

ANALISIS PERBANDINGAN PUTUSAN HAKIM DALAM PERMOHONAN PENUNDAAN KEWAJIBAN PEMBAYARAN UTANG TENTANG AKIBAT HUKUM TIDAK TERPENUHINYA SYARAT PERDAMAIAN DITINJAU DARI PASAL 281 AYAT (1) UNDANG – UNDANG NOMOR 37 TAHUN 2004 TENTANG KEPAILITAN DAN PENUNDAAN KEWAJIBAN PEMBAYARAN UTANG (STUDI PUTUSAN NO. 6/PDT.SUS-PKPU/2019/PN.NIAGA. MDN. DAN PUTUSAN NO. 119/PDT.SUS- PKPU/2020/PN. NIAGA.JKT.PST)

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INTISARI

Tujuan penelitian ini yaitu untuk mengetahui dan menganalisis (1) Akibat hukum bagi Debitor yang rencana perdamaianya ditolak oleh para kreditornya dalam proses PKPU dan (2) Pandangan hakim dalam memutuskan akibat hukum bagi Debitor yang rencana perdamaianya ditolak oleh Kreditornya dalam proses PKPU berdasarkan putusan Nomor 6/Pdt.Sus-PKPU/2019/PN.Niaga.Mdn., dan putusan Nomor 119/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst.

Penelitian ini merupakan penelitian normatif-empiris. Penelitian normatif dilakukan dengan penelitian kepustakaan dengan menelusuri data sekunder berupa bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier dengan metode dokumentasi dan alat berupa studi dokumen. Penelitian empiris dilakukan dengan penelitian lapangan dengan wawancara kepada subjek penelitian dan menggunakan alat berupa panduan wawancara. Analisis data menggunakan analisis kualitatif.

Hasil penelitian dan pembahasan menunjukkan bahwa terdapat perbedaan pandangan hakim dalam memutuskan apakah debitor yang rencana perdamaianya tidak memenuhi ketentuan Pasal 281 ayat (1) UUK-PKPU. Perbedaan ini menimbulkan ketidakpastian hukum bagi kreditor dan debitor, mengingat bahwa lembaga kepailitan ada untuk membantu kreditor dan debitor menyelesaikan permasalahan utang – piutang di antara mereka dengan cepat. Lembaga kepailitan adalah solusi terbaik dibanding lembaga peradilan pada umumnya ataupun lembaga penyelesaian alternatif (*Alternative Dispute Resolution*).

Berdasarkan hasil dan pembahasan tersebut dapat disimpulkan bahwa (1) rencana perdamaian yang telah diajukan pada saat PKPU tetapi ditolak karena tidak memenuhi ketentuan Pasal 281 ayat (1) UUK-PKPU wajib dinyatakan pailit karena pada saat PKPU kreditor dan pengurus dapat menilai apakah harta kekayaan debitor masih layak dilanjutkan, sanggup membayar biaya dan jasa pengurus serta mampu membayar utang kepada kreditor pada waktu yang telah ditentukan melalui laporan keuangan dan neraca aktiva – pasiva debitor masih layak untuk melakukan pembayaran kepada kreditor tepat pada waktunya. (2) selain itu perlu ada perubahan mengenai UUK-PKPU tentang syarat insolvensi karena UUK-PKPU tidak mengatur secara terperinci mengenai syarat debitor dinyatakan insolvensi.

Kata Kunci: Rencana Perdamaian, Penolakan, Pailit.

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**COMPARISON ANALYSIS OF JUDGE'S DECISIONS IN APPLICATION FOR SUSPENSION OF PAYMENT ABOUT LEGAL CONSEQUENCES OF NOT FULFILLMENT TERMS OF CONSILIATION REVIEWED FROM ARTICLE 281 SECTION (1) ACT NUMBER 37 YEAR 2004 CONCERNING BANKRUPTCY AND SUSPENSION OF PAYMENT
(A STUDY OF THE DECISION OF THE COMMERCIAL COURT OF MEDAN NUMBER 6/PDT.SUS-PKPU/2019/PN.NIAGA. MDN. AND THE DECISION OF THE COMMERCIAL COURT OF CENTRAL JAKARTA NUMBER 119/PDT.SUS-PKPU/2020/PN.NIAGA.JKT.PST)**

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ABSTRACT

This research aim to identify and analyze (1) the legal consequences for the debtor whose conciliation plan was rejected by his creditors in the suspension of payment process and (2) the judges' view in deciding the legal consequences for the debtor whose conciliation plan was rejected by the creditor in the PKPU process based on decision Number 6/Pdt.Sus-PKPU/2019/PN.Niaga.Mdn., and decision Number 119/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst.

This research is a normative-empirical research. Normative research is carried out by library research by tracing secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials with documentation methods and tools in the form of document studies. Empirical research was carried out by field research by interviewing research subjects and using a tool in the form of an interview guide. Data analysis used qualitative analysis.

The results of the research and discussion show that there are differences in the views of the judges in deciding whether debtors whose reconciliation plans do not meet the provisions of Article 281 paragraph (1) Bankruptcy Law. This difference creates legal uncertainty for creditors, given that bankruptcy institutions exist to help creditors and debtors resolve debt problems between them quickly. Bankruptcy institutions are the best solution compared to judicial institutions in general or alternative settlement institutions (Alternative Dispute Resolution).

Based on the results and discussion, it can be concluded that (1) the reconciliation plan that was submitted during the suspension of payment but was rejected because it did not meet the provisions of Article 281 paragraph (1) of the bankruptcy law must be declared bankrupt because at the time of suspension of payment, creditors and management can assess whether the debtor's assets still feasible to continue, able to pay fees and management services and able to pay debts to creditors at a predetermined time through financial statements and balance sheet assets - liabilities of debtors are still eligible to make payments to creditors on time. (2) in addition, there is a need for changes to the bankruptcy law regarding the requirements for insolvency because the bankruptcy law does not regulate in detail the conditions for debtors to be declared insolvency.

Keywords: Composition Plan, Rejection, Bankruptcy.

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