Court to determine an appropriate time. This change aims to create certainty regarding the PKPU period, within which the peace plan needs to be discussed and decided by the creditors. The amendment in the law serves as the basis for the issuance of Government Regulation in Lieu of Law No. 1 of 1998 concerning Bankruptcy. This regulation aims to create legal certainty, especially for the business world, to overcome the impact of the monetary crisis and provide a fair, fast, and transparent debt settlement mechanism.⁹

The Bankruptcy and Delay of Payment Obligation Law (UUK-PKPU) sets a timeframe for the temporary and permanent PKPU. In temporary PKPU, if the application is submitted by the debtor, the commercial court must approve it within a maximum of 3 days from the registration of the application. On the other hand, if the application is submitted by a creditor, the commercial court must appoint a supervisory judge and appoint one or more administrators within a maximum of 20 days from the registration of the temporary PKPU application. After the temporary PKPU decision is pronounced, the court is obligated to summon the debtor and creditors for a hearing no later than the 45th day from the PKPU decision.¹⁰ Meanwhile, to determine whether the debtor will be granted permanent PKPU, a meeting of the judges' deliberation must be held no later than the 45th day after the temporary PKPU decision. Permanent PKPU will be established by the commercial court if it receives the approval of more than 1/2 of the concurrent creditors present, representing at least 2/3 of the total claims of the concurrent creditors present or represented at the hearing. These provisions ensure that the decision of permanent PKPU is based on the majority approval of concurrent creditors. The set timeframe must not exceed 270 days from the date the temporary PKPU decision is established, providing clarity on the deadline for completing the PKPU process.¹¹

The provision of a very short timeframe within the framework of Delay of Payment Obligation (PKPU) in Indonesia is considered a policy that can expedite the achievement of a peace agreement between the debtor and creditors. On the other hand, *Fallissement veordering* gives the debtor more time, which may enable fewer cooperative debtors a way to finish their payments before declaring bankruptcy of their own volition. In contrast to UUK-PKPU, where the initiative is more placed on creditors to cooperate with debtors in resolving the debtor's debt settlement pattern. The purpose of limiting the timeframe in Law No. 37 of 2004 concerning Bankruptcy and PKPU is to prevent the PKPU process from taking too long so that debtors can quickly refocus on continuing their business.¹² This is expected so that the approved peace proposal (homologation) can be immediately implemented by the debtor. The speed of settling PKPU is expected

⁹ Regina Nitami Kasdi and Suyud Margono. "Analisis Putusan Pengadilan Niaga Terkait Akibat Hukum Permohonan Pkpu Yang Diajukan Oleh Pihak Yang Tidak Berwenang (Studi Kasus Putusan Pengadilan Niaga Pada Pengadilan Negeri Jakarta Pusat Nomor 24/Pdt. Sus-Pkpu/2018/Pn. Niaga. Jkt. Pst)." *Jurnal Hukum Adigama* 2, no. 2 (2019): 1401.

¹⁰ Zeffrianto Sihotang. "Duties And Authority Of PKPU Management Basen On Law No. 37 Of 2004 Concerning Bankruptcy And Suspension Debt Payment Obligations." *Journal of Law Science* 3, no. 1 (2021): 15-24.

¹¹ Zeto Bachri, Suhariningsih Suhariningsih, Sukarmi Sukarmi, and Iwan Permadi. "Legal Protection for Debtors Through Bankruptcy Concept." *International Journal of Multicultural and Multireligious Understanding* 8, no. 8 (2021): 459.

¹² Isis Ikhwanasyah and Lambok Marisi Jakobus Sidabutar. "The Implementation of Insolvency Test on Debtors' Bankruptcy in Performing the Principle of Justice." *Jurnal Media Hukum* 26, no. 2 (2019): 243.

to provide legal clarity and certainty, benefiting both debtors and creditors in efficiently addressing debt issues.¹³

¹⁰ Law No. 37 of 2004 concerning Bankruptcy and Delay of Payment Obligation (PKPU) formulates a timeframe with the aim of providing assurance to creditors that their debts will be promptly paid, while debtors are given a short time to make peace offers to creditors. This is intended to enable debtors to restore their financial condition and resume their business without fear of bankruptcy. By providing a limited time, UUK-PKPU encourages debtors to effectively settle their debts so that the restructuring process can proceed quickly and efficiently. However, in formulating the PKPU timeframe, consideration should be given to the company's ability to meet the debtor's future obligations. Business reorganization takes time, especially for companies that still have prospects for growth or continuing their business activities. The setting of time in PKPU should still consider other goals of the Bankruptcy Law, namely to increase the value of companies experiencing financial difficulties but are still prospective for development.¹⁴ By providing an opportunity to reorganize the debtor's business, UUK-PKPU can reduce the losses that may be suffered by stakeholders depending on the continuity of the company's business activities.

3.2. Reasons for the Failure of Debtors' Reconciliation Efforts with Creditors

Achieving or agreeing to a peace agreement becomes a crucial aspect in the implementation of Debt Payment Postponement (*Penundaan Kewajiban Pembayaran Utang*/PKPU), as the debtor company is generally in a weakened position. Debts may have matured and remain unpaid, prompting the debtor to make a strenuous effort to avoid bankruptcy. This effort is based on evaluating the company's asset production and current receivables and payables, even though overdue debts can still be claimed by creditors. The debtor may be petitioned for bankruptcy by several creditors who have experienced delayed payments. Each PKPU application views a peace agreement as a key element. The debtor needs to formulate a peace plan that appeals to creditors, encouraging them to negotiate together and reach a mutually beneficial agreement. The function of peace in PKPU goes beyond mere liquidation and distribution of bankrupt assets, as in bankruptcy.¹⁵ In Debt Payment Postponement (*Penundaan Kewajiban Pembayaran Utang*/PKPU), the function of peace involves approval of the debtor's debt restructuring, which can play a crucial role in maintaining the debtor's business continuity and achieving a win-win solution for all parties involved.

³ Debt Payment Postponement (*Penundaan Kewajiban Pembayaran Utang*/PKPU) differs from the concept of debt rescheduling commonly known in the banking industry. In PKPU, the 270-day period serves as a deadline for debtors and creditors to reach a peace agreement. This 270-day period is calculated from the temporary PKPU decided by the

¹³ Novitasari. "Tinjauan Yuridis Pembatasan Jangka Waktu Penundaan Kewajiban Pembayaran Utang Terhadap Debitor." *Kertha Patrika* 39, no. 2 (2017): 95.

¹⁴ Hendra Onggowijaya. "Regulation model for filing an actio pauliana lawsuit by creditors to revoke the debtor's legal actions prior to declaration of bankruptcy by the commercial court." *International Journal of Research in Business and Social Science* (2147-4478) 11, no. 7 (2022): 352.

¹⁵ Siti Putri Indah Meilani. "Role of Regional Financial & Assets Management Agency (BPKAD) in the Mediation Process of BPHTB & PPH." *Sultan Agung Notary Law Review* 3, no. 3 (2021): 1129.

commercial court, including the 45-day Temporary Postponement of Debt Payment. The maximum 270-day period in PKPU carries legal consequences where peace efforts must be agreed upon within that period. Although this deadline can be set shorter, any extensions of PKPU must still comply with the 270-day timeframe. This timeframe does not obligate debtors to immediately settle their debts with creditors but is intended to limit debtors in crafting a peace plan that appeals to creditors, encourages collaboration in negotiations, and achieves a mutually beneficial agreement for both parties.¹⁶

Peace becomes the primary determinant in the implementation of PKPU, but at this stage, the debtor company is in a weak position. Company debts may have matured and remain unpaid. Although the debtor makes a strong effort to avoid bankruptcy by looking at prospects and business opportunities for recovery, in some cases, certain creditors may hinder peace efforts with unclear intentions. Even if the debtor has agreed to peace and submitted a proposal according to their capabilities, creditors with ill intentions or involved in unhealthy business competition may intentionally reject peace proposals repeatedly. This action not only harms the debtor but also creates dissent that hampers the peace process, which should involve agreement from both parties. Additionally, the high voting requirements of creditors to approve PKPU can also be a factor in the failure of peace efforts, creating challenging obstacles in achieving the expected agreement.¹⁷

It is evident that debtors have a very weak bargaining position in peace efforts, as their success heavily depends on the approval and goodwill of creditors. Although the timeframe is not the primary factor causing the failure of a peace effort in PKPU, the short timeframe set by the UUK-PKPU still influences the process of reaching an agreement. The provision of a short timeframe can make it difficult for debtors to undertake PKPU efforts, as they do not have sufficient time to negotiate with creditors regarding debt payments.¹⁸ If the given timeframe exceeds 270 days, debtors will have a longer opportunity to negotiate with creditors and reach a mutual agreement regarding the payment of debts. While not the primary cause of failed peace, the short timeframe can impact the continuity of peace efforts, making the optimization of the timeframe in UUK-PKPU a consideration to achieve the expected goals of the law.

3.3. Legal Protection for Debtor Interests

Primarily, law functions as a mechanism to safeguard diverse human rights. Everybody engaged has their own interests in both life and legal interactions. These goals might coincide, diverge, or even be in opposition to one another. In life and in the legal world, interests that are shared typically do not cause issues. Likewise, in cases where the interests are disparate but undisputed. The emergence of conflicts of interest occurs when these interests clash and turn into open disputes. Given that law is a creation of society or humans, it is thought that human interests are something that it must safeguard. The broad goals and purposes of the law are intimately associated with the

¹⁶ Maya Tryandari. "Legal Protection for Bankruptcy Curators in The Resolution of Bankruptcy Cases." *Journal of Law and Legal Reform* 2, no. 3 (2021): 424.

¹⁷ Ruth Irene Saurmauli. "Legal Certainty of Actio Pauliana Decision in Bankruptcy Cases." *Locus Journal of Academic Literature Review* (2022): 389.

¹⁸ Jahya Donny Adi Tampemawa and Moh Yuda Sudawan. "Juridic Analysis of the Application of Legal Principles Contradictive Simple Proof in Two Identical Cases, the Application for PKPU between Applicant PT Gugus Rimbarta and Requested PT Budikencana Megahjaya." *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 5, no. 2 (2022): 11815.

word legal protection in this sense. Experts in law concur that protecting people's interests is one of the main purposes of the legal system.¹⁹

The purpose of Debt Payment Postponement (*Penundaan Kewajiban Pembayaran Utang*/PKPU) regulated by the Bankruptcy and PKPU Law (UUK-PKPU) is to provide an opportunity for debtors to reach a settlement with their creditors regarding their debts. This aims to help debtors avoid bankruptcy and continue their business. Additionally, PKPU also ensures creditors that their rights related to receivables will be fulfilled. The peace plan is an absolute right for debtors in PKPU.²⁰ If the debtor does not submit a peace plan throughout the PKPU process, the debtor can be declared bankrupt by the commercial court. It is important to note that there are no provisions requiring debtors to submit a peace plan in a specific format or content. The peace plan is prepared based on the situations, conditions, and interests that exist between the debtor and the relevant creditors.²¹

The mechanism of Debt Payment Postponement (*Penundaan Kewajiban Pembayaran Utang*/PKPU), despite providing legal protection for debtors against bankruptcy claims, still has limitations that need to be considered. One aspect to be noted is the relatively short time given to debtors to improve their company's performance. The PKPU process, primarily directed towards the interests of creditors, along with the limitations on ownership in managing the company jointly with administrators, restricts the debtor's ability to make significant improvements. Additionally, UUK-PKPU has not yet separated bankruptcy between companies and individuals, even though their goals and benefits may differ. Article 229 paragraphs (3) and (4) of UUK-PKPU regulate the prioritized position of PKPU applications, but in reality, PKPU often ends in bankruptcy, making the goal of preventing bankruptcy for debtors less optimal. Although PKPU provides protection, the set time frame in UUK-PKPU is considered inadequate, turning debtor's PKPU efforts into a boomerang by triggering bankruptcy actions by creditors.²²

An ideal bankruptcy law should be based on the principle of providing balanced protection to all parties involved and having interests in bankruptcy, not just creditors. Protection for debtors and their stakeholders should also be a primary concern in such a law. While UUK-PKPU assures protection for debtors by providing certainty to creditors that their receivables will be paid and helping debtors avoid bankruptcy, the existence of a relatively short time limit for debtors to negotiate with creditors is seen as suboptimal. The overly short time limit makes it difficult for debtors to reach agreements through negotiation, making the objectives of providing PKPU challenging to achieve. In

¹⁹ Binov Handitya. "Redesign The Relevance Of Justice In Debtor Protection Related To Parate Executions Performed By Separate Creditors In Liability Agreements." *Jurnal Akta* 8, no. 4 (2021): 224.

²⁰ Firman Wahyudi. "The quo vadis of bankruptcy settlement and pkpu laws on sharia banking." *Jurnal Hukum dan Peradilan* 8, no. 1 (2019): 2.

²¹ Novitasari. "Tinjauan Yuridis Pembatasan Jangka Waktu Penundaan Kewajiban Pembayaran Utang Terhadap Debitor." *Kertha Patrika* 39, no. 2 (2017): 96.

²² Wira Arizona. "Analisis Yuridis Kekuatan Hukum Pengajuan Permohonan Renvoi Prosedur Oleh Kreditor Yang Didasarkan Kepada Audit Internal Perusahaan Kreditor: Studi Putusan Mahkamah Agung No. 617. K/Pdt. Sus. Pailit/2018." *USU Law Journal* 7, no. 6 (2019): 59.

order to maximize the function of PKPU and more successfully achieve the purpose of providing debtors with legal protection, the time frame must be reviewed.²³

4. CONCLUSION

Based on Law No. 37 of 2004 concerning Bankruptcy and Debt Payment Postponement (UUK-PKPU), it can be concluded that Bankruptcy and Debt Payment Postponement (*Penundaan Kewajiban Pembayaran Utang*/PKPU) aims to provide assurance to creditors regarding the payment of their debts, while debtors are given a short time to make efforts for a peace agreement. The provision of a very short time frame, although intended to reach a peace agreement between creditors and debtors, seems to limit the optimization of peace agreements that can be achieved by creditors and debtors within the framework of PKPU. Although the short time frame regulated in the Bankruptcy and PKPU Law is not a determinant of the success or failure of a peace effort, it clearly influences the overall process of achieving PKPU. The weak bargaining position for debtors makes them highly dependent on the approval and good faith of creditors in peace efforts. The relatively short time limit in UUK-PKPU provides legal protection for debtors to prevent bankruptcy, but the weakness lies in the debtor's difficulty in reaching a peace agreement with creditors due to the excessively short time frame. Thus, although the purpose of granting PKPU is to protect the interests of debtors and prevent bankruptcy, strict time limits can hinder the achievement of these goals.

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²³ Farih Romdoni Putra. "Reform of Plan Termination in the Suspension of Debt Payment Obligations (PKPU) in Indonesia." *Yuridika* 36, no. 3 (2021): 623.

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