

COMPOSITION BANKRUPTCY AS REALIZATION PRINCIPLES OF BALANCE BETWEEN DEBTORS AND CREDITORS

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ABSTRACT

One way for debt settlement company is through bankruptcy receivables. Bankruptcy decision shall be the final step that is used (ultimum remedium), because bankruptcy will not only be detrimental to debtors and creditors but also of labors, suppliers, stakeholders and even the state would lose revenue from tax payments. For the insolvent debtor may propose a composition plan so that the objectives of the bankruptcy law that provides protection balanced between creditors and debtors is reached. The application of the principle of composition in bankruptcy is the right of every debtor who bankrupt. composition is one way to do bankruptcy law to reject the debtor. Talking about composition in bankruptcy do not only exist in the bankruptcy proceedings, but there are also in the process of Suspension of Payment (PKPU). Composition in bankruptcy aims to make the debtor bankrupt to conciliate with creditors which held a stipulation that the debtor bankrupt to pay something certain percentage (of the debt), he will be freed to pay the rest.

Key Words : Composition, Settlement, Bankruptcy, Principle of Balance

Introduction

Composition is the one of the most important principles contained in the Law of Bankruptcy and Suspension of Debt Bankruptcy (hereinafter abbreviated UUKPKPU), it aims to make the debtor bankrupt can continue its business so that employees, consumers, users and stakeholders also be able to continue its business, including countries with tax revenues obtained from the debtor company can continue to run the development program.

Composition is already present in some of the rules applicable bankruptcy ever in Indonesia. Beginning in Faillissement Vererdening (Staatblaad 1905 No. 217 junto Staatblaad 1906 No. 348), which is valid until 1998. Later amended by Perpu No. 1, 1998 which was later changed to Law No. 4 In 1998, then amended again by Law No. 37 In 2004.

Bankruptcy law is basically intended that all of the debtor's debt could be paid to all creditors. This corresponds to what is contained in Article 1131 and 1132 of the Civil Code¹. Debtors could bankrupt individuals and also companies.

The crisis of a country's economy can influence and unfavorable to the company because the company will not be able to pay all debts receivable from either the state or against the foreign party². If a company fails to execute its business activities not only detrimental to the company but also the creditors of the company.

Many things can affect a debtor unable to pay its debts. Broadly, there are two (2) causes: external factors and internal factors.

External factor is the form of a country's economy or the global economy that affect the financial condition (financial distress) of the debtor's business that has suffered a setback. As the incidence of monetary crisis in Indonesia and in some Asian countries in 1997³ and the global economic crisis in 2009. From some research shows crisis in Indonesia are caused by six principal factors.⁴

First, the rapid economic growth before the crisis was driven by growth in investment and not for efficiency and innovation. Second, most of the market value of the companies listed on the capital market is determined by the company's growth expectations (growth expectation) instead of the real performance of the company (current earnings stream). Third, the company's financial structure is basically unhealthy. A number of large companies outside the banking, rely on loans of more

¹Article 1131 of the Civil Code: Any material of owed either moving or not moving, either existing or new no future, the dependents for every relations.

Article 1132 of the Civil Code: the material together into a guarantee for all those who debt him; income of sale of the objects divided by the balance that is big or small according to the individual receivable except among indebted that there are legitimate reasons for precedence.

²Romli Atmasasmita, *Analisis dan Evaluasi Hukum Tentang Restrukturisasi Utang Pada Penundaan Kewajiban pembayaran Utang*, BPHN, Jakarta. 2000. p. v.

³Asian countries affected by the financial crisis, they are South Korea, Vietnam and the Philippines. See: (Doty Damayanti, "Kegelisahan Perekonomian Indonesia", Kompas 25 September 1998), p. 21.

⁴Tanri Abeng, "Kelemahan Fundamen Mikro Perekonomian Indonesia", 1999.

than 100% compared to equity. Though the composition of a healthy external funds generally below 50% of equity, so the company has a high resistance to the crisis. Fourth, in the process of lending a practice of marking up, so that in the end only destroying the structure of capital itself. Fifth, a concentration of an unhealthy economy. Data in 1996 shows that the peak of the pyramid structure of the economy is only filled by the 200 private conglomerate (owned by approximately 50 families) and 100 large BUMN. Employers middle layer of almost nothing. While at down layer there are approximately 39 million small and cooperative economic players including the informal sectors. Sixth, the absence of good corporate governance in the management of the company. Booz Allen & Hamilton study in 1998 showed that the index of Good Corporate Governance Indonesia is among the lowest in East Asia, 2.88 compared with Malaysia 7.72, Thailand 4.87, Singapore 8.93 and Japan 9.17.

This causes many Indonesian businessmen are no longer able to pay their debts (in foreign currencies) against foreign creditors. In addition, non-performing loans in the domestic banking also cause enormous difficulties to the national economy, especially the ability of the business community in developing its business and to meet their debt payment obligations to its creditors.

Furthermore, the Government also plays a role as a cause of congestion debtor debt payments⁵. The tight money policy⁶ is the high interest rate policy as a way of controlling inflation, preventing capital flight out of the country or prevent the purchase of Dollar massively that will lower the value of the Rupiah and others, all of that will lead to bottlenecks in business processes for employers are not easy to get capital. In other forms, with high interest rates would increase the cost of production that would affect the selling price (more expensive). Efforts were jammed does not allow employers keep all agreements, including to pay its debts.

Internal factors are factors originating from the debtor company itself. This can be caused⁷ by mismanagement or management of companies that may be the lack of reporting of financial performance and obligations of companies, lack of supervision over the activities of management by commissioners and auditors, the lack of external incentives to encourage efficiency in the company through the mechanism of fair competition, mistakes in investing or can not compete in the market.

In line with the rules issued by the Supreme Court Regulation (Perma)⁸. Actually, we already know the positive law of resolving the dispute peacefully or institution Dading⁹ in civil procedure law Article 130 HIR/154 Rbg¹⁰. This corresponds well with the principle of integration adopted in bankruptcy law, namely that a formal law and substantive law of the bankruptcy law is a unified whole of the civil law system and national civil procedural law.

It is a uniqueness of different insolvency proceedings with a civil process in general where composition must be filed after the bankruptcy decision and the parties themselves are actively offering peace. Although the process is slightly different but essentially the same composition principle which gives an opportunity for both sides to make peace acceptly only in bankruptcy concerning the assets of the deceased can not be proposed a peace plan¹¹.

Composition Plan proposed debtor in settlement of his debts can be a hair cut, rescheduling or restructuring or other offers which are all in the form of share ownership by offering to be agreed between the debtor by creditors¹².

Discussion

The settlement of bankruptcy under the Act No. 37 2004 About Bankruptcy and Suspension of Payment (Labor Law) must be submitted to the court. And according to article 1 point 7 Labor Law, the court is the Commercial Court are included in the scope of General Jurisdiction.

Arrangements regarding the existing Commercial Court since the issuance of Government Regulation in Lieu of Law No. 1 of 1998 on the Amendment of the Law of Bankruptcy and has been set into law by Act 4 of 1998 (the old Labor Law), namely Article 280 old Labor Law.

The Commercial Court is a special court referred to in Article 15 paragraph (1) and the elucidation of Article 15 paragraph (1) of the Act 4 of 2004 on Judicial Power and of Article 8 of the Act 8 of 2004 on the Amendment Law No. 2 of 1986 concerning the General Court.

⁵Mutiara Hikmah, *Aspek-Aspek Hukum Perdata Internasional Dalam Perkara Kepailitan*, Refika Aditama, Bandung 2007, p. 2.

⁶Government policy of borrowing money is difficult to obtain despite the high interest and a strong guarantee. (Kamus Hukum Ekonomi ELIPS, Jakarta ELIPS, 1997, p. 161)

⁷Adrian Sutedi, *Good Corporate Governance*, Sinar Grafika, Jakarta. 2011, p. 68.

⁸Perma No 2 Tahun 2003, 11 September 2003, About the Peace Court Procedure.

⁹Fockema Andreae, *Kamus Istilah Hukum Belanda-Indonesia*, Jakarta, Bina Cipta, p. 616. Peace means not hostile, hostile state. make peace, peaceful, safe. To make peace means to make peace, to negotiate to resolve feuds in order to negotiate the agreement. In the Dutch language the word "Dading" translated into Indonesian be peace, deliberation.

¹⁰Proceedings of the chain limited Bankruptcy Issues and others Insights Business Law, Center for Legal Studies, Jakarta, 2004. p. xxxi

¹¹Erwin Mangatas Malau. The role of the Commercial court in Debt Settlement, Panel Discussion Paper on the Development of Environmental Law and Economics and Sustainability, which is organized by Yayasan Bina Yustisia, Hotel Santika Dyandra Medan. 2012. p. 5.

¹²*Ibid.* p. 15.

The Special Court was established or formed for the purpose of specialization dealing with cases-case bankruptcy that has the duty and authority to examine and decide upon the declaration of bankruptcy and suspension of debt payments (Article 280 paragraph (1) Labor Law old) and examine and decide on other matters in the field of commerce (Article 280 paragraph (2) the old Labor Law, and Article 300 paragraph (1) of the Act 37 of 2004. Later on further development of the scope of duties and authority of the Commercial Court extended that examining and deciding judge actions in the field of intellectual property rights (the right to intellectual property) like the case of the Brand (Act No. 15 of 2001), Patents (Law No. 14 of 2001), Copyright (Act No. 19 of 2002), Industrial Design (Law No.31 of 2000), Layout Design Integrated circuits (Act No. 32 of 2000).

A. Composition Bankruptcy in Jakarta Commercial Court

In Indonesia, more bankruptcy petition filed by creditors and bankruptcy more composition petition filed by the debtor.

Bankruptcy creditors are divided into several parties, preferred creditors, secure creditor and concurrent creditor¹³. According to Article 1133 of the Civil Code, a creditor may be given precedence notch for payment receivables to other creditors if bills creditors concerned are the charges incurred for the privilege, which is a bill that is secured by liens and mortgages. After the enactment of Law No. 4 of 1996 on Mortgage and Law No. 42 of 1999 on Fiduciary then creditors have a bill that is guaranteed by the Mortgage and Fiduciary Rights have the same position should take precedence to the concurrent creditors.

The Preferred Creditors and Separatists just want the value of assets of the debtor is the guarantee has not decreased below the value of its debt. If the debtor can convince creditors and separatist preferred that the collateral value will not fall below the value of the debt then the peace plan proposed by the debtor would generally be accepted, as in the case of peace Number: 70/Pailit/2010/PN. NIAGA.JKT.PST. Jakarta happened in court, between;

1. Rustandi Jusuf, hereinafter referred to as the debtor Bankrupt 1
2. Tonnie Jusuf, hereinafter referred to as the debtor Bankrupt 2
3. Sunta Jusuf, hereinafter referred to as the debtor Bankrupt 3
4. Eddie Joseph, hereinafter referred to as the debtor Bankrupt 4

Furthermore, each either individually or jointly called the debtor, as the owner of PT. Dewata Royal International.

With the secure creditor consisting of:

1. PT. Bank Mandiri (Persero) Tbk, hereinafter referred Creditor Mandiri Bank.
2. PT. Bank Panin Tbk, hereinafter referred Creditor Panin Bank.

That the debtor has filed for bankruptcy composition plan that has been approved to be discussed by the Supervisory Judge of the separatist creditors, namely PT. Bank Mandiri (Persero) Tbk and PT. Bank Panin Tbk on January 21, 2011, which was approved unanimously with a percentage of 100%. With the approval of the composition plan of the debtor by the creditor, then the composition plan by-laws changed and set forth in the composition/ accords with the terms and provisions as follows:

1. The payments previously received Panin Bank declared null and void.
2. The obligation of the debtor to the bank until the date of the bankruptcy decision handed down by the bills that need to be verified first by the Receiver.
3. The debtor's total liabilities to Mandiri Bank is USD 4,063,665.75 (four million sixty three thousand six hundred and sixty-five point seven-five USD) and given relief to be USD 3,000,000.00 (three million USD) through stage payments as follows:
 1. 1 million shall be paid directly to the bank within a period of 5 days after the peace agreement is in the homologation by the court. And the balance of 2 million USD to be paid not later than three months from the date of homologation of a peace agreement by the court.
Since a period of 5 days after receiving full payment of the above, then the bank will release the loan guarantees granted by the debtor to the bank.
 2. Payment of the debtor to Panin Bank declared null and void by the bankruptcy decision would be resolved through the mechanism of registration and matching of debt by the Receiver and after being passed by the supervisory judge then payments to the bank would be applied its ratification and Panin Bank is entitled to the money he had received it.
 3. Since 5 days after signing this peace agreement ended the case of debts and bankruptcy PT. Dewata Royal International.

From this verdict a composition agreement there are some important things, namely:

- a. Composition treaty is a means accomodation to the whole interest of the creditors different. In general creditor wants immediate composition plan approved by the debtor so that the debts can be resolved and the activities of the debtor company will soon recover. With the recovery of the debtor's business activities ("going concern") will have an impact also on the "supply" effort on the concurrent creditors, i.e. receivables not yet billable be gradually paid¹⁴
- b. Composition / accords load of debt restructuring, which is to reduce the cost burden of the debtor obligations¹⁵, such that the debtor may continue their business and at the same time be able to pay its debts¹⁶.

¹³ Sutan Remy Sjahdeini, *op.cit.*, p. 9.

¹⁴ John Woodhall dan Gerain Hughes, *A practical Guide to Debt Restructuring in Asia*, Asia Law Supplement, 2000, p.

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¹⁵ J.Fred Weston, Mark I. Mitchell, J. Harold Mulherin, "Take over, Restructuring and Corporate Governance", New Jersey, Pearson Education Inc, 2000, p. 288. In Darminto Hartono.

¹⁶ Chase (et all), "The Asia law Guide to Corporate Restructuring", Asia law & Practice.

With the recovery of the business, the debtor will be able to re-pay all obligations. In other words, to pay the debt through the recovery of the debtor's business is the essence of corporate debt restructuring. Ability to pay the debt of the debtor is the key to composition can file bankruptcy.

B. Composition Bankruptcy in Medan Commercial Court

Throughout in 2005-2011 there was only one (1) case of peace bankruptcy entered in the Commercial Court of Medan.

To accommodate all the interests of creditors, the composition plan does not solely concerns the interests of debtors alone but also concerns the interests of all creditors. Thus the composition plan really should be an "accord" which is an agreement between a debtor by creditors as happened in the case of PT. V. PT Drydock World First. Abizah Jaya No. 04/Perdamaian/Pailit/2011/ PN.Niaga, Medan.

PT. Drydock World First is a company engaged in the field of shipping which is located at Jl. Brigadier General Katamso, Industrial Area Tanjung Uncang, Batam, has a total debt of Rp. 931 376 311 (nine hundred and thirty one million three hundred seventy six thousand three hundred and eleven rupiah) and SGD \$ 5.984.537.73 (Five million nine hundred eighty-four thousand five hundred and thirty-seven Singapore dollars and seventy-three cents) and one the debt has matured and could be charged. PT. Abizah Jaya which has receivables that have matured and can be charged has filed a bankruptcy petition against the PT. Drydock World's First Commercial Court of Medan. On a bankruptcy petition filed by PT. Abizah Jaya, then debtors PT. Drydock World First has applied for peace and that application has been granted as stated in Decision No. 04/Perdamaian/Bankrupt/2011/PN.Niaga.Medan.

As a result of the composition petition granted then ended the First World PT. Drydock bankruptcy. The total liabilities owned by the debtor to the creditor which consists of:

1. Amar H. Hanafi, SH, lawyers representing 89 parties.
2. Maraihut Simbolon, SH, lawyers representing 27 parties.
3. Irwanta Rasmada, SH, lawyers representing 35 parties.
4. Jondranur, as the owner and therefore acting for and on behalf of Jon Service, a company based in Batam.
5. Konica Minolta, a company based in Batam.
6. Yiu Liang, acting for and on behalf of Zinkpower Batam Indonesia, a company in Batam, based on the special power of attorney dated July 5, 2011.
7. Raminda Unelly, SH, lawyer at the Law Firm AKHH Lawyers, acting for and on behalf of PT. SWTS, based in Batam.
8. Bayu Christyo, as the owner and therefore acting for and on behalf of CV. Covenant Engineering, based in Batam.
9. Nurpahimah, acting for and on behalf of Medilab Clinic, which is located in Batam.
10. CV. Mavin Engineering a firm in Batam.

Bankruptcy debtor is represented by Mark Andryn SH and SH Sangti P. Nainggolan advocate acting for and on behalf of PT. Drydock World First (in bankruptcy); Curator was attended by Lotty Siagian and Iva SH SH Noor Diah.

Request composition/ peace debtor filed for bankruptcy after the Receiver of PT. Drydock World First complete the bankruptcy in the case in the peace/composition and set forth in the deed of composition. The petition reached an agreement among creditors, as reported by the supervisory judge, after hearing;

1. Report of the debtor that the debtor property including objects for which carried the right to hold an object not much larger than the amount approved in peace.
2. Implementation of the peace is guaranteed.
3. Composition is achieved not because of fraud, conspiracy with one or more creditors, or for the use of other measures that are not honest and without of whether the debtor or other parties to work together to achieve this.

The contents of the composition that has been signed by the parties (debtor and creditors) is as follows:

- A. Whereas the other creditors are legitimate creditors on the debtor bankrupt with the total bill on May 31, 2011 upon verification by the creditor and the debtor bankrupt is Rp. 931 376 311 (nine hundred and thirty one million three hundred seventy six thousand three hundred and eleven rupiah) and SGD \$ 5,984,537.73 (five million nine hundred and eighty-four thousand five hundred and thirty-seven Singapore dollars and seventy-three cents) consisting of:
 1. The bill that must be paid by the bankrupt debtor to a creditor PT. Abizah Jaya amounted Rp.581.541.709 (five hundred and eighty one million five hundred and forty one thousand seven hundred and ninety rupiah) and SGD\$ 286,002.49 (two hundred and eighty twenty-six thousand two Singapore dollars and forty-nine cents) in which the sum is the amount of debt that has been approved by the Bankrupt Debtors and Creditors bill still PT. Abizah Jaya on the bankruptcy debtor is not recognized and approved by the bankruptcy debtor.
 2. The bill that must to be paid by the bankrupt debtor to the creditor (except Creditors PT. Abizah Jaya) is Rp. 348 834 602 (three hundred and forty-eight million eight hundred and thirty-four thousand six hundred and twenty rupiah) and SGD \$ 5,698,535.24 (five million six hundred ninety eight thousand five hundred and thirty-five Singapore dollars and twenty four cents).
- B. Whereas during verification receivables after the imposition of Decision Bankrupt, Bankrupt Debtors agreed to resolve the debt payments to the Bankrupt Debtors Creditors with the procedure as described in the Peace Agreement; namely payment of the total debt to the Bankrupt Debtors Creditors will be conducted by the Receiver at the latest within 14 (fourteen) days after the Curator receive attestation (homologation) peace plan of the Commercial Court.

- C. Whereas in the past as well as the Meeting of Creditors Accounts Verification turns the Benefit of Creditors has been present and submit the bills to Lotty Siagian SH, and Iva Ida Noor Diah, SH, as the Curator Bankrupt Debtors who have been appointed pursuant to Decision Bankrupt ("hereinafter referred Curator") to be verified and discussed in the meeting of creditors.
- D. That the Bankrupt Debtors have filed a settlement proposal letter dated June 17, 2011 to the curator who is a creditor of the debtor Bankrupt overall, has approved a proposed settlement in question.
- E. Whereas the Total Debt Debtor Bankrupt per the date of May 31, 2011, the debtor shall pay by way of transferring the total debt owed to creditors through the account of the Curator designated for it ("Curator Account") at the latest and effective on July 25, 2011.

Peace in bankruptcy as described above is not an agreement as set out in article 1313 KUHPdt. Because it is not a treaty, then peace in bankruptcy is not subject to the fundamental principles of contract law as provided in Article 1338 KUH Pdt.

Composition in bankruptcy are also not subject to the principle of *Pacta sunt servanda*, which provides that the agreement is legislation for the maker. Because composition in bankruptcy is not an agreement, then the principle of *Pacta sunt servanda* does not apply. Composition is made by the debtor in bankruptcy and accepted or not by the creditors but not all creditors accept, peace will still be acceptable to all creditors. And after it was enacted, then peace in bankruptcy applies not only to the creditors who accepted peace alone but also applies to creditors who did not accept the peace, resisting ratification of peace and true even for those who do not file for bankruptcy.

According to Hartono, although the accord is not a treaty binding even for those who did not participate approve it. Due in accord/composition is not made between the debtor and each creditor individually but with the lenders together. Accord is an agreement between the debtor and creditors together as a community of people who participated in the agreement on the basis of a majority decision is binding on the minority, which is corroborated by the judge.

This happens because bankruptcy is a form of protection to the debtor bankrupt to guard against the arbitrariness of the creditors and for the creditor to receive payment on its receivables. Due to a form of protection against such parties, it becomes a natural thing if the rules of peace in a bankruptcy, the unsecured creditors who did not participate in bankruptcy proceedings that could happen, because they do not know their bankruptcy petition from another lender, know there is a bankruptcy petition of other creditors but does not want to know, and there is also to be indifferent to its accounts receivable. But the bankruptcy law with the position of unsecured creditors is the same. And in contrast to creditors whose rights take precedence as separatist creditors and creditors with privileges that have accrued to one that is different from each other and different from the other unsecured creditors. Creditors with the right of precedence will be met first payment of its receivables overdue, compared to other creditors.

Peace in bankruptcy may bind third parties, as is often the case the bankruptcy estate have legal problems. And the legal issues that also involve a third party. Labor Law authorizes the curator to act for and on behalf of the insolvent debtor, including representing the debtor bankrupt in the face of every legal issues relating to the bankruptcy estate. If there is a dispute regarding the bankruptcy estate, the curator will face and solve them.

Curator will first examine each type of object in the bankruptcy estate does have a legal problem or not. And curator will classify the bankruptcy estate that no legal proceedings and the bankruptcy estate who have a legal issue thus indirectly peace in bankruptcy is not only binding on third parties but will also bind curator.

Legal issues involving third parties may include ownership disputes, the court confiscated in cases of civil and criminal cases, a dispute with the community, controlled by others, entrusted to others, used another person, etc. Every kinds of legal issues that must be separated and classified and completed first. The bankruptcy estate that had not had the problems will be recorded and can be data for the debtor filed bankruptcy in the peace plan.

But if it turns out after inspection there are no legal issues and then used to offer peace and after the ratification of the peace process would arise disputes involving third parties that hinder the implementation of the peace, the peace that will inevitably involve a third party in it.

The involvement of a third party must be issued in advance of peace in a way had to get approval from the creditor to the curator resolve the legal issues. This agreement also must be reported to the supervisory judge and an application for approval must be in place in order to be seen by the court registry creditors and interested parties. If the creditors do not agree obviously be detrimental to the creditor itself because of the amount of the bankruptcy estate will be reduced and reducing the number of their parts. After it completes the legal issues that treasure and then will be distributed again to the minutes of its own.

C. Composition Bankruptcy in Surabaya Commercial Court

Composition Case Bankruptcy is happening in the Commercial Court in Surabaya occurred between:

1. P.T Iglas (Persero) Tbk with offices Jl. Ngagel No. 153, Surabaya, has been declared bankrupt pursuant to Supreme Court Decision R.I No. 397K/Pdt.Sus/2009 dated 30 July 2009 jo No. 01/Pailit/2009/PN. Niaga.Sby.
2. Concurrent creditors who have filed and registered its bill to the curator as much as 67 concurrent creditors recognized the invoice value of Rp. 85,937,257,322 (eighty-five billion, nine hundred and thirty seven million two hundred and fifty-seven thousand three hundred twenty two rupiah) and 1 concurrent creditors who temporarily admitted to the invoice value of Rp. 150,000,000 (one hundred and fifty million rupiah).

Composition plan proposed substantially contain;

1. That PT Iglas (Persero) as the debtor in bankruptcy has offered peace proposal to all its creditors, which essentially contains:
 - A. GI Plant Commissioning and handover for 1 (one) -2 (two) months.
 - B. Grace Period for 3 (three) months after the peace is legally binding.
 - C. After the Grace Period, the payment per month to unsecured creditors amounting to Rp. 1,000,000,000 (one billion) divided pro rata.
 - D. Payments to Creditors Concurrent derived from funds PT.PPA (Persero) amounting Rp.33.480.000.000 (thirty three billion, four hundred and eighty million) is scheduled to be received in June 2010 and Rp. 13.210.000.000 (thirteen billion two hundred and ten million) in September 2010.
 - E. If the period of seeking funding from PT. PPA (Persero) shifts, payment according to item 3 continues to run, as well as when after payment of the funds come from PT. PPA (Persero) is still a shortage of the debtor bankrupt to continue to pay according to item 3.
2. On December 16, 2009 at Arjuna Room, 2nd floor of the Hotel Mercure Surabaya, the Concurrent creditors and their legal representatives and Curator attend discussion meetings and attachments peace plan before the Supervisory Judge.
3. That the number of creditors, especially the concurrent creditors who have filed and registered its bill to the curator was as much as 67 concurrent creditor with a bill of Rp. 85,937,257,322 (eighty-five billion, nine hundred and fifty seven million du hundred and fifty-seven thousand three hundred twenty two rupiah) and 1 concurrent creditors that while admittedly the invoice value of Rp. 150,000,000 (one hundred and fifty million rupiah).
4. That the agreement on a peace plan to do next voting meeting voting (voting) against the peacekeeping plan the company which was attended by 64 concurrent creditors who represent a bill of Rp. 86,040,393,764 (eighty-six billion forty million three hundred and ninety-three thousand seven hundred and sixty-four rupiah) and there are four concurrent creditors who do not present the bill for Rp.46.863.585 (forty-six million eight hundred and sixty-three thousand five hundred and eighty-five) and has a quorum under the terms of Article 151 of Law No. 37 2004 About Bankruptcy and Suspension of Payment.
5. That the results of the voting (voting) by 63 concurrent creditors who are recognized with a charge of Rp. 85,937,257,322 (eighty-five billion, nine hundred and thirty seven million two hundred and fifty-seven thousand three hundred twenty two rupiah) and 1 concurrent creditors that while admittedly the invoice value of Rp. 150 000 000 (one hundred and fifty million rupiah).

Thus, the parties hereby agree on that.

In the case of the peace of the above there are several factors that lead to composition:

1. The composition plan approved by creditors
The creditors either concurrent or secure creditor creditors agree to the composition plan proposed debtors. In Article 151 of Law Bankruptcy and Suspension of Payment stated that the peace plan is accepted if approved in the meeting of creditors by over 1/2 (one half) of the number of concurrent creditors who were present in the meeting and whose rights are recognized, representing at least 2/3 (two thirds) of the total number of concurrent receivables are recognized or temporarily recognized from concurrent creditors or proxies who attended the meeting.
2. The debtor obtain financing sources
New financing sources are very important in the debt settlement debtor bankrupt, because for the peace process, the debtor company must remain a going concern (going concern). The costs of the bankruptcy debtor company is in the form of working capital that helps the debtor company's liquidity in the short term and the long term.

Financing short-term nature of time is called the working capital while the long-term financing in the form of so-called syndicated financing (syndicated loan)¹⁷. In the system of US Bankruptcy code, if the financing is done during the moratorium or stand still lenders who provide such financing will get priority in repayment compared to other creditors¹⁸. Loan granted by the new creditor bankruptcy law is possible in Indonesia according to the rules of Article 69 paragraph (2) whose content is as follows:

- (2) In performing its duties, Curator:
 - a. Not required to obtain the consent of or take the discourse prior notification to the debtor or the debtor though one organ in a state outside of bankruptcy, approval or notification as required;
 - b. May apply for loans from third parties, only in order to increase the value of the bankruptcy estate.

In the article it is shown that the debtor company to receive a loan from another company if it has received approval from the Receiver, and if these loans require collateral assets of the debtor, then the loan should be approved by the Supervisory Judge.

Supervisory Judge approvals necessary so these loans are actually utilized for the benefit of the debtor company become healthy again and be able to pay its debts (Article 69 paragraph 3).

The provision of working capital loans and syndicated loans we can see the composition plan of bankruptcy filed by PT. Iglas (Persero) in item 4 above was inscribed as follows: "Payments to creditors concurrent funds from the PT. PPA (Persero) amounting to Rp. 33.480.000.000 (thirty three billion, four hundred and eighty million rupiah) to be received in June 2010 and

¹⁷Prosedings, *Loan Syndication*, Jakarta, Center for the Study of Law and the Supreme Court R.I, 2003, p 67.

¹⁸Richard Posner, *Economics Analysis of Law*, Boston, Toronto, London, little Brown and Company, p. 404.

amounted Rp.13.210.000.000 (thirteen billion two hundred and ten million rupiah) is scheduled to be accepted in September 2010.

Bankruptcy composition will be achieved when, first, that in the agreement there is good agreement between the creditors and the creditors concurrent secure creditor. Second, the presence of debt restructuring. Third, borrowers obtain new sources of financing.

Composition is a process of negotiation, accommodation, and compromise, conducted outside the judicial mechanisms. The debtor does not need to wait until the state can not pay (insolvent) to file the petition in bankruptcy, but the bill creditor against the debtor has exceeded existing assets¹⁹. Tension often occurs between parties with different interests of the debtors, where their expectations are "what they can get from the debtor" and the availability of funding plays an important role in shaping peace. Bankruptcy Code governs the limitation, and the parties may choose to struggle out of court in case of a deadlock. If so, the real sense of peace requires some respect for the parties involved, their interests and goals, and "enmity" which give effect to the parties in the composition.

The secured creditors are the first to stand at the forefront of the procedure Chapter 11. Contrary to the secured creditor bills are bills on administrative costs, which filed for bankruptcy creditors against debtors²⁰, employee wage bill, a bill for the cost of storage, consumer bills and tax bills²¹. In general, the creditors mentioned above do not play an important role in the peace²². If the group accepts the peace plan so they can receive payments from debtors other assets of equal value to the value of the current proposed bill at the time of the request. Debtors can pay the tax bill a priority when proposed by more than six years²³. After the collector is then attend secured creditors represented by the committee of creditors.

There are some standards in the composition plan setting.²⁴ First, the parties that support the composition plan must fulfill all rules that exist in the Bankruptcy Code, including observance of the prohibition in openness and acceptance of the composition plan request. Secondly, the composition plan to be carried out in good faith. Third, the composition plan should be approved based on eligibility, payment by the parties propose, debtors or the issuers of securities or assets gained by the composition plan, the expenses associated with the composition plan approved by the court. Fourth, identity and compensation of each person who will be retained by the debtor that is reconciled also must be shown as well as the identity and affiliation of the individuals involved in the management of the establishment²⁵.

Bankruptcy Code requires all claims or interests that exist in a special group received the same treatment except an individual bills owners agree to receive unequal treatment²⁶. In deciding whether to confirm, the court must consider the possibility, as to whether the peace plan is likely to be followed by liquidation or in need of financial peace²⁷.

Second, Chapter 11 requires that in addition to also organize their negotiation and compromise between the parties initiated by the composition plan. Determination of peace justified although there are groups that do not grant either planning or completeness to make the composition plan. The absence of ratification of the composition plan in bankruptcy, making any charges or interest group should be in a weakened state²⁸, or agree to the peace plan has made the determination if the peace²⁹. Debtors very rarely have sufficient assets to be given to creditors who were strong, e.g by payment in full, so that must be negotiated with the creditors to accept them. Although the debtor to seek ratification of the peace plan³⁰, but the Bankruptcy Code requires that the agreement must be approved at least by one group of the weak³¹.

¹⁹ 11 U.S.C. § 109.

²⁰ Creditors bill arises because the process of filing the bankruptcy petition, after the case began, but before their appointment orders trustee.

²¹ 11 U.S.C. § 507(a).

²² 11 U.S.C. § 1129(a)(9) set several treatments that can be selected for this creditor group and only give little opportunity for debtors. Each party administrative charge and any group of creditors who file for bankruptcy are entitled to a cash payment on the date specified in the peace plan unless the individual creditors agreed to take another path. Other bills that priority is employee salaries, the consumer deposits, which must be paid in cash on the effective date only if the group they make a selection of the peace plan.

²³ 11 U.S.C. § 1129(a)(9).

²⁴ 11 U.S.C. § 1129.

²⁵ Note, "Disclosure of Adequate Information in a Chapter 11 Reorganization," 94 *Harv.L.Rev.* 1808 (1981); Phelan & Cheatham, "Would I Lie to You? Disclosure in Bankruptcy Reorganizations," 9 *Sec. Reg. L.J.* 146 (1981); Thimmg, "Adequate Disclosure under Chapter 11 of the Bankruptcy Code," 53 *S.Cal. L.Rev.* 1527 (1980).

²⁶ See more *Klasifikasi Tagihan-Tagihan (classification of claims)* in Thomas C. Given & Linda J. Philipps, "Equality in the Eye of the Beholder-Classification of Claims and Interest in Chapter 11 Reorganizations," 43 *Ohio St. L.J.* 735 (1982), p. 765-767.

²⁷ 11 U.S.C. § 1123(a)(4).

²⁸ 11 U.S.C. § 1129(a)(11).

²⁹ 11 U.S.C. § 1129(a)(8).

³⁰ 11 U.S.C. § 1129(b). Cramdown intended as authorizing a peace plan in bankruptcy, although there are groups that do not agree to it, as long as the peace plan give at least equal treatment to groups that do not agree.

³¹ 11 U.S.C. § 1129(a)(10).

The proposal and adopted in Chapter 11 more emphasize negotiation mechanisms rather than litigation. Is the composition plan is based on Chapter 11 can be accepted or whether the debtor must be transferred to Chapter 7 and liquidate itself is determined by negotiation, not by litigation. Negotiations will be effective if the lawyer representing his client well informed bankruptcy laws.

Ratification of the composition plan to do, if a group is not a person has been agreed, so that the composition plan can be made and applies to each group of creditors who rejected it.

Third, the best interests test to protect an individual who has rejected the bills³², namely by requiring every holder of rights bill approved property value equal to the amount that would be received by creditors based upon liquidate Chapter 7 debtor company. A composition plan supporters have met best interest test through the analysis of liquidation which shows the value of the assets of the debtor, creditors secured on these assets, administrative costs Chapter 11 and Chapter 7, which has been calculated, the priority bills and creditors are not secured, and the calculation of the percentage distribution of each types of bills. As business projections, analysis of this liquidation may be subjective.

Fourth, the establishment of the peace accord despite the rejection by one or several groups of creditors³³. Composition plan made based on the criteria of "fair and reasonable" to ordinary creditors, secured creditors and holders of privileges under the law³⁴.

Fifth, there are three standard alternative composition plan for approval in bankruptcy over the objection of the secured creditors³⁵. The first standard to allow ratification of the composition plan in bankruptcy if the group members maintain their security rights to the assets of the debtor³⁶, and receive a cash payment for the charges according to the amount which is at least equal to the secured creditor³⁷, and the value at this point is equal to the value of their collateral³⁸. This allows the debtor to do more than eliminate the failure and return the loans that have been obtained. Debtors may extend past the due date of payment guarantee agreement. The calculation of value at this time is to use the market price of the contract value³⁹.

Determination may also be carried out on the objection filed by the secured creditor if the composition plan stipulates that each member of the group will realize "the same amount" of the secured creditors recognized⁴⁰.

Sixth, the requirement to certify the composition plan in bankruptcy relating to rights provisions top priority of creditors who are not secured⁴¹. Provision on the right top priority is standard fair treatment and proper for groups that do not agree that having the bill was not secured. If the bill group that is not secured creditor does not agree, then the composition plan shall set aside the bill that position under creditor precedence (junior claims), but the group did not agree to accept the property with a value equal to the value of their bills⁴². Debtors can pay creditors more than the time specified for payment of the current value equal to the value of the bill when the loan is granted.

To approve their composition in bankruptcy over the interests or rights owned group does not agree⁴³, the bill holder creditor position under the precedence should be set aside. This does not apply if the holder the right to receive any assets of the debtor to the value of the asset at the time of entry into force of the composition plan, which is equal or greater to the number given at the time of liquidation, greater than the price of return that has been established or even with the value of the rights⁴⁴. Provisions on

³² 11 U.S.C. § 1129(a)(7). Admission requirements contained in § 1129 (a) (8) and (10) applies to all groups of the bill, as well as fair and reasonable standards as well as discrimination in 11 U.S.C. § 1129 (b).

³³ 11 U.S.C. § 1129(b)(1).

³⁴ 11 U.S.C. § 1129(b)(2).

³⁵ 11 U.S.C. § 1129(b)(2)(a).

³⁶ Peace plan to do ratification despite the wealth of debtors transferred to another business entity, as long as the creditor remains master guarantee. 11 U.S.C. § 1129 (b) (2) (A) (ii) (I).

³⁷ According to 11 U.S.C. § 506 (a), a bill that is secured by the assets of the debtor where there is interest, then the secured creditor can confiscate a number of collateral value, and no secured creditors can expropriate wealth beyond the value of the collateral. For the secured creditor, the amount to be awarded is the amount of the bill or the value of the collateral, the smaller, unless the creditor is not secured creditor which makes 11 U.S.C. § 1111 (b) (2) can be used.

³⁸ 11 U.S.C. § 1129(b)(2)(A)(i).

³⁹ See Klee, "All You Ever Wanted to Know about Cram Down under the New Bankruptcy Code," 53 *Am. Bankr. L.J.* 133(1979), p. 158.

⁴⁰ 11 U.S.C. § 1129 (b) (2) (A) (iii); see also discussion on the standard "the same number" associated with adequate protections set forth in 11 U.S.C. § 362.

⁴¹ 11 U.S.C. § 1129(b)(2)(A)(ii).

⁴² 11 U.S.C. § 1129(b)(2)(B).

⁴³ Interest is the right of the shareholders (ordinary and main), an ally in a civil partnership, and the other parties whose rights have not emerged as a creditor. Similarly, there are rights holders whose position under or subordinated to the rights of shareholders in a company that has a fairly complicated financial situation in which there is a regular and main shareholder. See Klee, "All You Ever Want to Know about Carmdown under the New Bankruptcy Code," 53 *Am. Bankr. L.J.* 133 (1979), p. 147.

⁴⁴ 11 U.S.C. § 1129 (b) (2) (C). Fair and decent standard also prevents the creditor group guarantees rights holders to receive more than the full payment if the bill or rights position under the precedence of creditors objected. These terms of influence in negotiations for the owners interests. If wealth was distributed to the bill and interest groups are more senior that

the absolute priority of the secured creditor does not regulate with them significant bargaining chip against the debtor, the ability to eliminate the owner's interests.

The creditors often basing reason unjust discrimination⁴⁵. A debtor wished to discriminate in favor of the creditor with separate bills. Composition plan "may put a charge or interest in a particular group or interest only if the bill was substantially the same sort of bill or other interests⁴⁶. Phrases in this article is not clear whether the same group of creditors should be placed in the same group. Some creditors argued that the separation would lead to a similar group of "unfairly discriminatory."

Based on the facts and circumstances of each group of court decisions have followed a four-part test set out in Chapter 13 Bankruptcy. This test assumes that discrimination in bankruptcy had been anticipated by the Congress as a clear result in the separation of classification. The following factors have to be considered to ensure that the natural discrimination is unfair. First, whether the discrimination has a rational basis. Second, whether the debtor can use a peace plan without discrimination. Third, whether such discrimination has in good faith.

Conclusion

1. Bankruptcy Law provides for the composition Institute debtor in bankruptcy cases because:
 - a. Law requires justice for all parties concerned, namely the creditor and the debtor. In accordance with Article 1131 and Article 1132 of the Civil Code which is the philosophical foundation of the bankruptcy law, said the first; property of the debtor as collateral for all his debts., the second payment of the debt is divided by the Creditors accounts receivable balance. This means that not only the creditors will receive payment protection on credit-receivable them, but the bankruptcy law also provides protection to the debtor/companies debtor by providing institution peace (Accord) contained in Article 144 to Article 177 of the Law of Bankruptcy and Suspension of Debt payments, so that the debtor/prospective debtor company avoid bankruptcy because the debtor business continuity affect many parties, such as employees of the company, shareholders, stakeholders, distributors, sales agents, consumers and even the State as recipients of tax.
 - b. Bankruptcy composition institute showed that bankruptcy laws Indonesia consider the interests of the debtor. Practice in court showed that the debtors are bankrupt less than 50%. Many bankruptcy petitions filed by creditors but not end in a declaration of bankruptcy of the debtor.
2. The reason creditors agree to the composition plan in the bankruptcy case are:
 - a. The existence of good faith from debtors
Good faith is one of the basis / principles for the creation of composition bankruptcy. Good faith is a statement of the truth about the real situation of the debtor. The principle of good faith is regulated in Article 1338 of the Civil Code. Good faith debtors actually began plans peace proposals made is the obligation of the debtor to notify or explain (ouderzockplicht) honest about the facts material to creditors related to the principal agreement.
 - b. Their financial ability of debtors to settle debts
The reason creditors to accept a composition plan proposed for the persistence of the financial ability of the debtor company to pay its debts, which is evident from the new investors will provide capital loans/financing to the debtor company. Article 69 states that the UUKPKPU Curator in performing the maintenance and settlement or bankruptcy estate may apply for loans from third parties, in order to increase the value of the bankruptcy estate. So it is possible for the debtor to obtain additional working capital through empowerment of the assets of the debtor. With the new investor the concurrent creditors increasingly skeptical about the ability of debtors to repay all his debts. In addition it can also be seen from the asset or assets the debtor bankrupt. The existence of the treasure greatly affect bankruptcy. If the bankruptcy estate is very small for a split would disrupt the peace process in particular bankruptcy in bankruptcy. In the process of bankruptcy in principle pursued is the property of the debtor bankrupt. Such property shall be used for fixed, namely to be distributed to creditors, are used to pay for services curator and payment of court fees. Therefore, when the bankruptcy estate that is too small is better that the peace process is stopped.
3. Shape the composition ideal for parties in the bankruptcy case is completed with a written agreement in which includes about: First; given the opportunity on the debtor to restructure its debts. Restructuring scheme commonly used in the process of settlement of these debts is by cutting debt (Rescheduling). That is the burden of the debtor's obligation to pay its debts reduced in number such that the debtor can pay all his debts. Two; the addition of the term of payment. Given the addition of the payment period will give a chance to the debtor company to continue or restore their business so as to re-pay all obligations. Third; the prospective debtor companies were given the opportunity to obtain a loan or financing from third parties. Due to obtain additional equity or loan financing from a third party business continuity debtor prospective viable, so it does not cause any harm to third parties not involved in the problem of bankruptcy, such as shareholders, employees, sales agents, consumer / user of the product even states as the recipient of the tax.

shareholders belonging to the debtor, then the business valuation will be needed to determine whether the group had received more than the current bill or rights they have. The secured creditor groups often provide value to obtain approval of the peace plan and rejected the adverse assessment.

⁴⁵ The reason is filed under 11 U.S.C. § 1122.

⁴⁶ 11 U.S.C. § 1122 (a). A member of the group who agreed that disagrees can reject the legality of the group and bills from creditors are not secured by 11 U.S.C. § 1129 (a) (1).

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