



The Petitioner's Legal Standing In Verdict No.4/Pdt.Suspdkpu/2018/Pn.Niaga Surabaya With The Case Of Loan Payment Suspension (PKPU) Based On Law No. 37 Of 2004

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Abstract

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Loan Payment has governed the process of Bankruptcy and Suspension of Loan Payment for State-Owned Corporations in which the one who has authority to submit the petition is the Ministry of Finance as the supervisory agency of a State-owned Corporation. Issue to be raised by the writer in this research is the Legal Standing of the Petitioner in Verdict Number 4/ Pdt.Sus-PKPU/2018 /PN.Niaga Surabaya which involves a State-Owned Corporation namely PT Merpati Nusantara Airlines with its Creditors. The issue is analyzed with the applicable laws and regulations, courts verdicts, journals or articles, theories, legal concepts and views of prominent legal scholars. This study aims to determine the legal standing of the petitioner for the Loan Payment Suspension and the legal consequences of this verdict by using normative juridical method. Based on the results of this study, the verdict of Loan Payment Suspension of PT Merpati Nusantara Airlines causes on the state of free from Bankruptcy and the airline can operate again. In addition, through existing Homologation, this company gets an injection of funds from a new company partner. Thus, by operating again, the company can make payment of loans to its creditors, including employees and former employees of the company.

Keywords: Bankruptcy, Legal Standing, State-Owned Corporation, Suspension of Loan Payment

I. Introduction

Regulations regarding Suspension for Loan Payment have been regulated and written in Law No. 37 of 2004 concerning Bankruptcy and Suspension for Loan Payment. Suspension for Loan Payment is a period provided by the Law through the Decision of the Commercial Judge, during which period the creditors and debtors are given opportunity to discuss on the loan payment methods whether it is entirely or partially¹. Suspension for Loan Payment can be requested through the creditor or debtor.

Law of the Republic of Indonesia No. 37 of 2004 regarding Suspension for Loan Payment Article 223 Jo. Article 2 section (5) explains that if the Debtor to be petitioned for bankruptcy or Suspension for Loan Payment is an Insurance Company, Reinsurance Company, Pension Fund Company, or State-Owned Enterprise engaged in public interest sector, the request for bankruptcy statement and Suspension for Loan Payment can only be submitted by the Minister of Finance. However, in case Number 4 / PDT.SUS-PKPU / 2018 / PN.Niaga.Sby which is being disputed in the Surabaya Commercial Court,

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the Debtor is PT Merpati Nusantara Airlines (Persero) in which it is a State-Owned Corporation that operates in the field of aviation services hereinafter referred to as the respondent and the creditor who filed the Request for Suspension for Loan Payment is PT. Parewa Katering, one of the Concurrent Creditors of the Petitioner, hereinafter referred to as the Petitioner in this case.

The legal relationship that binds the parties is the Petitioner which is a food service supplier catering to Merpati Airlines. Whereas, the Respondent has a loan to the petitioner in the amount of Rp. 60,000,000,000 (sixty billion rupiah) has reached the due and has not been paid yet by the respondent to the petitioner, then PT. Merpati Nusantara Airlines (Persero) has been disputed for bankruptcy several times by different parties but the petition was rejected by the Judge because based on Law Number 37 of 2004 Concerning Bankruptcy and Suspension for Loan Payment Article 223 Jo. Article 2 section (5), the one that has authority to submit the request is the Ministry of Finance of the Republic of Indonesia. But, at the beginning of 2018, precisely on 15 January 2018, the petition was granted by the Judge and terminated during the Suspension for Loan Payment period on 18 November 2018. This is obviously not corresponding with the contents of Article 223 Jo. Article 2 section (5) of Law Number 37 Year 2004 regarding Bankruptcy and Suspension for Loan Payment.

II. Method

This type of research used in this study is normative juridical or can also be called as doctrinal legal research. In this type of research, law is often conceptualized as what is written in the legislation (law in book) or as a rule or norm which is a benchmark for community behavior towards what is considered appropriate². This research was carried out in specific relation to Indonesian civil law regarding the Suspension for Loan Payment to PT. Merpati Nusantara Airlines.

The normative juridical method in this research is applied by analyzing the verdict of Suspension for Loan Payment to PT. Merpati Nusantara Airlines which is later associated with the principles in Law No. 37 of 2004 concerning Bankruptcy and Suspension for Loan Payment.

III. Main Heading of the Analysis or Results

A. Disposition of Verdict in Case Number 4 / pdt.sus-PKPU / 2018 / PN.Niaga Surabaya with Law Number 37 of 2004 Regarding Bankruptcy and Suspension for Loan Payment.

Petition for Loan Payment Suspension Number 4 / pdt.sus-PKPU / 2018 / PN. Niaga Surabaya is submitted by PT Parewa Katering as a creditor. In the petition, the petitioner explains that the petitioner has carried out and fulfilled all requests and performances that was ordered by the Respondent as per the agreement of the parties. Meanwhile, The Respondent does the opposite. The respondent does not carry out their obligation to make payments for the provision of services that had been used by the Respondent. Therefore, the Petitioner took initiative to undergo legal process to request for the Suspension of Loan Payment in the Surabaya Commercial Court. The Respondent is PT Merpati Nusantara Airlines, a State-Owned Enterprise engaged in the field of aviation services. The Respondent has been in arrears of payment since October 2013 until the request for Loan Payment Suspension is submitted. The total outstanding of the Respondent to the Petitioner up to January 2014 is IDR 2,459,449,480 (two billion four hundred fifty nine million four hundred forty nine thousand four hundred eighty Rupiahs) and it has been acknowledged by the Respondent through Debt Acknowledgment Letter No. MNA / DZ / 1477 / KU.2 / 2014 dated 9 September 2014.

In addition to being proven to have maturity, the Respondent was also proven to have more than 1 (one) creditor, namely PT Prathita Titian Nusantara (PT. PTN) with a total debt of IDR 80,675,511,819 and US \$ 77,671.31, and PT. Kirana Mitra Mandiri (PT. KMM) with total loan of IDR 350,460,000. With proof submitted by these two Creditors to deliver their statements, thus the element of "The debtor has more than one creditor" as stated in the article 222 section (3) Jo. Article 2 section (1) of Law Number 37 Year 2004 concerning Bankruptcy and Suspension of Loan Payment has been fulfilled. Based on the matters that have been described by the Petitioner in the petition for the Suspension of Loan Payment, the Judge granted the request, appointing a Supervising Judge to oversee the process of Suspension of Loan Payment, subsequently appointing the Curator and Administrator to become the Management Team for the Suspension of Loan Payment and instructing the Management Team to summon the Respondent and Creditors by letter to appear at the Session which is held no later than the 45th day (forty-five) counted from the verdict of temporary Loan Payment Suspension.

The Management Team posted an announcement in the newspaper, announced the Verdict on Loan Payment Suspension and at the same time enclosed an invitation to be present at the session that was determined in accordance with the provisions of Article 226 of Law Number 37 of 2004 concerning Bankruptcy and Loan Payment Suspension. Based on The Supervising Judge report on the temporal Loan Payment Suspension, there is a proposal to extend the temporal Loan Payment Suspension to the permanent one. The proposal was accepted by the Panel of Judges and then decided by the Panel of Judges to change it to Permanent Loan Payment Suspension.

Having been terminated as Permanent Loan Payment Suspension, the process continues to take vote for the Remedy Plan. During the Remedy Plan vote, there were several Concurrent Creditors and Separatist Creditors who rejected the reconciliation plan proposed by the debtor, but based on the suggestion of Supervisor Judge, the remedy was Homologized.

B. Analysis of the Legal Facts of the Verdict 4/pdt.susPKPU/2018/PN.Niaga Surabaya

The Respondent admits that they has a loan that is due and can be collected by the Petitioner, in which the arrear is recognized assertively and clearly through Debt Acknowledgment Letter No. MNA / DZ / 1477 / KU.2 / 2014 dated 9 September 2014. The Respondent has more than 1 (one) creditor namely PT. PTN with total loan of Rp 80,675,511,819 and US \$ 77,671.31 and PT. KMM with a total loan of Rp 350,460,000. Thus, the element in Article 222 of Law Number 37 of 2004 regarding Bankruptcy and Suspension of Loan Payment, namely "Debtor has loans and has more than one creditor and have been proven unable to pay these loans" is fulfilled.

Specific requirement for Creditors who are eligible to request Suspension for Loan Payment is regulated in Law Number 37 of 2004 regarding Bankruptcy and Suspension for Loan Payment in Article 223 jo. Article 2 section (5) that if a Debtor is a State-Owned Corporation (BUMN), Suspension for Loan Payment can only be requested by the Minister of Finance because every State-Owned Corporation (BUMN) is under the supervision of the Minister of Finance. The Petitioner wrote argument regarding the Legal Standing of the Petitioner authority in Filing a Request for Loan Payment Suspension because the Respondent or PT Merpati Nusantara Airlines does not comply with the conditions regulated in Article 223 jo. Article 2 section (5) of Law Number 37

Year 2004 regarding Bankruptcy and Suspension for Loan Payment. The argument is based on Article 3 in the Company's Articles of Association of PT Merpati Nusantara Airline about the intent and purpose of pursuing profits (Profit-Oriented) by applying Company principles. The State-Owned Corporations (BUMN) referred here are those engaged in the field of public affairs whose entire capital is owned by the State and is not divided into shares. Referring to Article 3 of the Articles of Association of PT Merpati Nusantara Airlines, the Petitioner believes that PT Merpati Nusantara Airlines is not bound by Article 223 Jo. Article 2 Paragraph (5) of Law Number 34 Year 2004 regarding Bankruptcy and Suspension of Loan Payment because PT Merpati Nusantara Airlines is a company that pursues profits and belongs to the Limited Liability Company. Therefore, the Petitioner interprets that Article 223 Jo. Article 2 Section (5) of Law Number 34 Year 2004 regarding Bankruptcy and Suspension of Loan Payment is intended only for Public Companies because Public Companies are not Profit-Oriented, state-owned, and not divided into shares. However, according to Law No. 19 of 2003 concerning State Owned Corporations in Article 1 Section (4), it provides definitions on Public Company which is State Owned Corporations whose entire capital is owned by the state and is not divided into shares. Its aim is also for public affairs related to the provision of high quality goods and / or services yet still aim for benefits based on the principles of company management. From these definitions, the Public Company also has a goal to pursue profit or profit-oriented. Thus, the articles of association of PT Merpati Nusantara Airlines cannot be submitted as reference for the claim of Legal Standing to request for Loan Payment Suspension.

The next legal fact regarding the Proposal of Reconciliation Plan is regulated in Article 281 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Loan Payment about the legal requirements for a Reconciliation plan including the number of concurrent creditors who approve the plan is at least ½ (half) of the total concurrent creditors concurrent, by representing at least 2/3 (two-thirds) the total number of legally recognized bills present at the meeting, as well as creditors whose receivables are guaranteed with pawn. Meanwhile, there is 1 (one) Separatist Creditor who do not approve the Reconciliation Plan and affect the overall number of votes. The Administrator and the Supervisory Judge recommend that the Panel of Judges decide to ratify the Reconciliation Plan. The Panel of Judges believes that based on the reasons of

the Separatist Creditor, he/she does not fully disagree with the Reconciliation Plan. The Separatist Creditor requires that if homologation continues, payment of compensation to the Ministry of Finance based on article 281 paragraph 2 as a separatist creditor is only intended for the absence of execution so that it will not result in the elimination of the remaining receivables of the Ministry of Finance as the creditor.

C. Analysis of Legal Consequences in the Verdict Number

4/pdt.susPKPU/2018/PN.Niaga Surabaya for Debtor to Creditor

With this verdict, the agreement that was previously made has been replaced with a Homologized Reconciliation Plan. In this case, Creditors are divided into 3 (three) types, namely Separatist Creditors which is according to Article 1134 of the Civil Code is Creditors who hold privileges according to Article 55 of Law Number 37 Year 2004 regarding Bankruptcy and Suspension of Loan Payment. Each creditors who are pawn holders, fiduciary guarantees, mortgages, and collateral rights over other things can execute their rights as if the bankruptcy did not occur, the Separatist Creditor is also included in the Preferred Creditor.

Furthermore, in accordance with Article 1133 of the Civil Code, the Preferred Creditor is Creditor who has right to be prioritized in fulfilling their loan from other Creditors who are also included in the Separatist Creditors. In this Verdict, the Preferred Creditors consist of the Company's loan to Taxes, Non-Tax State Revenue (PNPB) and Employee Delinquent Wages. Separatist creditors consist of the Company's loan to creditors holding separatist security rights, including the Government of the Republic of Indonesia (Subsidiary Loan Agreement), PT Bank Mandiri (Persero) Tbk., And PT *Perusahaan Pengelola Aset* (Persero). Concurrent Creditors, which consist of the Company's debts to other Creditors which do not belong to the Preferent Creditor and Separatist Creditors, including but not limited to State Institutions; Government Agencies; SOE (BUMN)s and its Affiliates; Vendors, Private parties, Other Loans (Agent Deposits, Customer Deposits, and other Deposits) as well as a Debt Acknowledgment Letter (SPU) for former Employees. In order to reach the granted request for Loan Payment Suspension, the proposal for reconciliation plan containing negotiations and proposing of a financial restructuring (loan) and capital restructuring of the company was submitted because of the emergence of a new strategic partner who will inject funds for the operational costs of the Debtor company so that it is able to operate again.

The concept of Company's Loan Restructuring offered by the Debtor is to convert the company's main loan into shares either temporarily or permanently, write off all interest loan, fines, provisions and other costs except interest debt, fines, provisions and other costs of the Government Republic of Indonesia Creditor (SLA), payment of corporate loan in cash with a certain grace period by installments in a certain period and deduction of "haircut" for part of the main loan.

D. Analysis of the Legal Consequences of the Verdict Number 4/pdt.susPKPU/2018/PN.Niaga Surabaya for Employees and Debtor

Because of the Verdict on Loan Payment Suspension, PT Merpati Nusantara Airlines is free from Bankruptcy, considering the condition of Debtor which has stopped operating and almost all of the company's assets have been mortgaged to the separatist creditor for the loan provided. The debtor believes that they cannot make payments to all creditors by relying only on the means of production or currently owned assets. Therefore, in addition to submitting a reconciliation plan, the Debtor also seeks for partners who can support the Debtor so that the company is able to operate again. After the debtor has gone through the process of searching for new partners, the debtor has obtained 1 (one) expectant partner namely PT Intra Asia Corpora. Based on business Proposal and funding source from PT IAC, the Debtor pours the plan into the proposal of reconciliation plan, in which in this proposal, the Debtor proposes financial restructuring (loan) and capital restructuring of the company because there is prospective new strategic partner who will inject funds for operational costs of the Debtor company so that it is able to operate again.

In this Verdict, the employee salary loan is included in the Preferent Creditor, while the Employee Severance pay Loan is referred as Debt Acknowledgment Letter (SPU) which includes Concurrent Creditors. In addition, in accordance with the Minister of Transportation regulations, airlines that are unable to carry out operations for the period of 1 (one) year, their business license will be revoked, thus since February 2015, the Air Operator Certificate (AOC) and the lisenca of Commercial Aviation Business (SIUAU-NB) owned by PT Merpati Nusantara Airlines has expired. Preferred Creditors and Concurrent Creditors for Employee and Former Employee wages have a Grace Period of 3 years and a payment period of 6 years. Payment of the loan for the rights of employees

can be in cash or in installments and can be made after the end of the grace period and can be accelerated if the Company is able to make accelerated payments.

IV. Conclusion

In regards to the petitioner's reason regarding the Legal Standing of the petition for the Suspension of Loan Payment in verdict No. 4 / pdt.susp KPU / 2018 / PN.Niaga Surabaya on the basis of Article 3 of the Articles of Association No.102 dated 15 August 2008, PT Merpati Nusantara Airlines could not fulfil the reasons that the Respondent company does not included in Article 223 Jo. Article 2 section (5) of Law number 34 2004 concerning Bankruptcy and Suspension of Loan Payment. Besides, there is still uncertainty about the legal subject referred to, because according to the explanation in Law number 34 of 2004 regarding Bankruptcy and Suspension of Loan Payment in State Owned Corporation, the State Owned Corporation which is included are those which are engaged in the public interest and its shares are owned by the State and not divided into shares, which can be interpreted as a Public Corporation, not an open company that pursue profit and whose shares can be divided. Meanwhile, the specifications regarding the type of State Owned Corporation are not clearly written in the Law thus resulting in the different interpretations regarding the authority to submit a request for Suspension of Loan Payment or the term of bankruptcy for state owned corporation. The confusion comes because the existence of the company whose entire shares are owned by the state and not divided on shares. Another cause is that the limited liability company and Public Company own the same goal which is gaining profit or profit-oriented.

The legal consequence regarding the verdict of Suspension for Loan Payment to PT Merpati Nusantara Airlines is the company was spared from Bankruptcy. In addition, because of the homologation of Loan Payment Suspension process, the previous agreement will be replaced by the homologation and binds the Debtor and Creditor. Through the process of Loan Payment Suspension, PT Merpati Nusantara Airlines has a new business partner company that will inject funds. Thus, PT Merpati Nusantara Airlines can re-operate and can pay its obligations to the creditor, employee and also the former employee of the company

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