



## **Bankruptcy because the Honor of the Management has not been agreed between the Management and the Debtor in PKPU (Case Study of the Commercial Court Decision at the Surabaya District Court Number 13 / PDT. SUS-PKPU/2023/PN NIAGA SBY)**

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**Abstract:** COVID-19 has had a significant impact on business actors in fulfilling their obligations to their business partners, so many business actors have requested the postponement of debt payment obligations (PKPU), including PT Mas Murni Indonesia Tbk (In PKPU). The Peace Agreement that was agreed upon between PT Mas Murni Indonesia (In PKPU) and 100% of its Creditors was rejected by the supervisory judge and the Panel of Judges, considering that there was no agreement between the Management Team and PT Mas Murni Indonesia (In PKPU).

**Keywords:** PT Mas Murni Indonesia Tbk (In PKPU), no, agreement

### **INTRODUCTION**

The Covid-19 pandemic has made Indonesia's economy much worse. In 2020, Indonesia's economy shrank -2.07%, causing prices to fall. As of December 2020, Indonesia's debt was Rp6,074.56 trillion, according to the Finance Ministry. This amount increased by Rp1,296.56 trillion from the debt value at the end of 2019, which was Rp4,778 trillion. The large amount of debt mentioned earlier has a significant impact on the ability of businesses to meet their obligations to their partners. When people struggle with money, they tend to file more for debt repayment delays and bankruptcy. People who are in debt and want to save their business will try to devise a plan to reconcile with their creditors. They will then ask their creditors to approve this plan. If the debtors do not approve or cannot support the peace plan, then the Debtor will be officially declared bankrupt. On September 4, 2023, the Commercial Court at the Surabaya District Court declared PT Mas Murni Indonesia Tbk bankrupt because it was unable to pay its debts (PKPU Case No. 13/2023/Sby). The decision was made because there was no agreement on the management fees to be paid by the debtor in PKPU.

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People who are in debt and want to save their business will try to come up with a plan to reconcile with their creditors. They will then ask their creditors to approve this plan. If the debtors do not approve or cannot support the peace plan of the Debtor, then the Debtor will be officially declared bankrupt. On September 4, 2023, the Commercial Court at the Surabaya District Court declared PT Mas Murni Indonesia Tbk in bankruptcy because it was unable to pay its debts (PKPU Case No. 13/2023/Sby). The decision was taken because there was no agreement on the management fees to be paid by the Debtor in PKPU.

## **METHOD**

This research uses a statutory approach. The legal review of PKPU case No. 13/2023/Sby is related to laws and regulations. The way research is done is by describing and analyzing. These data are examined using a research method called qualitative analysis. The panel of judges did not like the peace plan because the debtor and the board could not agree on how much the management honorarium.

## **RESULTS AND DISCUSSION**

The large amount of debt mentioned earlier has a major impact on the ability of businesses to meet their obligations to their partners. When people are struggling with money, they tend to file more for debt repayment delays and bankruptcy. (Juditia Damlah, 2017) People who are in debt and want to save their business will try to come up with a plan to reconcile with their creditors. They will then ask their creditors to approve this plan. If the debtors do not approve or cannot support the peace plan of the Debtor, then the Debtor will be officially declared bankrupt. On September 4, 2023, the Commercial Court at the Surabaya District Court declared PT Mas Murni Indonesia Tbk in bankruptcy because it was unable to pay its debts (PKPU Case No. 13/2023/Sby). The decision was taken because there was no agreement on the management fees to be paid by the Debtor in PKPU (Fauziah & Fahrudin, 2022).

(Simanjuntak, 2023b) Law of the Republic of Indonesia No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UU K-PKPU) does not explain in detail what is meant by Suspension of Debt Payment Obligations (PKPU). However, we can understand from Article 222 of the K-PKPU Law. If someone owes two or more people and they don't know if they can pay it back, they can apply for what is called PKPU. In addition, if the Debtor does not pay the debt, the Creditor can apply for PKPU against them (Tampemawa, 2019).

File for bankruptcy if the individual owes more than one or creditors and is unable to repay at least one of those debts. This applies to individuals, businesses, or legal entities. This can happen when an entity requests it or when one or more creditors request it. Later, the court ruled that the entity was bankrupt. This rule says that the person who owes the debt must be able to file for bankruptcy. They must have at least 2 creditors. You cannot file for bankruptcy or PKPU if you only have one creditor. In addition, the debtor has failed to settle at least one payable and collectible debt. Individuals who owe multiple creditors and still have collectible bills are not eligible to be declared bankrupt. Insolvency is a legal status determined by a judge's decision. (Manogihon & Wiradiputra, 2023).

A debtor is a person who owes money due to an agreement or legal obligation (Yusmita et al., 2019). They have to pay it back, and if they don't, the court can force it. Insolvent debtor refers to an individual who has received an official declaration of bankruptcy from the court. The creditors mentioned above consist of concurrent creditors, separatist creditors, and preferred creditors. Both concurrent creditors and preferred creditors have the ability to initiate insolvency procedures while retaining their rights to the debtor's assets as collateral and priority rights they. When there is a group of creditors, each creditor in that group is called a creditor according to Article 1 paragraph 2 of the Bankruptcy Law (R. Saputra, 2023).

(F. Saputra, 2022) When a debt is due and collectible, it means that the person who owes the debt is legally obliged to pay it. This may occur due to a previously concluded agreement, an expedited collection time as agreed, sanctions or fines imposed by the competent institution, or a decision made by a court, arbitrator, or arbitral tribunal. If there is no specific provision or agreement regarding the due date, then the due date will be determined at the time of billing. If no specific deadlines are mentioned, the agreement can be concluded at any time. More and more people are applying for Suspension of Debt Payment Obligations (PKPU) due to Covid-19. In 2020, the Commercial Court of the Central Jakarta District Court (PN) had 440 PKPU cases. In 2021, there were 331 PKPU cases (Ismail, 2021).

The Commercial Court at the Surabaya District Court (PN) in 2020 there were 98 PKPU cases and in 2021 there were 49 PKPU cases. The Commercial Court in Semarang PN had 51 PKPU cases in 2020 (Iqbal.T., Ermanto.F.,Ayu,C.S., 2021). From January to August 2021, they received 30 PKPU cases. 1) The number of bankruptcy cases has decreased compared to PKPU in 2023, according to data compiled by Hukumonline from 2022 to 2023: 2) PKPU Case No. 13/2023/Sby involves 12 people who used to work at PT Mas Murni Indonesia Tbk. 3) They are the petitioners in this case: 4) The debtor in this case is PT Mas Murni Indonesia Tbk which is a public company: 5) According to the K-PKPU Law, if the Debtor is a Securities Company, Stock Exchange, Clearing and Guarantee Institution, Depository and Settlement Institution, then only the Capital Market Supervisory Agency (Bapepam) can apply for bankruptcy: 6) Bapepam's status as a bankruptcy applicant has been transferred to the Financial Services Authority (OJK) in accordance with the provisions of Law No. 21 of 2011 concerning the Financial Services Authority (OJK Law).

**Table 1. Number of bankruptcy cases**

| Commercial Court | BANKRUPT |      | PKPU |      |
|------------------|----------|------|------|------|
|                  | 2022     | 2023 | 2022 | 2023 |
| Medan            | 4        | 9    | 48   | 50   |
| Jakarta          | 49       | 46   | 345  | 389  |
| Semarang         | 21       | 12   | 27   | 40   |
| Surabaya         | 21       | 16   | 84   | 116  |
| Makasar          | 4        | 3    | 6    | 16   |
| Jumlah           | 99       | 86   | 510  | 611  |

(Juita & Astanti, 2018) OJK's authority to act as a bankruptcy and PKPU applicant for securities companies is regulated in Article 55 paragraph (1) of the OJK Law. This law states that since December 31, 2012. (Nadira, 2021) the responsibility and authority for regulating and supervising financial services activities in the Capital Market, Insurance, Pension Funds, Financing Institutions, and Other Financial Service Institutions sectors has shifted from the Minister of Finance and the Capital Market and Financial Institutions Supervisory Agency to OJK. Law of the Republic of Indonesia Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector ("PPSK Law") affirms the authority of OJK as the authorized institution to conduct bankruptcy and/or PKPU proceedings against securities companies and stock exchanges .

1) PT Mas Murni Indonesia Tbk has been stipulated in the Provisional PKPU for 45 days, starting from February 15, 2023. (F. Saputra et al., 2023) This means that PT Mas Murni Indonesia Tbk is undergoing the PKPU process: 2) After the reading of the decision of PKPU Case No. 13/2023/SBY, on March 29, 2023, a Follow-up Bill Verification Meeting and Peace Plan Discussion and Vote on the Temporary Postponement of Debt Payment Obligations (PKPU): 3) In this case, PT Mas Murni Indonesia Tbk (In PKPU) submitted a peace proposal. The Peace Proposal submitted by the Debtor is a proactive step to prevent the Debtor from entering bankruptcy (Marinka & Suryono, 2024), (Simanjuntak, 2023a).

### **Postponement of Debt Payment PKPU Peace Plan**

The K-PKPU Law regulates peace efforts in the context of bankruptcy and PKPU. Arrangements regarding peace in bankruptcy are regulated in Articles 144 to Article 177 of the K-PKPU Law. In contrast, arrangements regarding peace in PKPU are regulated in Articles 265 to 289 of the K-PKPU Law. A peace offer is the right of the Debtor to make a peace offer to all its Creditors. 1) When an insolvent Debtor submits a peace plan, it must be forwarded to the Registrar of Court no later than eight days before the debt matching meeting. This allows the Creditors to get information about the plan. Once the debt matching process is complete, it is imperative to discuss the peace plan immediately and reach a decisive resolution: 2) The curator and the committee of temporary creditors must formally assess the peace plan submitted by the PKPU Debtor: 3) Both debtors and creditors can apply for PKPU (Suspension of Debt Payment Obligations), a legal process for debt restructuring. The debtor can make a peace offer both at the time of the PKPU application and a later stage, as specified in Article 265 of the PKPU Law. The debtor can file a peace plan before the scheduled hearing. The peace plan is presented to the Supervising Judge, administrators, and relevant experts. 4) The Management must notify all Creditors about the peace plan submitted by the PKPU Debtor: 5) This will allow the Creditor to submit a bill, written proof, and supporting documentation. These bills will then be matched with the Debtor's records and statements (Juditia Damlah, 2017).

Based on PKPU decision No. 13/2023/Sby, it has been decided that the peace proposal submitted by PT Mas Murni Indonesia Tbk (In PKPU) did not get approval from the Creditors. This is proven by the proposed extension of PKPU. The extension of time for the fixed PKPU is legally supported by Article 229 paragraph (1) letter a and letter b of the K-PKPU Law. (Novikasari & Harahap, 2021) According to this provision, the Court determines the granting of permanent PKPU by considering the approval of more than 1/2 (one-half) part of the number of concurrent creditors whose rights are recognized or provisionally recognized who are present and represented by at least 2/3 (two-thirds) part of the number of bills recognized or provisionally recognized from concurrent creditors or their proxies present at the hearing. In addition, it is also necessary to approve more than 1/2 (one-half) part of the number of Creditors whose receivables are secured by liens, fiduciary guarantees, liens, mortgages, or other property collateral rights that are present and represented by at least 2/3 (two-thirds) part of the number of bills of Creditors or their proxies present at the hearing (Novikasari & Harahap, 2021).

The extension of the PKPU time that has been determined indicates the Creditor's recognition of the peace plan submitted by the Management, in which they have aligned their bills, as stated by the PKPU Debtor. Based on PKPU decision No. 13/2023/Sby, it is evident that the peace plan proposed by PT Mas Murni Indonesia Tbk (In PKPU) has not been approved by the Creditors. (Dewi, 2019) Therefore, time is still needed to discuss and perfect the peace plan. This conclusion is based on the written Report and Recommendation of the Supervising Judge dated 31 May 2023, as well as the Report of the Management Team dated 31 May 2023. The reports called for an extension of the Permanent PKPU for 30 days to refine the Peace Plan and seek a settlement. Therefore, the panel of judges approved the extension of the PKPU until July 4, 2023 on July at the hearing on June 5 2023 (Mantili & Trisna Dewi, 2021).

On Monday, June 26, 2023, PT Mas Murni Indonesia Tbk (In PKPU) continued the peace plan by holding a meeting to discuss and vote on the extension of the permanent PKPU and the peace plan itself. The peace plan has yet to get approval from creditors. This is following the written report and recommendation of the supervising judge dated July 3, 2023, as well as the report of the management team dated June 26, 2023. The reports proposed extending the Permanent PKPU for 45 days to refine the peace plan and seek peace. PKPU adjourned until the Judges' Consultative Meeting on August 21, 2023. (Doni Budiono, 2018)

The Voting Meeting on the Peace Plan submitted by PT Mas Murni Indonesia Tbk (In PKPU) was chaired by the Supervisory Judge of PKPU Case No. 13/2023/Sby. The meeting took place on Tuesday, August 15, 2023, at the Commercial Court of the Surabaya District Court. It was attended by the Substitute Registrar, Management Team, Debtors of PT Mas Murni Indonesia Tbk (In PKPU), and Creditors (Ahmad Ridwan et al., 2023).



A peace plan may be accepted if approved by more than half of the number of concurrent creditors whose rights are recognized or provisionally recognized and who are present at the meeting of Creditors referred to in Article 268, including creditors as referred to in Article 280. Such creditors and their proxies shall represent at least two-thirds of all recognized or provisionally recognized bills. In addition, approval of more than half of the creditors whose debts are secured by liens, fiduciary guarantees, liens, or other property collateral rights is required. Such creditors and their proxies must represent at least two-thirds of all creditors' bills present at the meeting (Echols et al., 1952).

Repeated extension of the PKPU deadline in Case PKPU No. 13/2023/Sby demonstrates the debtor's commitment to the PKPU process, while the creditors are eager to end the PKPU by signing a Peace Agreement (homologation), as shown in Table 2 below:

**Table 2. Extension of Time PKPU**

| Date       | Days |
|------------|------|
| 03-04-2023 | 60   |
| 05-06-2026 | 30   |
| 04-07-2026 | 45   |

Report of the Supervisory Judge on the Permanent PKPU process of PT Mas Murni Indonesia Tbk (In PKPU) Case Number: 13/Pdt.Sus-PKPU/2023/PN. Niaga.Sby, dated August 18, 2023, has been submitted to the Panel of Judges, outlining the progress achieved in the discussion of the peace proposal submitted by PT Mas Murni Indonesia Tbk (In PKPU). On August 15, 2023, the Voting Meeting was held in the Commercial Court of the Surabaya District Court. The meeting was chaired by the Supervisory Judge and attended by the Substitute Registrar, Management Team, Debtors of PT Mas Murni Indonesia Tbk (In PKPU), and Creditors. The purpose of the meeting was to discuss and vote on the Peace Plan submitted by PT Mas Murni Indonesia Tbk (In PKPU). The voting results are shown in the table below.<sup>1</sup>

**Table 3. Recapitulation of Concurrent and Separatist Creditors Voting**

| Description of Creditors                                       | Sum | Vooting | Receivables Value     | %   |
|--|-----|---------|-----------------------|-----|
| Concurrent attendance  | 175 | 8.197   | Rp 81.076.838.621,41  | 100 |
| Concurrent present and approve peace plan                      | 175 | 8.197   | Rp 81.076.838.621,41  | 100 |
| Concurrent present and disapprove of the peace plan            | 0   | 0       | Rp 0                  | 0   |
| Separatists present  | 1   | 7.464   | Rp. 74.638.851.193,95 | 100 |
| Separatists present and approved the Peace Plan                | 1   | 7.474   | Rp. 74.638.851.193,95 | 100 |
| Separatists who attended and did not approve of the Peace Plan | 0   | 0       |                       | 0   |

The voting recapitulation table shows that all the concurrent and separatist creditors mentioned earlier unanimously or 100% approved the peace plan submitted by PT Mas Murni Indonesia (PKPU) after several debates and improvements. The agreed peace plan is then outlined in the Peace Agreement signed by PT Mas Murni Indonesia (In PKPU) and the Creditors on August 15, 2023. However, the Management Team has informed the Supervising Judge that they have not agreed on the amount of management fees to be paid for their services and the management expenses that have been incurred.

The Peace Plan, which had received unanimous approval from all creditors, was rejected by the Supervisory Judge on the request of the Management Team on the grounds of the provisions of Article 285 of the K-PKPU Law. Before handing down the bankruptcy decision based on the rejection of the Peace Agreement, the Panel of Judges gave the PKPU Respondent

and the Management Team a final opportunity for 14 days to negotiate an agreement and/or guarantee payment regarding management services and compensation. However, no agreement was reached. Therefore, the panel of judges refused to ratify the agreement Peace between PT Mas Murni Indonesia Tbk (in PKPU) with creditors reached on August 15, 2023. As a result, on September 4, 2023, PT Mas Murni Indonesia was declared bankrupt by the Commercial Court at the Surabaya District Court. The case is currently under investigation at the cassation level.

## CONCLUSION

Based on the analysis above, the K-PKPU Law provides legal protection to PKPU Debtors and their Creditors who reach agreements and are outlined in the Peace Agreement. The Supervisory Judge may not recommend the Severing Judge to impose a bankruptcy decision considering the non-achievement of an honor agreement between the PKPU Debtor and the Management Team or Management Team.

Disagreements regarding the amount of the salary of the Management or Management Team above are resolved by referring to the provisions of Article 6 of the Permenkumham Honor Curator Management / 2016, which is the authority of the Panel of Judges and not using the provisions of Article 285 paragraph (2) letter d of the K-PKPU Law.

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