

Composition in Bankruptcy that Comes from Suspension of Debt Payment Obligations in The Verdict of Indonesian Supreme Court No.667/Pdt.Sus-Pailit/2021

Kezia Cessy Ananda Priscilla
Student of Business Law Department
Faculty of Humanities
Bina Nusantara University
Jakarta, Indonesia
kezia.priscilla@binus.ac.id

Shidarta
Lecturer-Specialist of Business Law Department
Faculty of Humanities
Bina Nusantara University
Jakarta, Indonesia
shidarta@binus.edu

Abstract

Composition in bankruptcy is permitted by Article 144 of Law No. 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations which gives the Debtor the right to offer composition to all Creditors. However, in case that the bankruptcy comes from the failure of Suspension of Debt Payment Obligations because the composition plan offered by the Debtor was rejected by its Creditors, the Commercial Court and the Supreme Court do not share the same view regarding whether it is permissible to make a composition in bankruptcy. In the bankruptcy case of PT Hanson International Tbk., the Commercial Court using an extensive interpretation method held the view that composition in bankruptcy that comes from Suspension of Debt Payment Obligations is permissible, while the Supreme Court using a restrictive interpretation method held the opposite view. Therefore, in this study, the authors conducted a study of these disparities by using the grammatical interpretation method of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act.

Keywords

Composition in bankruptcy, Suspension of Debt Payment Obligations.

1. Introduction

In their quest to obtain the satisfaction of economic needs and benefits, individuals and businesses engage in various activities to achieve these goals. These activities involve entering into agreements with individuals and/or other entities, which then create rights and obligations for each party bound by the agreement. The party obliged to pay the debt is referred to as the debtor, while the party entitled to sue is referred to as the creditor (Subekti, 2003).

Debts owed by debtors to creditors cannot always be settled by the debtor (Simanjuntak, H.A., 2019). One of the factors that can lead to this is the debtor's inability to pay and/or continue to pay their debts to the creditors. In such circumstances, the Bankruptcy and Suspension of Debt Payment Obligations Act provides several options that can be taken by the debtor or creditor. The first option is suspension of debt payment obligations (hereinafter referred to as PKPU) if the debtor or creditor requires the debtor to submit a composition plan containing an offer to pay the creditor part or all the debt. There is also a second possibility, namely bankruptcy.

The Bankruptcy and Suspension of Debt Payment Obligations Act have specifically regulated bankruptcy and PKPU, including Chapter II regarding bankruptcy and Chapter III regarding the PKPU. In both cases, the Bankruptcy and Suspension of Debt Payment Obligations Act provide debtors with the opportunity to submit a composition plan to their creditors, which is stated in Articles 144 to 177 of the Bankruptcy and Suspension of Debt Payment Obligations Act for Bankruptcy, and Section 222, Subsections (2) and (3) of the Bankruptcy and Suspension of Debt Payment Obligations Act for PKPU (Dwinanto, R., 2019). The composition plan is submitted with the expectation that the creditors will accept the composition plan. Then, the composition plan that has been accepted by the creditors to become a composition agreement is ratified (Homologation) by the Commercial Court so that the status of PKPU or the bankruptcy of the debtor ends with the occurrence of composition between the debtor and the creditors, and the debtor can continue business as usual.

However, the composition plan proposed by the debtor is not always acceptable to the creditors. In case the composition plan in the PKPU process is rejected by the creditors, then based on Article 289 of the Bankruptcy and Suspension of Debt Payment Obligations Act, the debtor is declared bankrupt (Rahmadiyah, R. A., 2015). In such circumstances, the provisions relating to bankruptcy referred to in Chapter II, except for Articles 11 to 14 of the Bankruptcy and Suspension of Debt Payment Obligations Act, apply. One of the debtors that went bankrupt is PT Hanson International Tbk.

Initially, PT Hanson International Tbk., was declared in PKPU status by the Central Jakarta Commercial Court for a total of 160 days. As part of the PKPU process, PT Hanson International Tbk. submitted a composition plan to its creditors. Then, on the composition plan, 2 votes were taken, dated July 27, 2020, and August 4, 2020. However, the composition plan offered by PT Hanson International Tbk., to its creditors was rejected by the creditors.

With the rejection of the composition plan proposed by PT Hanson International Tbk., the Central Jakarta Commercial Court declared the PKPU of PT Hanson International Tbk. was terminated and PT Hanson International Tbk. went bankrupt (Rahmawati, W.T., 2022). This was decided based on Bankruptcy Decision of Central Jakarta Commercial Court No. 29/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt. Pst., dated August 12, 2020.

However, PT Hanson International Tbk., which has entered the bankruptcy process, has again submitted a composition plan to its creditors. The composition plan proposed during the bankruptcy of PT Hanson International Tbk., was accepted by the creditors. Subsequently, the Central Commercial Court in Jakarta issued Verdict No. 29/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt. Pst., dated February 18, 2021, which declared the composition agreement between PT Hanson International Tbk., and its creditors was valid and binding.

However, Verdict No. 29/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt. Pst., dated February 18, 2021, was later overturned by the Supreme Court at cassation level by Verdict No. 667 K/Pdt.Sus-Pailit/2021 dated June 8, 2021. In its verdict, the Supreme Court held the view that the Central Jakarta Commercial Court wrongly applied the law because in Chapter III regarding PKPU, if it should apply the articles contained in Chapter II regarding bankruptcy, then this is stated explicitly and clearly (*expresis verbis*), as well as if it is cannot be applied (Sugianto, D., 2021). Meanwhile, in Articles 289 and 290 of the Bankruptcy and Suspension of Debt Payment Obligations Act, there is nothing expressly and clearly (*expresis verbis*) to apply the provisions of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act. Thus, it is not possible for a debtor who has gone bankrupt due to PKPU as regulated in Chapter III to be brought to composition agreement according to the Chapter II corridor which is specifically intended for composition that comes from from bankruptcy in reason for applying for a declaration of bankruptcy, as the pattern regarding voting for composition is also different between voting in PKPU and voting regarding composition in case of bankruptcy.

The problem with this case is that Article 144, Chapter II of the Bankruptcy and Suspension of Debt Payment Obligations Act states the following: "Debtors in bankruptcy have the right to offer settlement to all creditors". However, from the considerations presented by the Central Jakarta Commercial Court and the Supreme Court above, it can be concluded that there is a disparity between the Central Jakarta Commercial Court and the Supreme Court in reviewing composition in the event of bankruptcy that comes from the failure of the PKPU due to the rejection of the Debtor's composition plan. Central Jakarta Commercial Court of Jakarta uses an extensive method of interpretation, namely interpretation by expanding the scope of a provision (Shidarta, 2013). At the same time, the Supreme Court uses a method of restrictive interpretation, namely an interpretation by limiting the scope of a provision (Shidarta, 2013) to appreciate the composition in bankruptcy that comes from the failure of the PKPU due to the rejection of the

composition plan of the debtor. Therefore, in this study, the authors conducted a study of these disparity using the method of grammatical interpretation of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act.

2. Literature Review and Methods

In this study, the authors use a method of normative legal research. Normative legal research includes research on legal principles, legal systematics, levels of vertical and horizontal synchronization, legal comparisons, and legal history. As to the extent of normative legal research the authors has done, namely legal principles and level of synchronization. The data that the authors use is in the form of secondary data, which is sufficient data taken from available references (Shidarta, 2020). Secondary data was collected by the authors using literature review or literature review techniques.

3. Results and Discussion

Based on the research done by the authors, the structure of the case in the bankruptcy of PT Hanson International Tbk. can be stated as follow: (Table 1)

Table 1 Case Structure in the Bankruptcy of PT Hanson International Tbk.

Central Jakarta Commercial Court	Intersection	Supreme Court
	PT Hanson International Tbk., was declared bankrupt because the composition plan of PT Hanson International Tbk., offered in the PKPU process was rejected by creditors based on the votes of July 27, 2020 and July 4 August 2020.	
There is an opportunity for PT Hanson International Tbk., to offer composition plan to all creditors after the composition plan of PT Hanson International Tbk. offered in PKPU process was rejected by the creditors.		It is not possible for PT Hanson International Tbk., which went bankrupt due to the failure of PKPU to offer composition plan in bankruptcy.
Consideration of the view that there is still an opportunity for composition in bankruptcy that comes from the failure of the PKPU as the debtor's composition plan was rejected by creditors due to: <ol style="list-style-type: none"> 1. The bankruptcy of PT Hanson International Tbk., occurred because the composition plan in PKPU was rejected as stipulated in Article 289 of the Bankruptcy and PKPU. 2. There is no one legal provision in the Bankruptcy and Suspension of Debt Payment Obligations Act which prohibits composition agreement in the event of 		Consideration of the view that it is not possible for the composition in bankruptcy that comes from the failure of the PKPU because the debtor's reconciliation plan was rejected by the creditors due to: <ol style="list-style-type: none"> 1. The bankruptcy of PT Hanson International Tbk. comes from an application for PKPU that all the processes and procedures are regulated in Chapter III of the Bankruptcy and Suspension of Debt Payment Obligations Act, and not from bankruptcy that comes from a petition for declaration of bankruptcy as regulated in Chapter II of the Bankruptcy and Suspension of Debt Payment Obligations Act.

<p>bankruptcy that comes from PKPU.</p>		<p>2. In Chapter III regarding PKPU, if it should apply the articles contained in Chapter II regarding bankruptcy, then this is stated explicitly and clearly (<i>expresis verbis</i>), as well as if it is cannot be applied.</p> <p>3. In Articles 289 and 290 of the Bankruptcy and Suspension of Debt Payment Obligations Act, there is nothing expressly and clearly (<i>expresis verbis</i>) to apply the provisions of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act. Thus, it is not possible for a debtor who has gone bankrupt due to PKPU as regulated in Chapter III to be brought to composition agreement according to the Chapter II corridor which is specifically intended for composition that comes from bankruptcy in reason for applying for a declaration of bankruptcy, as the pattern regarding voting for composition is also different between voting in PKPU and voting regarding composition in case of bankruptcy.</p>
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Further, since Article 144 of the Bankruptcy Suspension of Debt Payment Obligations Act is the reference in determining the most appropriate method of interpretation to determine whether composition in bankruptcy that comes from the PKPU due to the rejection of the debtor's composition plan by its creditors, an analysis of the structure of the norm (Shidarta, 2019) Article 144 of the Bankruptcy Act and the PKPU is applied, as follow (Table 2).

Table 2 Norm Structure of Article 144 of the Bankruptcy Suspension of Debt Payment Obligations Act

Norm Element	Description	Norm Condition
Subject of the Norm	Bankrupt Debtor	
Operator of the Norm	Entitled	
Object of the Norm	To offer composition	To all creditors

From the above norm structure and considering the problem of the difference in interpretation that occurs between Central Jakarta Commercial Court and the Supreme Court, the authors conclude that the point of the problem lies in the subject of the norm, namely the bankrupt debtor. It is because Central Jakarta Commercial Court held the view that bankrupt debtors that comes from PKPU have the right to offer composition to all creditors in the bankruptcy process. Meanwhile, the Supreme Court is of the opinion that the bankrupt debtor that comes from PKPU does not have the right to offer composition to all creditors in the bankruptcy process.

To determine the more accurate view between the two, it is necessary to return to the definition of bankrupt debtor itself. This definition search was made using a method of grammatical interpretation of the provisions of the Bankruptcy and Suspension of Debt Payment Obligations Act, in which there is an explicit definition of bankrupt debtor in the provisions of Article 1 (4), of the Bankruptcy and Suspension of Debt Payment Obligations Act.

Bankrupt debtor within the meaning of Article 1(4) of the Bankruptcy and Suspension of Debt Payment Obligations Act is the debtor who have been declared bankrupt by a court decision. As for what is meant by court, it is the commercial court in the general judicial environment. Thus, a debtor who has been declared bankrupt by a court

decision has the right to offer composition to all creditors. Since the method of grammatical interpretation of the definition of bankrupt debtor is clear and explicit, there is no need for another interpretation of the definition of bankrupt debtor.

Furthermore, to determine which interpretation is in accordance with the grammatical interpretation of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act, it is necessary to know whether the bankrupt debtor, in this case PT Hanson International Tbk., has the right to offer peace to its creditors in the process of bankruptcy that comes from PKPU. To answer this question, the syllogism of Article 1 (4) of the Bankruptcy and Suspension of Debt Payment Obligations Act is needed, which are as follows: (Table 3).

Table 3 Syllogism of Article 1 (4)
of the Bankruptcy and Suspension of Debt Payment Obligations Act
in the Composition in the Bankruptcy of PT Hanson International Tbk.

Major Premise	A bankrupt debtor is a debtor who has been declared bankrupt by a court decision.
Premis Minor	PT Hanson International Tbk., is a debtor who has been declared bankrupt by a court decision (Verdict No. 29/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst., dated March 5, 2020).
Conclusion	PT Hanson International Tbk., is a bankrupt debtor.

After concluding that PT Hanson International Tbk., is the bankrupt debtor within the meaning of Article 1 (4) of the Bankruptcy and Suspension of Debt Payment Obligations Act, a syllogism was made on Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act in the case of PT Hanson International Tbk., as follows: (Table 4).

Table 4 Syllogism of Article 144
of the Bankruptcy and Suspension of Debt Payment Obligations Act
in the Composition in the Bankruptcy of PT Hanson International Tbk.

Major Premise	Bankrupt debtor is entitled to offer composition to all creditors.
Minor Premise	PT Hanson International Tbk., is a bankrupt debtor.
Conclusion	PT Hanson International Tbk., is entitled to offer composition to all creditors.

From the syllogism of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act in the bankruptcy case of PT Hanson International Tbk., which uses a grammatical interpretation, it can be concluded that PT Hanson International Tbk., which is a debtor in bankruptcy that comes from PKPU, has the right to offer composition to all creditors. This means that an overview can be drawn that debtors in bankruptcy that comes from PKPU have the right to offer composition to all creditors. Indeed, the bankrupt debtor that comes from PKPU was declared bankrupt based on the court decision. Therefore, Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act provides an opportunity for bankrupt debtor, both directly from the granting of the petition for bankruptcy or from the failure of the PKPU process to offer composition to all creditors.

After concluding regarding the policies contained in Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act above regarding composition in case of bankruptcy that comes from the failure of PKPU due to rejection of debtor's composition plan by creditors, it is necessary to determine which method of the extensive interpretation method held by Central Jakarta Commercial Court and the restrictive interpretation method of held by by the Supreme Court in the bankruptcy of PT Hanson International Tbk., is in accordance with Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act.

Based on the above analysis, it can be concluded that the extensive interpretation method held by Central Jakarta Commercial Court is in accordance with the grammatical interpretation method of Article 144 of the Bankruptcy Law and the PKPU. The extensive interpretation method proposed by the Commercial Court of the Central District Court of Jakarta and the grammatical interpretation method of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act both allow composition in case of bankruptcy that comes from the failure of PKPU process because the debtor's composition plan was rejected by its creditors.

Furthermore, based on an analysis of the arguments made by the Supreme Court regarding the reason for the Supreme Court's opinion that it is not permissible to have a composition in bankruptcy that comes from the failure of PKPU

process due to the rejection of the debtor's composition plan by the creditors, it can be concluded that the Supreme Court produced a restrictive method of interpretation using the systematic interpretation method. This is because the argument constructed by the Supreme Court is to link one regulation to another (Shidarta, 2013). This connection is demonstrated by the Supreme Court by linking the regulations of Chapter III of the Bankruptcy and Suspension of Debt Payment Obligations Act to Chapter II of the Bankruptcy and Suspension of Debt Payment Obligations Act using the argument of stated explicitly and clearly (*expresis verbis*) to link the two regulations.

Then, from the analysis of the restrictive interpretation method presented by the Supreme Court, it can be concluded that the restrictive interpretation method is contrary to the grammatical interpretation method of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act. That is because the restrictive interpretation method in the Verdict No. 667K/Pdt.Sus-Pailit/2021 provides a different conclusion from the grammatical interpretation method of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act. The restrictive interpretation method presented by the Supreme Court concludes that it is not permissible to have a composition in bankruptcy that comes from the failure of PKPU because the debtor's composition plan was rejected by the creditors, while the grammatical interpretation method of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act conclude that the composition in bankruptcy that comes from the failure of PKPU because the composition plan of the debtor was rejected by the creditors.

4. Conclusion

From the above analysis, it can be concluded that the interpretation method which satisfies the provisions of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act is the extensive interpretation method using grammatical interpretation method of Article 144 of the Bankruptcy and Suspension of Debt Payment Obligations Act. This is what makes this study unique. In general, the grammatical interpretation method produces a restrictive interpretation method. Indeed, the interpretation according to the language, among other things by looking at the lexical definition, generally limits the applicability of a rule, hence resulting a restrictive interpretation method. However, in this study, the grammatical interpretation method produces an extensive interpretation method with the analysis previously described above.

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Biographies

Kezia Cessy Ananda Priscilla is an undergraduate student at the Business Law Department, Bina Nusantara University majoring in Business Law. During her study in college, she has been given responsibility as a Staff to Managing Partner at LHP Law Firm, an Indonesian Law Firm located in Jakarta that specialized in Bankruptcy, Debt Restructuring, and Civil Dispute Resolution. Furthermore, she was appointed as Chairman and Treasurer of Bina Nusantara University Moot Court Community. She also has participated in various National Moot Court Competitions organized by University of Indonesia and Brawijaya University, which are among the top universities in Indonesia.

Shidarta is a lecturer of legal philosophy, legal reasoning, and consumer protection law at Bina Nusantara University. He is the author of many books and articles on legal reasoning, legal philosophy, legal research method, competition law, and consumer protection. He is one of the founders of the Association of Indonesian Legal Philosophy (AFHI) and the Lecturer Forum of Business Competition (FDPU) of which he used to be chairman of both.