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LEGAL ASPECTS OF BANKRUPTCY PEACE THROUGH RESTRUCTURING CORPORATE DEBT IN THE DIGITAL ECONOMY ERA

Ida Nadirah
Lecturer at Post Graduated School, Universitas Muhammadiyah Sumatera Utara
Corresponding Email: idanadirah@umsu.a.id

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Abstract

The digital economy era has brought significant transformations in the business world, including in the aspect of corporate debt management. In the context of bankruptcy, the traditional approach that tends to focus on the liquidation of corporate assets has begun to be replaced by the peace model through debt restructuring. This approach aims to provide an opportunity for companies experiencing financial difficulties to recover and contribute to the economy. This study aims to analyze the legal aspects of bankruptcy peace through corporate debt restructuring, especially in the digital economy era. The main focus is to identify the applicable legal framework, challenges faced, and opportunities offered by digital technology in the debt restructuring process. The research method used is normative juridical with a conceptual approach and analysis of relevant regulations, including the Bankruptcy and Suspension of Debt Payment Obligations Law (PKPU) in Indonesia. The results of the study indicate that the peace mechanism through debt restructuring has great potential to increase the efficiency and effectiveness of bankruptcy dispute resolution. In the digital era, technologies such as blockchain and digital platforms can be used to increase transparency, accountability, and speed of the restructuring process. However, the implementation of this technology faces challenges, including a lack of specific regulations, data security risks, and resistance from traditional stakeholders.

Keywords: ***Legal Aspects, Bankruptcy, Restructuring, Corporate Debt and Digital Economy***

Background

A. The Existence of Debt Restructuring in Peace

1. There is a Rescheduling of Debtor's Debt

Settlement of bankruptcy cases according to Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK) must be submitted to the court. And according to article 1 point 7 of the UUK, the court is the Commercial Court which is included in the scope of the General Court. Regulations regarding the Commercial Court have existed since the issuance of Government Regulation in Lieu of Law No. 1 of 1998 concerning Amendments to the Bankruptcy Law and have been stipulated as law with Law No. 4 of 1998 (old UUK) namely in Article 280 of the old UUK. The Commercial Court is one of the special courts as referred to in Article 15 paragraph (1) and the explanation of Article 15 paragraph (1) of Law No. 4 of 2004 concerning Judicial Power and Article 8 of Law No. 8 of 2004 concerning Amendments to Law Number 2 of 1986 concerning General Courts.

The Commercial Court is one of the special courts within the General Courts, in addition to several other special courts such as the Juvenile Court, Human Rights Court, Corruption Court, Industrial Relations Court, all of which are within the General Courts. A special court means that there is differentiation/specialization. Special courts are held or formed with the aim of specializing in handling bankruptcy cases, namely having the task and authority to examine and decide on applications for declarations of bankruptcy and suspension of debt payment obligations (Article 280 paragraph (1) of the old UUK) and examine and decide on other cases in the field of commerce (Article 280 paragraph (2) of the old UUK, and Article 300 paragraph (1) of Law No. 37 of 2004.

Then in subsequent developments the scope of the duties and authority of the Commercial Court was expanded, namely examining and deciding cases in the field of IPR (intellectual property rights) such as cases concerning Trademarks (Law No. 15 of 2001), Patents (Law No. 14 of 2001), Copyright (Law No. 19 of 2002), Industrial Design (Law No. 31 of 2000), Integrated Circuit Layout Design (Law No. 32 of 2000). The Commercial Court was first established in Central Jakarta with the legal basis of Article 281 paragraph (1) of the old UUK. The Central Jakarta Commercial Court at that time had jurisdiction throughout the territory of the Republic of Indonesia. Then with Presidential Decree No. 97 of 1999, the Commercial Court was established at the Ujung Pandang (Makassar), Medan, Surabaya and Semarang District Courts (Article 1). The jurisdiction of the Commercial Court based on Article 2 of Presidential Decree No. 97 of 1999 is:

1. The Makassar Commercial Court covers the areas of the Provinces of South Sulawesi, Southeast Sulawesi, Central Sulawesi, North Sulawesi, Maluku and Irian Jaya.
2. Medan Commercial Court, covers the areas of West Sumatra Province, Bengkulu, Jambi and the Special Region of Aceh.
3. The Surabaya Commercial Court covers the areas of; East Java Province, South Kalimantan, Central Kalimantan, East Kalimantan, Bali, West Nusa Tenggara, East Nusa Tenggara and East Timor (when it was still part of the Unitary State of the Republic of Indonesia)
4. Semarang Commercial Court covers the areas of Central Java Province and the Special Region of Yogyakarta.
5. The Central Jakarta Commercial Court covers; The provinces of the Special Capital Region of Jakarta, West Java, South Sumatra, Lampung and West Kalimantan (Article 5 of Presidential Decree Number 97 of 1999)

The following are bankruptcy peace cases that researchers obtained in several Commercial Courts in Indonesia.

The number of bankruptcy cases at the Jakarta Commercial Court can be seen from the data below:

Year 2014:	Bankruptcy case	: 75	PKPU case	: 66
	Separated	: 64	Separated	: 35
	Unplug	: 10	Unplug	: 14
Year 2013:	Bankruptcy Case	: 87	PKPU case	: 37
	Separated	: 76	Separated	: 29
	Unplug	: 11	Unplug	: 8
In 2012:	Bankruptcy Case	: 89	PKPU case	: 45
	Separated	: 77	Separated	: 27
	Unplug	: 12	Unplug	: 10
Year 2011:	Bankruptcy Case	: 94	PKPU case	: 56
	Separated	: 79	Separated	: 42
	Peace	: 2	Unplug	: 14
Year 2010:	Bankruptcy Case	: 88	PKPU case	: 51
	Separated	: 83	Separated	: 39
	Unplug	: 5	Unplug	: 12

Source: Bankruptcy case register book of the Jakarta Commercial Court.

For comparison, the number of bankruptcy cases submitted by creditors to the County Court in England in 2011 was 7,296 cases and 9,923 were submitted to the High Court. In 2012, 6,947 applications were submitted to the County Court and 8,624 applications were submitted to the High Court. In 2011, there were 12,170 bankruptcy applications from debtors to the County Court in England and 587 applications were submitted to the High Court. In 2012, 14,285 applications were submitted to the County Court and 699 to the High Court.[1]The data shows that debtors utilize bankruptcy petitions and peace petitions more than creditors. This is different in Indonesia, where

[1]Fiona Tolmie. 2014. Corporate and Personal Insolvency law, Oregon, Cavendish Publishing p. 152

bankruptcy petitions are mostly filed by creditors and bankruptcy peace petitions are mostly filed by debtors.

Bankruptcy creditors are divided into several parties, namely, preferred creditors, separatist creditors and concurrent creditors.[2]. According to Article 1133 of the Civil Code, a creditor may be given priority in payment of his receivables over other creditors if the creditor's claim is a claim arising from privileges, namely a claim secured by a lien and a mortgage. After the enactment of Law No. 4 of 1996 concerning Mortgage Rights and Law No. 42 of 1999 concerning Fiduciary Rights, creditors who have claims secured by Mortgage Rights and Fiduciary Rights also have a position that must be prioritized over concurrent creditors.

Preferred and Separatist Creditors only want the value of the debtor's assets that are used as collateral not to decrease below the value of the debt. If the debtor can convince the Preferred and Separatist Creditors that the value of the collateral will not decrease below the value of the debt, then the peace plan submitted by the debtor will generally be accepted, as in the peace case Number: 70/Pailit/2010/PN.Niaga. JKT.PST. which occurred in the Jakarta court, between;

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

Furthermore, each of them, either individually or jointly, is called the Debtors, as the owner of PT. Dewata Royal Internasional.

With the Separatist Creditors consisting of:

1). PT. Bank Mandiri (Persero) Tbk, hereinafter referred to as Bank Mandiri Creditors

2). PT. Bank Panin Tbk, hereinafter referred to as Bank Panin Creditors.

That the Bankrupt Debtors have submitted a peace plan that has been approved by the Supervisory Judge to be discussed by the Separatist Creditors, namely PT. Bank Mandiri (Persero) Tbk and PT. Bank Panin Tbk on January 21, 2011, which was finally approved by acclamation with a percentage of 100%. With the approval of the debtor's peace plan by the creditors, the peace plan is legally changed and is stated in a peace agreement with the following terms and conditions:

1. Payments previously received by Panin Bank are declared null and void by law.
2. The debtor's obligations to Bank Mandiri up to the date of the bankruptcy decision with these bills must first be verified by the Curator.
3. The total debtor's obligation to Bank Mandiri is USD 4,063,665.75 (four million sixty three thousand six hundred sixty five point seventy five United States dollars) and is given relief so that it becomes USD 3,000,000.00 (three million United States dollars) through the following payment stages:

   1 million US dollars must be paid directly to Bank Mandiri within 5 days after this peace agreement is homologated by the court. And the remaining 2 million US dollars must be paid no later than 3 months from the date of homologation of the peace agreement by the court.

   Starting from a period of 5 days after receiving the full payment above, Bank Mandiri will release the debt guarantee given by the debtors to Bank Mandiri.
2. The debtor's payment to Bank Panin which is declared null and void by law based on a bankruptcy decision will be settled through a debt recording and verification mechanism by the Curator and after being approved by the supervisory judge, the payment to Bank Panin will be requested for approval and Bank Panin will be entitled to the money it has received.
3. Since 5 days after the signing of this peace agreement, the debt and bankruptcy case of PT. Dewata Royal Internasional has ended.

From the decision of this peace agreement there are several important things, namely:

a. A peace agreement is a means of accommodating all the different interests of creditors. In general, creditors want the peace plan to be approved immediately so that the debtor's debt can be

[2]Sutan Remy Sjahdeini, op. cit. Pg 9

settled immediately and the debtor's business activities will recover immediately. With the recovery of the debtor's business activities ("going concern"), it will also have an impact on the "supply" activities of the concurrent creditor's business, namely that its receivables that cannot be collected can be gradually paid[3]

b. The peace agreement contains provisions regarding debt restructuring, namely reducing the burden of the debtor's obligations in such a way that...[4], so that debtors can continue their business and at the same time pay their debts[5].

With the recovery of the business, the debtor will be able to pay all of its obligations. In other words, paying debts through the recovery of the debtor's business is the essence of corporate debt restructuring. The debtor's ability to pay debts is the key to being able to file for bankruptcy peace. In the United States there are several cases as follows:

The dispute between CHA vs Shin Group[6]

This case began with a dispute between three bankruptcy applicants and Central Hobron Associates (CHA) over the implementation of a real estate complex sales transaction. CHA was the buyer, Kong ZR Corporation and Shin were the sellers (in the sales document it became “Shin Group”). The transaction between CHA and Shin Group was authorized through*Letter of Agreement*December 12, 1980 and in the Stock Opinion Purchase Agreement of December 17, 1980. This transaction was the sale of the Kong family's interest in the Waikiki Hobron condominium project. The "Kong Family" interest consisted of all the shares of Dora Kong Corporation, which was an active partner in a company called Waikiki Hobron Associates (WHA, with Clifford Shin as its president); the rights of Enoch Kong as a passive partner in WHA; and the rights of ZR Corporation (Clifford Shin as its president director) as a passive partner in WHA. On December 12, 1980, the Letter of Agreement stated that the total purchase price of the Kong family's interest was US $ 1,300,000.00 and the monthly payment to CHA was US $ 25,000. The purchase price and the amount of the monthly payment were divided into three parts indicating the sale of three ownership interests, namely Dora Kong Corp, ZR Corp, and Enoch Kong. After the Letter of Agreement was signed, Clifford Shin requested that the agreement relating to the shares of Dora Kong, Corp. be changed to a Stock Option Purchase Agreement on December 17, 1980. This agreement was only between Stanley Shin (as trustee for Shin's four minor children) and Central Hobson Associates, for the option to sell shares of Dora Kong Corporation. After this agreement was executed, CHA and the Shin Group began to dispute over some of the terms of the agreement.

Despite the dispute, CHA continued to pay US$25,000.00 per month, as required, from April 1981 to December 1981. On December 1, 1981, CHA decided to stop paying due to the obstruction of justice filed against it. On April 7, 1982, after Cha stopped paying, Shin Group filed suit in Hawaii State Court. CHA filed defenses, including breach of contract, failure to comply with terms of the agreement, breach of warranty, and filed a counterclaim and third-party complaint. On December 5, 1983, when the bankruptcy court entered an order to extinguish the debtor's debt, it was delayed for over 18 months, and Shin Group failed to perform its actions. The bankruptcy court noted in its decision that "no findings were made, no facts were presented, and no evidence was met." The appeal from the bankruptcy order was filed with the United States Bankruptcy Court for the District of Hawaii,36 BRIII. The judge of the district court, Pence, J, decided several things. First, in determining whether the debtor has paid its debts as they fall due, it must not only be based on the debtor's balance sheet to determine which assets are subject to income tax from the total gross income and defer the important debts that determine it. Second, even though the sellers of this condominium project are three different companies, they will be treated as a single creditor to determine whether the debtor is “generally in default” on its debts due, especially for the fact that the transaction consists of a single

[3]John Woodhall and Gerain Hughes, A practical Guide to Debt Restructuring in Asia, (Asia Law Supplement, 2000). Pg 2.

[4]J. Fred Weston, Mark l. Mitchell, J. Harold Mulherin, Take over, Restructuring and Corporate Governance, (New Jersey: Pearson Education Inc, 2000). Page 288. In Darminto Hartono.

[5]Chase (et. all), The Asia law Guide to Corporate Restructuring, (Asia law & Practice, n.d.).

[6]CHA v. Shin Group,41 Bankr.444,(DC Hawaii, 1984).

sale price and the entire balance of the purchase price is not paid due to a dispute caused by the total amount of the sale price. Third, even though the debtor has sold its business assets, the right to avoid bankruptcy filed by its creditors can still be exercised, because the debtor can still pay the remaining purchase price of this condominium project. Unpaid debts will not be included in determining the debtor "in default" on its debts due, because if the debtor does not pay his debts even though the debts are due, then this is an error.

Furthermore, the company's ability to provide sufficient cash, which can be taken from the continuation of the company's activities from the distribution of bankrupt assets as payment of debts that have matured, can be seen in the case.*Tabor Court Realty Corp.*[7] In 1966, Glen Alden Corporation sold its subsidiary, Blue Coal Corporation, to Raymond for US$500,000.00 in cash and the remainder using the mortgage owned by Blue Coal. A serious problem occurred in 1971 when Raymond's largest shareholders, the Gillen and Cleveland families, could not find an agreement on dealing with the company's declining production. After an unsuccessful attempt to obtain a loan, Durkin formed a company called Great Company and bought Raymond's shares. Raymond Group shareholders sold the company to a small number of investors led by Raymond's President Director. The investors substantially loaned all the prices at a fairly high interest rate which was secured by a mortgage on the sold company and its subsidiaries and all that was a guarantee of repayment. Great American obtained a loan from Institutional Investor Trust (IIT) on June 24, 1973 in the amount of US$8,530,000.00.

IIT restructured so that the Raymond Group was divided into a borrower and a guarantor. The loans were secured by a lien on the assets of the borrower, but were also secured by a lien on the assets of the guarantor. The borrower companies in the Raymond Group received $7,000,000.00 from IIT. The loan agreement also contained a clause that gave IIT priority over the collateral in the event of a sale of Raymond's land. In return, Great American issued to each borrower an unsecured promissory note with the same interest rate as that in the agreement with IIT. According to the mortgage seller's contact, and prior to the closing of the sale and transfer of the mortgage, IIT and Pagnotti each placed $600,000.00 in a third party ledger to be used for payment of real estate taxes on the property listed for the county tax sale or to be used as funds to bid on the property at the tax sale. IIT and Pagnotti agreed that the bidding of the property at the tax sale in Lackawana and Luzerne would be attempted by the prospective company. Pagnotti prepaid the delinquent taxes on the mortgage held by IIT to Lackawana County.

A similar mechanism was also applied to another subsidiary, Glen Nan. Based on the failure of Tabor Court Realty to pay other outstanding taxes, on December 16, 1980, Lackawana County conducted a second sale of Raymond's land. On January 26, 1977, the sale and assignment of the IIT mortgage was conducted. Pagnotti paid $4,500,000.00 for the IIT mortgage; at that time the remaining mortgage was $5,817,475.69. On December 12, 1977, Hyman Green, a representative of Raymond's stockholders, stated that McClellan intended to conduct a private sale of some of Raymond's assets that were encumbered as collateral for the IIT mortgage.

And here is an example of the Lionel Corp case which is an example of the court's rejection of a debtor who sold a large number of his shares outside of the peace plan. On February 19, 1992, the Lionel Corporation, a toy train manufacturing company, and two of its subsidiaries, Lionel Leisure, Inc. and Consolidated Toy Company, jointly filed for reorganization under*Chapter 11 of Bankruptcy Code.*The reorganization plan was accelerated due to the loss of US$22,500,000.00 suffered by Lionel during the two years. The assets and liabilities of the company as of March 31, 1983 and 1982 were US$295,100,000.00 and US$338,600,000.00. Lionel's creditors had US$135,600,000.00 before the reorganization petition, and during the bankruptcy process. Lionel's creditors, represented by the Official Creditors Committee, had claims of US$80,000,000.00 and US$55,000,000.00. Other creditors' claims. Lionel continued to conduct its business in accordance with 11 USCA §§1107-1108,

[7]Us v. Tabor Realty Corp.et.al,803 F2d 1288 (3 Cir.1986)

although through Leisure, its subsidiary. Leisure has 56 specialty retail stores, some of which were previously operated by Lionel subsidiary Consolidated Toy.

In addition to Leisure and Consolidated Toy shares, Lionel still obtained other assets such as the right to receive royalty payments for its toy trains. Lionel's most important asset in this bankruptcy process was the ownership of 82% of the common stock in Dale, a company engaged in the manufacture of electronic components. On June 14, 1983, Lionel filed a petition under Section 363 (b) with the Bankruptcy Court to authorize the sale of 82% of its rights in Dale to Acme-Cleveland Corporation for US $ 43,000,000.00 in cash. On September 7, 1983, the Securities and Exchange Commission filed an objection to the sale process. Bankruptcy judge Ryan conducted a preliminary examination of the sale of Lionel shares. At the time of the examination, Peabody succeeded as an offer with a bid amount of US $ 50,000,000.00. Creditors wanted the assets to be exchanged for a "pot of cash" of US $ 70,000,000.00 to pay creditors under the settlement plan.

In approving the sale, Judge Ryan noted that the sale was the strong desire of the creditors' committee and that failure to reach a settlement would set the settlement process back a year or more. The Bankruptcy Court of the Southern District of New York, Edward J. Ryan, J., ruled in favor of the sale of the debtor's assets as part of the bankruptcy estate outside the ordinary course of business. The Committee of Equity Security Holders, representing public stockholders, appealed the decision. The SEC also appealed and supported the appeal, stating that the approval of the sale violated the Bankruptcy Code's requirement for notice of voting rights, which is the essence of Chapter 11. The creditors' committee felt that the sale was in the best interests of Lionel and that the sale was also regulated by the Bankruptcy Code.[8]Lionel argued that his ownership of Dale was an asset not included in the business of the company and that the proceeds of the sale would provide a benefit for the reorganization plan. The Court of Appeals, Cardamone, circuit judge, granted the appeal. The fact that the Creditors Committee supported the sale was not a compelling reason to approve the sale. The emergency or perishability standard is no longer a bar for courts to approve such sales, but not all of the limitations imposed by the judges have been removed.[9].

Bankruptcy cases submitted to the Medan Commercial Court are as follows:

Table 15
Bankruptcy Applications 2009-2014

No	Types of Decisions	Total	Percentage
1	Bankrupt	13	76.47
2	PKPU	3	17.65
3	Rejection	-	
4	Revocation	-	
5	Peace	1	5.88
		17	100

Source: Medan Commercial Court

From the table above, it can be seen that during 2009 to 2014 there were 13 (thirteen) bankruptcy cases entered the Medan Commercial Court, from these bankruptcy cases there were 3 (three) PKPU cases. And throughout 2009-2014 there was only 1 (one) bankruptcy peace case entered the Medan Commercial Court. To accommodate all creditors' interests, the peace plan does not only concern the interests of the debtor but also concerns the interests of all creditors. Thus, the peace plan must truly be an "accord" which is an agreement between the debtor and the creditors as happened in the case of PT. Drydock World Pertama V. PT. Abizah Jaya No. 04/ Perdamaian/Pailit/2011/ PN.Niaga, Medan.

PT. Drydock World Pertama is a company engaged in the shipping sector located at JL. Brigadir Jenderal Katamso, Tanjung Uncang Industrial Area, Batam, has a total debt of Rp.

[8]II USC§ 363(b).

[9]Bryan A. Gardner, et.al., eds., op.cit. p.526. Emergency doctrine is a legal principle that exempts a person from the standard normally applied based on reasonableness, if the person acts instinctively to meet a very important and urgent need.

931,376,311 (nine hundred thirty one million three hundred seventy six thousand three hundred eleven rupiah) and SGD$ 5,984,537.73 (five million nine hundred eighty four thousand five hundred thirty seven Singapore dollars and seventy three cents) and one of the debts has matured and can be collected. PT. Abizah Jaya which has receivables that have matured and can be collected has filed a bankruptcy petition against PT. Drydock World Pertama at the Medan Commercial Court. Based on the bankruptcy petition filed by PT. Abizah Jaya, the debtor PT. Drydock World Pertama has filed a peace petition and the petition has been granted as stated in Decision No. 04/Peace/Pailit/2011/PN.Niaga.Medan.

As a result of the granting of the peace request, the bankruptcy of PT. Drydock World Pertama ended. The total obligations owned by the debtor to its creditors consist of:

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

The bankrupt debtor was represented by Mark Andryn SH and Sangti P. Nainggolan SH, advocates acting for and on behalf of PT. Drydock World Pertama (In bankruptcy); The curator was attended by Lotty Siagian SH and Iva Diah Noor SH.

The peace application was filed by the bankrupt debtor after the Curator of PT. Drydock World Pertama resolved the bankruptcy in the case with peace and was stated in a peace deed. The application reached an agreement between the creditors as reported by the supervising judge, after hearing;

1. A report from the debtor that the debtor's assets include objects for which the right to retain an object is exercised, not much greater than the amount agreed in the peace.
2. The implementation of the peace is quite guaranteed
3. The settlement is achieved not through fraud, collusion with one or more creditors, or through the use of other dishonest means and regardless of whether the debtor or other parties cooperated in achieving this.

The contents of the peace agreement that has been signed by the parties (debtor and creditors) are as follows:

A. That the other creditors are legitimate creditors of the bankrupt debtor with the total amount of claims as of May 31, 2011 which after being verified by the creditors and the bankrupt debtor is Rp. 931,376,311,. (nine hundred thirty one million three hundred seventy six thousand three hundred eleven rupiah) and SGD $ 5,984,537.73,. (five million nine hundred eighty four thousand five hundred thirty seven Singapore dollars and seventy three cents) consisting of:
   c. The bill that must be paid by the bankrupt debtor to the creditor of PT. Abizah Jaya is Rp. 581,541,709,- (five hundred eighty one million five hundred forty one thousand seven hundred nine rupiah) and SGD $ 286,002.49,- (two hundred eighty six thousand two Singapore dollars and forty nine cents) which amount is the amount of debt that has been approved by the Bankrupt Debtor, and is still a bill from the Creditor of PT. Abizah Jaya to the Bankrupt Debtor that is not recognized and approved by the Bankrupt Debtor;

d. The bill that must be paid by the Bankrupt Debtor to the Creditors (except for the Creditor of PT. Abizah Jaya) is Rp. 348,834,602,- (three hundred forty eight million eight hundred thirty four thousand six hundred and two 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. That during the Verification of Receivables period after the Bankruptcy Decision is issued, the Bankrupt Debtor agrees to settle the payment of the Bankrupt Debtor's debts to the Creditors in the manner as will be explained in this Peace Agreement; namely, the payment of the total debt of the Bankrupt Debtor to the Creditors will be made by the Curator no later than 14 (fourteen) days after the Curator receives approval (homologation) of the peace plan from the Commercial Court;

C. That during the Verification of Receivables and Creditors' Meeting, it turned out that the Creditors had attended and submitted their claims to Lotty Siagian SH, and Iva Ida Diah Noor, SH, as the Bankrupt Debtor's Curator who had been appointed based on the Bankruptcy Decision ("hereinafter referred to as the Curator") to be verified and discussed in the Creditors' Meeting;

D. That the Bankrupt Debtor has submitted a letter of proposed settlement dated 17 June 2011 to the Curator, who constitutes all of the Bankrupt Debtor's creditors, and has approved the proposed settlement;

E. That regarding the Total Debt of the Bankrupt Debtor as of May 31, 2011, the Debtor will pay by transferring the entire total debt to the Creditor through the Curator's Account designated for that purpose ("Curator's Account") no later than and effectively on July 25, 2011.

Peace in bankruptcy as explained above is not an agreement as regulated in Article 1313 of the Civil Code. Because it is not an agreement, peace in bankruptcy is not subject to the legal principles of agreements as regulated in Article 1338 of the Civil Code.

Peace in bankruptcy is also not subject to the principle*The Pact of Our Lord*which stipulates that an agreement is a law for its makers. Because peace in bankruptcy is not an agreement, the principle of Pacta Sunt Servanda does not apply. Peace in bankruptcy is made by the debtor and is accepted or not by the creditors, although not all creditors accept it, the peace will still be accepted by all creditors. And after being ratified, peace in bankruptcy applies not only to creditors who accept peace but also applies to creditors who do not accept peace, reject the ratification of peace and even apply to those who do not file a bankruptcy petition.

According to Hartono, an accord is not an agreement, even though it is binding for those who do not agree to it. This is because the accord/peace is not made between the debtor and each creditor individually but with the creditors together. An accord is an agreement between the debtor and his creditors together as a group of people who participate in the agreement based on a majority decision that binds the minority, which is confirmed by a judge.

This happens because bankruptcy is a form of protection for bankrupt debtors to avoid arbitrary actions by creditors and for creditors to receive payment for their receivables. Because it is a form of protection for these parties, it is natural that in the rules of peace in bankruptcy, there are concurrent creditors who do not participate in the bankruptcy process, because they do not know about the bankruptcy petition from other creditors, know that there is a bankruptcy petition from other creditors but do not want to know, and there are also those who are indifferent to their receivables. However, in bankruptcy law, the position with concurrent creditors is the same. And it is different from creditors who have priority rights such as separatist creditors and creditors with special rights who have different positions from each other and different from other concurrent creditors. Creditors with priority rights will have their receivables that are due first fulfilled, compared to other creditors.

Peace in bankruptcy can bind third parties, because it often happens that the bankrupt estate has legal problems. And the legal problems also involve third parties. The UUK gives authority to the curator to act for and on behalf of the bankrupt debtor, including representing the bankrupt debtor in facing any legal problems related to the bankrupt estate. If there is a dispute regarding the bankrupt estate, the curator will face and resolve it.

The curator will first examine each type of object in the bankrupt estate whether it has legal problems or not. And the curator will classify the bankrupt estate that has no legal problems and the

bankrupt estate that has legal problems so that indirectly the peace in bankruptcy is not only binding on third parties but also binding on the curator.

Legal problems involving third parties can be in the form of ownership disputes, in court seizures in civil and criminal cases, disputes with the community, controlled by others, entrusted to others, used by others, and so on. Each type of legal problem must be separated and classified and resolved first. Bankrupt assets that no longer have problems will be recorded and can be data for bankrupt debtors in submitting a peace plan.

However, if it turns out that after being examined there are no legal problems and it is then used to offer peace and after the peace ratification process a dispute arises involving a third party which hinders the implementation of the peace, then the peace inevitably involves a third party in it.

The involvement of this third party according to the author must first be removed from the peace by obtaining approval from the creditors so that the curator resolves the legal problem. This approval must also be reported to the supervising judge and the request for approval must be placed in the court clerk's office so that it can be seen by creditors and interested parties. If the creditors do not agree, it will clearly harm the creditors themselves because the amount of bankrupt assets will decrease and reduce their share. After the legal problem is resolved, the assets will then be distributed again with a separate report.

In America there are several cases, where the peace has already begun at the time of the peace plan. As in the case of Nathanael J, Schultz v. Credit Association.[10]

Nathanael and Dolores Schultz filed for settlement on January 28, 1986. The Niggs filed for settlement on the same date. Neither debtor filed a settlement plan within the 120-day exclusivity period. Northeast then filed a plan of liquidation for the Niggs case on August 1, 1985, and Mitchell-Huron filed a plan of liquidation for the Schultz shirts on June 25, 1986. Northeast's and Mitchell-Huron's plans of liquidation contained similar requirements for the appointment of trustees under Chapter 11, and the trustees' purposes in these plans were also to liquidate the estates of Schultz and Niggs. A preliminary examination was conducted to confirm the plan of liquidation filed by the Production Credit Associations (PCA), and the appointment of trustees by Northeast and Mitchell-Huron to conduct the liquidation under Chapter 11. The bankruptcy court consolidated these cases in order to reach a consensus on the single question of whether the creditors' plan of liquidation should be governed by a creditor-appointed liquidator or by a Chapter 11 trustee appointed by the United States Trustee under the Bankruptcy Code. The bankruptcy court approved the plan of reorganization, and permitted the debtors to implement the proposed liquidation plan and approve the appointment of a trustee.

*Bankruptcy court*decided that it was in the best interests of all parties to have a plan of liquidation governed by a Chapter 11 trustee provision rather than a plan of liquidation governed by a trustee-liquidator. In this context, the requirements of the Bankruptcy Code do not prohibit the use of a Chapter 11 trustee provision. On the other hand, the court dismissed the objections raised by the United States Trustee to the appointment of the trustee. On appeal, the district court, John B. Jones, J., ruled, first, that under the statute it was wrong to appoint a trustee by means of a plan of liquidation. The liquidator, supported by the obligations and compensation provided for in the plan of liquidation, was the proper party to carry out the plan of liquidation.

In the following cases, peace will occur or be accepted if there is negotiation between the curator and the creditors. Like the following case:[11]The plaintiffs are former employees or spouses of deceased former employees of White Farm Equipment Company (White Farm). They petitioned for the reinstatement and non-termination of benefits established by White Farm. The White Motor Corporation Insurance Plan for Salaried Employees (the Plan) is a non-cashable, non-donorable

[10]http://search.proquest.com/docview/1367069005/fulltextPDF/F1311743F39F4E2DPQ/1?accountid=50257

[11]http://search.proquest.com/docview/195152560/fulltextPDF/F1311743F39F4E2DPQ/4?accountid=50257

benefit plan that provides life, health and income insurance, prescription drug services, dental care, and hearing aids to former employees and their dependents. White Motor Corporation (White Motor) is the parent company of White Farm; TIC Investment Company (TIC), and Equitable Life Assurance Society of the United States (Equitable). On September 4, 2011, White Farm filed for Chapter 11 reorganization under the Bankruptcy Reform Act of 1978.

On the same date, White Motor and its four subsidiaries also filed for reorganization citing financial difficulties. On December 19, 2011, in a transaction approved by the bankruptcy court, White Motor sold White Farm to White Farm USA, Inc. (WF USA). WF USA entered into an agreement with White Motor regarding employee benefit plans, subject to certain conditions, and White Motor's obligations to current and former employees under the benefit plan. On the same date, White Farm's president and chief executive officer sent a letter to the company's former employees informing them of the purchase and stating that "employee benefits will continue to be maintained." White Farm continued to pay benefits for two months, but on March 31, 1981, the former employees were notified by letter that benefits would be discontinued effective May 1, 2012. The only written documents were the terms of the benefit plan and the pension insurance plan. The plan was set out in three booklets that outlined the benefits plan that White Farm had prepared for its current and former employees, but no formal benefit plan was ever formally established.

Or in the following case, where ratification of the peace plan can be carried out if a group that is not an insider has agreed so that the peace plan can be carried out and apply to each group of creditors that rejects it.[12]. Allan Heins, Janet Heins, and Hildegrad Heins, collectively known as "Heins," filed an amendment to the district court's decision to grant the bankruptcy order. In the early 2010s, Ruti-Sweetwater and seven other companies, then either the debtors or debtors in reorganization, actively operated a vacation rental business together. As stipulated, the debtors were required to provide thousands of customers with use of the resort. In late 2013 and early 2014, the debtors filed for discharge under Chapter 11 of the Bankruptcy Code. For purposes of the Administration, their eight cases were consolidated. At the time of the bankruptcy filing, the debtors received requests from secured and unsecured creditors who were owed millions of dollars in additional bonds held by thousands of time-share owners. Following their filing, the debtors submitted a plan of arrangement that included separate treatment of 83 classes of secured creditors and 40 classes of time-share owners. Under the plan of arrangement, the Heins were treated as a separate subgroup and were given voting rights. The settlement plan stated that the Heins' collateral would be transferred to unsold timeshare intervals, where the Heins would receive a small portion of their dues when all of the intervals had been sold. The settlement plan also stated that the Heins would receive the full amount of their dues, without interest, for the first 48 months after the settlement plan was finalized.

*Bankruptcy court*scheduling May 28, 1984 as the last date for submitting written objections to the determination of the peace plan and May 30, 2014 as the last date for voting on the peace plan.[13]Heins did not submit written objections and did not vote on the settlement plan.[14]. Twenty separate classes of secured creditors including the Heins failed to vote. The United States District Court for the District of Utah, Bruce S. Jenkins, chief judge,57 BR748 approved the settlement. The creditors appealed. The court of appeals. Barret, senior circuit judge, ruled that creditors who did not vote who were members of the class were deemed to have approved the settlement plan.

Bankruptcy cases submitted to the Surabaya Commercial Court are as follows:

Table 16

Bankruptcy Applications 2010-2014

No	Types of Decisions	Total	Percentage
1	Bankrupt	141	76.47

[12]http://search.proquest.com/docview/224375179/fulltextPDF/F1311743F39F4E2DPQ/79?accountid=50257

[13]See Bankruptcy Rules 3017 © and 3020 (b) (l).

[14] 11 USC§ 1126.

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2	PKPU	11	17.65
3	Rejection	-	
4	Revocation	-	
5	Peace	1	5.88
		153	100

Source: Surabaya Commercial Court.

The Bankruptcy Peace case that occurred at the Surabaya Commercial Court occurred between:

1. PT Iglas (Persero) Tbk, which has its office at Jl. Ngagel No. 153, Surabaya, has been declared bankrupt based on the Decision of the Supreme Court of the Republic of Indonesia No. 397 K/Pdt.Sus/2009 dated July 30, 2009 in conjunction with No. 01/Pailit/2009/PN.Niaga.Sby.
2. The concurrent creditors who have submitted and registered their claims to the Curator are 67 concurrent creditors who are recognized with a claim value of Rp. 85,937,257,322,- (eighty-five billion nine hundred thirty-seven million two hundred fifty-seven thousand three hundred twenty-two rupiah) and 1 concurrent creditor who is temporarily recognized with a claim value of Rp. 150,000,000,- (one hundred and fifty million rupiah).

The proposed peace plan essentially contains;

1. That PT Iglas (Persero) in bankruptcy as a debtor has offered a peace proposal to all its creditors, the main points of which are:
   A. GI Factory Commissioning and handover for 1 (one)-2 (two) months.
   B. Grace Period for 3 (three) months after the peace agreement has permanent legal force.
   C. After the Grace Period, monthly payments to concurrent creditors amounting to Rp. 1,000,000,000,- (one billion) are divided pro rata.
   D. Payment to Concurrent Creditors originating from PT.PPA (Persero) funds amounting to Rp.33,480,000,000,- (thirty three billion four hundred and eighty million scheduled) will be received in June 2010 and Rp.13,210,000,000,- (thirteen billion two hundred and ten million) in September 2010.
   E. If the time period for seeking funds from PT.PPA (Persero) shifts, then the payment according to point 3 will continue, likewise if after the payment the funds come from PT.PPA (Persero) there is still a shortfall, then the bankrupt debtor will continue the payment according to point 3.

ii. On December 16, 2009, at the Arjuna Room, 2nd floor of the Mercure Hotel Surabaya, the Concurrent Creditors and their legal counsel and the Curator attended a meeting to discuss the peace plan and its attachments before the Supervising Judge.

iii. That the number of creditors, especially concurrent creditors who have submitted and registered their claims to the curator is 67 concurrent creditors with claims amounting to Rp.85,937,257,322,- (eighty five billion nine hundred fifty seven million two hundred fifty seven thousand three hundred twenty two rupiah) and 1 concurrent creditor who is temporarily recognized with a claim value of Rp.150,000,000,- (one hundred fifty million rupiah).

iv. That upon reaching an agreement on the peace plan, a voting meeting was held on the company's peace plan which was attended by 64 concurrent creditors representing claims amounting to Rp. 86,040,393,764,- (eighty-six billion forty million three hundred ninety-three thousand seven hundred and sixty-four rupiah) and there were 4 concurrent creditors who were not present with claims amounting to Rp. 46,863,585,- (forty-six million eight hundred sixty-three thousand five hundred and eighty-five) and had fulfilled the quorum in accordance with the contents of Article 151 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

v. That the results of the voting by 63 concurrent creditors recognized with a bill of Rp. 85,937,257,322,- (eighty five billion nine hundred fifty seven million two hundred fifty seven thousand three hundred twenty two rupiah) and 1 concurrent creditor temporarily recognized with a bill of Rp. 150,000,000,- (one hundred fifty million rupiah).

Accordingly, the parties hereby agree as follows;

In the case of peace above, there are several factors that cause peace to occur:

1. The Peace Plan Received the Approval of Creditors.

Creditors, both concurrent creditors and separatist creditors, approve the peace plan submitted by the debtor. Article 151 of the Bankruptcy and Suspension of Debt Payment Obligations Law states that the peace plan is accepted if approved in a Creditor meeting by more than 1/2 (one half) of the number of concurrent creditors present at the meeting and whose rights are recognized, representing at least 2/3 (two thirds) of the total amount of concurrent receivables recognized or temporarily recognized from concurrent creditors or their proxies present at the meeting.

2. Debtors Get Financing Sources.

New sources of financing are very important in settling the debts of bankrupt debtors, because during the peace process, the debtor company must maintain its business continuity (going concern). The costs required by the bankrupt debtor company are in the form of working capital that helps the liquidity of the debtor company in the short and long term.

Short-term financing is called working capital, while long-term financing is called syndicated financing (*syndicated loan*)[15].In the US Bankruptcy Code system, if financing is carried out during the moratorium or stand still period, the creditor who provided the financing will receive top priority in repayment compared to other creditors.[16]. The loan provided by this new creditor is possible under Indonesian bankruptcy law according to the provisions of Article 69 paragraph (2) which contains the following:

1. In carrying out his duties, the Curator:
   a. It is not required to obtain approval from or provide prior notification to the debtor or one of the debtor's organs, although in circumstances outside bankruptcy, such approval or notification is required;
   b. Can take out loans from third parties, only in order to increase the value of the bankrupt's assets.

In this article, it is seen that the debtor company can receive a loan from another company if it has received approval from the Curator, and if the loan requires collateral in the form of the debtor's assets, then the loan must receive approval from the Supervising Judge.

The approval of the Supervisory Judge is required so that the loan is truly used for the benefit of the debtor company to become healthy again and be able to pay its debts (Article 69 paragraph 3).

The provision of working capital loans and syndicated credits can be seen in the bankruptcy peace plan submitted by PT. Iglas (Persero) in point 4 above, the contents of which are as follows: "Payment to concurrent creditors comes from PT. PPA (Persero) funds amounting to Rp. 33,480,000,000,- (thirty three billion four hundred and eighty million rupiah) which will be received in June 2010 and Rp. 13,210,000,000,- (thirteen billion two hundred and ten million rupiah) is scheduled to be received in September 2010.Bankruptcy peace will be achieved if, first, in the agreement there is an agreement between the creditors, both concurrent creditors and separatist creditors. Second, there is debt restructuring. Third, the debtor obtains a new source of financing.

[15]Proceedings, Syndicated Credit, (Jakarta: Center for Legal Studies & Supreme Court of the Republic of Indonesia, 2003).Page 67.

[16]Richard Posner, Economic Analysis of Law, (Boston, Toronto, London: Little Brown and Company, n.d.). P.404.

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Bryan A.Gardner,et.al.,eds., op.cit. Hal.526.*Emergency doctrine* adalah suatu prinsip hukum yang membebaskan seseorang dari standar yang biasa diterapkan berdasarkan kewajaran,jika orang itu berbuat secara naluriah untuk mengatasi kebutuhan yang sangat penting dan mendadak.

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