The Legal Position of Creditors Outside the Deed of Peace That has Obtained Permanent Legal Force : Case Study of PT. xxx

Azet Hutabarat
Universitas Kristen Indonesia
Email : azethutabarat@gmail.com
* azethutabarat@gmail.com

ARTICLE INFO

Article history
Received 12 Sep 2022
Revised 25 Okt 2022
Accepted 03 Nov 2022

Keywords
Bankruptcy Law, Civil Procedure Law, Settlement, Settlement of Debt Settlement Obligations to All Creditors as Legal Certainty.

ABSTRACT

Law Number 37 of 2004 concerning Bankruptcy and PKPU (Suspension of Debt Repayment Obligations) provides an opportunity to propose reconciliation so that the debtor has the opportunity to settle all receivables responsibly and has a method and process for settlement of settlement and payment properly. But is the purpose of settling all debtor receivables only limited to existing creditors and binding on PKPU institutions? What about the fate of creditors who are outside PKPU and have even obtained legal force through civil decisions? Because the essence of peace as the principle of debt forgiveness (debt forgiveness principle) should also provide legal certainty for all creditors without exception. Has bankruptcy law and civil procedural law accommodated and provided protection for all creditors without exception? This research and writing is an event that actually happened but unfortunately creates the impression that there is a legal conflict and battle between bankruptcy law and civil procedural law, so that the essence of the principle or principle of debt pooling law is in the best law.
In this study, the authors conducted research on aspects of normative legal research and sociological or empirical legal research. These two aspects are the reference for research carried out by the author by finding and seeking answers to legal issues raised as a goal to obtain results from the research conducted. Both aspects of this research serve as a reference for obtaining the results obtained as a conclusion as well as input in the form of suggestions from the writings on this legal research.
Investigation of the legal principles contained in positive law as data that is juxtaposed with the principles of bankruptcy law should be important to be used in interpreting or interpreting statutory regulations. All parties, both in the context of enforcing bankruptcy law and civil procedural law, really should adhere to and be respected, such as the principle of concursus creditorium, the parity creditorium principle adopted in civil law is in line with the debt collection principle which is so inherent in the principle of bankruptcy law. Alignment of legal principles and applicable legal principles should always be a reference and guide for every party who has an interest in the bankruptcy process. So that there is no longer any dichotomy of applicable law, civil procedural law or bankruptcy law as laws as if they were running separately. If all parties want to adhere to the applicable legal principles, as Satjipto Raharjo stated that legal principles are a legal ratio of legal regulations or as a reason for the birth of legal regulations.

1. Introduction

As a product of national law that can guarantee and provide certainty, order, enforcement and legal protection of judgments, it can force a person or a legal entity to become incompetent to carry

out legal acts, control, and manage their property since the decision of the dispute. bankruptcy is pronounced. However, the bankruptcy declaration decision also provides an opportunity for the insolvent debtor to file or offer peace which if accepted by all creditors will result in the insolvency will be terminated (Law Number 37 of 2004 *concerning Insolvency and Postponement of Debt Payment Obligations, Gazette of the Republic of Indonesia of 1998 Number 135, Supplement to the State Gazette of the Republic of Indonesia Number 3778), 2004*). Undanag-Law Number 37 of 2004 concerning Insolvency and PKPU (Postponement of Debt Repayment Obligations) provides a real opportunity for peace to be proposed which is a solution so that debtors are given the opportunity to be able to settle all receivables responsibly and have a way and process of settlement of repayment and payments that are closer to very good ways for all parties involved in the insolvency institution alone. The essence of a peace as the most important principle in insolvency institutions is the debt *forgiveness principle* (Subhan, 2009) meaning that insolvency is not synonymous only as a blasphemy institution against debtors or only as a means of pressure (*pressie middel*), but it can mean the opposite, namely it is a legal institution that can be used as a tool to alleviate the burden that must be borne by the debtor because as a result of financial difficulties so that it is unable to make payments to its debts in accordance with the original agreement even up to the forgiveness of its debts so that the debts become completely erased.

Peace in insolvency proceedings is different from peace as is common in ordinary procedural proceedings (Subhan, 2009), peace in insolvency cases occurs starting with the insolvent debtor filing first a peace plan with all creditors jointly. The peace text prepared by the bankrupt Debtor was then discussed together and decided together in a receivables verification meeting. The peace plan must be submitted by the insolvent debtor within 8 (eight) days before the debt verification meeting and placed in the clerkship of the court and the office of the curator. Discussion of the peace offer submitted by the insolvent debtor in a meeting attended by creditors. A peace meeting is accepted if it has been approved at a meeting of creditors by more than 1/2 (one-second) of the number of concurrent creditors present at the meeting whose rights are claimed, representing at least 2/3 (two-thirds) of the total receivables of concurrent creditors recognized or temporarily recognized from concurrent creditors. In addition, if more than 1/2 (one-second) of the number of creditors present at the creditors' meeting and representing at least 1/2 (one-second) of the amount of receivables of creditors who have the right to vote agree to accept the peace plan. If the peace plan is approved by the meeting, then the peace plan must be ratified by the Commercial Court. The endorsement of peace by such courts is called homologation. In homologation, the judge will decide whether the peace plan is rejected or whether it will be homologated.

Furthermore, the author will outline the chronology behind the legal events for and to what extent peace in homology can proceed in accordance with existing legal proceedings from both insolvency and civil law aspects. For this reason, it will first explain chronologically as follows, is PT. XXX, based on the amendment of deed No. 50 dated September 10, 2009 before a notary in Jakarta, Sutjipto, S.H., Mkn. in his position as a Defendant, was sued with an act of default by YYY Company as the Plaintiff, namely a company domiciled in Carrer, Bogota, Colombia at the South Jakarta District Court with a case register at the clerkship of the South Jakarta District Court No.439/Pdt.G/200/PN. Jak.Sel. on October 9, 2000.

The underlying matter of plaintiff's suit letter material is as the holder and rightful owner of 6 (six) *promissory notes* issued by Defendants each dated February 2, 1998, all of which amount to USD. 2,400,000.00, (two million four hundred thousand US Dollars). With the issuance of these six writs by the Defendants, the Defendants expressed their ability and were therefore obliged to pay *unconditionally* to the Plaintiffs on their due date, the value written on each of the said Writs. Because the six Writs were fully due, defendants were not willing to pay the amount of USD. 2,400,000.00, (two million four hundred US dollars), although the last collection has been made with the Plaintiff's power of attorney dated September 25, 2000 (Registration of Civil *Cases in the Civil Registrar of JakartaSelatan District Court No.439/Pdt.G/200/PN. Jkt.Sel. Dated 9 Otober 2000.* , 2000) .

The Panel of Judges at the South Jakarta District Court who examined, tried and decided the case in register No.439/Pdt.G/200/PN. Jak.Sel. on June 12, 2001 had dismissed the case by granting Plaintiff's suit and declaring Defendant to have committed a tort and punishing Defendant to: pay USD in USD. 2,400,000.00, (two million four hundred thousand US dollars); pay a loss of 10% per annum of the USD amount. 2,400,000.00, commencing from February 24, 1998 until paid in full;

pay statutory interest at 6% per annum of USD. 2.400.000,00; and selanjuntya sentenced the Defendant to pay the costs incurred in the case (Jakarta District Court, 2001).

Against the decision of the Panel of Judges of the South Jakarta District Court, originally the next Defendant as a Comparator had filed an appeal on June 25, 2001 (Registration of Appeal in the Civil Registrar at the JakartaSelatan District Court No.65/PDT/2002*/PT. DKI, June 25, 2001.* , 2001) against the decision of the Panel of Judges of the South Jakarta District Court to the DKI Jakarta High Court and has been registered with No.65/PDT/2002/PT. DKI. The Panel of Judges on appeal after examining, adjudicating the next court on October 15, 2002 decided the case: Strengthening the decision of the South Jakarta District Court dated June 12, 2001 No.439/Pdt.G/2000/PN. Jkt.Cells pleaded for appeal; Punishing the Defendant to pay the costs of the case (*DKI Jakarta High Court Decision No.65/Pdt/2002/PT. DKI. October 15, 2002.* , 2002) .

The Defendant/Comparator responded to the decision of the Panel of Judges at the DKI High Court No. 65/PDT/2002/PT. DKI. which was decided on October 15, 2002 by filing a legal remedy for appeal on July 22, 2003 with case register No. 3093 K/PDT/2003 (Indonesia, 2003). Furthermore, at the final level, the Panel of Judges at the Supreme Court of the Republic of Indonesia has examined, adjudicated and decided on May 17, 2006, which essentially rejected the appeal filed by the Defendant/Comparator and subsequently sentenced the Cassation Applicant to pay the costs of the case (*Supreme Court of the Republic of Indonesia Decision No. 3093 K/PDT/2003 dated May 17, 2006.* , 2006) . Against the decision of the Supreme Court of the Republic of Indonesia at this level of cassation, the Defendant/Comparator/Petitioner of Cassation has filed an extraordinary legal remedy, namely Judicial Review on April 19, 2007 with case regiter No. 368 PK/Pdt/2007 (*Registration of Review With No. 368 PK/PDT/2007 In the Supreme Court of the Republic of Indonesia Dated April 19, 2007.* , 2007) . A Panel of Judges at the level of Judicial Review in the Supreme Court of the Republic of Indonesia on January 8, 2009 has examined, adjudicated by deciding to reject the Application for Review as the Review Petitioner and subsequently charging the Review Petitioner to pay the costs of the case. Based on a series of events and legal disputes between YYY Company and PT. XXX has acquired/has a fixed legal force stating PT. XXX has committed an act of default and legally requires PT. XXX to pay a sum of USD 2,400,000.00, (two million four hundred thousand US dollars) to YYY Company (*Supreme Court of the Republic of Indonesia PK Decision No. 368 K/PDT/2007 dated January 8, 2009.* , 2009) .

In the process of running civil law disputes of default between YYY Company and PT. XXX from the time the lawsuit in the District Court in 2000 to the level of judicial review in the Supreme Court in 2009 so that finally this case has permanent legal force. PT. XXX apparently during that time period also had a legal dispute with PT. ZZZ in a legal dispute in the commercial court, namely insolvency law.

On October 28, 2004 PT. ZZZ as the Bankruptcy Petitioner has filed an application for a bankruptcy statement against PT. XXX as the Bankruptcy Respondent at the Central Jakarta commercial court with case register No. 43/Bankruptcy/2004/PN. Niaga/Jkt.Pst (*Registration of Bankruptcy Cases in the Commercial Registrar at the Central Jakarta Commercial Court No.43/Bankruptcy/2004/PN. Commerce/Jkt.Pst Stairs; October 28, 2004.* , 2004) . Application for bankruptcy statement filed by applicant PT. ZZZ in connection with the transaction with the purchase of securities in the form of *promissory notes* issued by respondent PT. XXX. Upon the issuance of three letters each; Number 0161-Number 000331 with a nominal principal of USD 1,000,000.00, (one million US Dollars) due date July 15, 1998; Number 0162-Number000332 with a nominal principal of USD 1,000,000.00, (one million US Dollars) due date July 15, 1998; Number 2570/PEP/07/97 with a nominal principal of USD 1,000,000.00, (one million US Dollars) maturity date of July 31, 1998, resulting in a total debt of USD 3,000,000.00, (three million US Dollars). And it has been collected and it has matured as the conditions required in the bankruptcy declaration application are filed. The Panel of Judges at the first level in the application for a bankruptcy statement at the Central Jakarta Commercial Court has examined and tried by deciding to reject the petitioner's bankruptcy declaration application and charging the petitioner a case fee which was read on December 20, 2004 (Decision of the Commercial Court *at the Central Jakarta Commercial Court No.43/Bankruptcy/2004/PN. Commerce/Jkt.Pst dated December 20, 2004.* , 2004b) .

PT. ZZZ as the applicant filed a legal remedy by filing an Application for Cassation against the judgment in the first instance at the Central Jakarta Commercial Court on December 24, 2004 with

the deed of appeal application number 25/Kas/bankruptcy/2004/PN. Niaga.JKT.PST. and received by the Supreme Court of the Republic of Indonesia with register No. 01 K/N/2005(*Registration of Commercial Cassation at the Supreme Court of the Republic of Indonesia No. 25/Cash/Bankruptcy/2004/PN. Niaga.Jkt.Pst and received by the Supreme Court of the Republic of Indonesia No. 01 K/N/2005 Stairs December 24, 2004.* , 2004a) . Furthermore, the Supreme Court of Justice of the Supreme Court of the Republic of Indonesia in case register No. 01 K/N/2005 on February 15, 2005 has examined, tried and decided: granting the Petitioner's application for a part; stated Respondent PT. XXX is insolvent with all its legal consequences; order the Commercial Court at the Central Jakarta District Court to appoint a Supervisory Judge from the Court Judge at the Central Jakarta District Court and the Curator; sentenced the respondent to pay the costs of the case at two levels of justice (*Supreme Court of the Republic of Indonesia Judgment No. 01 K/N/2005 Of December 24, 2004. February 15, 2005.* , 2005) . Against this cassation decision PT. XXX has also filed an extraordinary remedy i.e. Review No.04 PK/N/2005, which the Panel of Chief Justices of the Supreme Court in case register No.04 PK/N/2005 dated May 18, 2005 has rendered a judgment rejecting the application for Review of PT. XXX, thus PT. XXX was declared bankrupt with all its legal consequences (*Pk Decision of the Supreme Court of the Republic of Indonesia No.04 PK/N/2005 dated May 18, 2005.* , 2005) .

Based on the Supreme Court decision No. 01 K / N / 2005 which stated PT. XXX is bankrupt with all its legal consequences, the Central Jakarta Commercial Court has made a determination No. 43/BANKRUPTCY/2004/PN. TRADE. JKT. PST dated March 3, 2005 (*Central Jakarta Commercial Court Determination No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No. 01 K/N/2005. Jo. No. 04 PK/N/2005 Dated March 3*, 2005, 2005b) challenged the appointment of a Supervisory Judge and Curator to supervise and manage and settle PT. XXX. Based on the determination of the Central Jakarta Commercial Court, the bankruptcy process of PT. XXX must carry out the process that must be passed in the bankruptcy mechanism starting from announcement, receipt of bills made by the curator, verification of bills, determination of creditor fees and the holding of creditor meetings in order to follow the steps and resolve various problems related to insolvency experienced by debtors bankruptcy ranging from the amount of debt that is still an issue to the determination of the list of permanent creditors to the amount of fixed debt from each classification of creditors, both separatist, preferred and congruent creditors with a total number of creditors 147 (*Central Jakarta Commercial Court Determination No.43 / BANKRUPTCY / 2004 / PN. TRADE. JKT. PST Jo. No. 01 K/N/2005. Jo. No. 04 PK/N/2005 Dated April 15, 2005.* , 2005b) .

As stipulated in insolvency in Law 37 of 2004, in the creditor meeting that took place the bankrupt debtor PT. XXX submitted a peace plan at a meeting of creditors to provide an opportunity for all creditors to see, discuss and study the offer of peace proposals submitted by the insolvent debtor. After going through the process of discussing the peace plan until the fourth time in the creditors' meeting, finally all debtors agreed after previously conducting a vote mechanism to get approval as stipulated in the insolvency law. Until finally the approval of the peace plan submitted by the bankrupt debtor PT. XXX was brought to trial by a Panel of Judges to obtain a holomogation determination of the PT. XXX based on judgment No. 43/BANKRUPTCY/2004/PN. COMMERCE/JKT. PST Jo. No.01 K/N/2005 dated November 16, 2005 concerning the Decision of the Holomogasi Peace of PT. XXX (*Central Jakarta Commercial Court Determination No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. Np. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated November 16, 2005.* , 2005a) . So that the peace has been binding on all creditors and debtors and has an insolvency law impact on PT. XXX becomes terminated. Furthermore, by the Curator of peace, it has been announced in 2 newspapers and contained in announcements in the state news of the Republic of Indonesia (Determination of the *Central Jakarta Commercial Court No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. Np. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated November 18, 2005.* , 2005)

The peace which has been monopolized is it merely in view of the insolvent debtor to carry out the obligation of payment and repayment to all the creditors of the insolvency in the insolvency proceedings which have been fixed in the determination of the Supervising Judge which amounts to only 147 only?. What about the YYY company which turned out to have bagged a civil procedural court ruling that had been in permanent force stating that PT. XXX is obliged to pay its debt to YYY

Company in the amount of USD. 2,400,000.00 (two million four hundred US Dollars) following a loss of 10% and interest of 6% per annum?. Considering that YYY Company is not included in the list of permanent creditors and is not included in the list of creditors' names listed in the peace that has been homologated in the PT. XXX. To the extent that our insolvency law protects YYY company in claiming its rights to debts that are appropriate and payable by PT. XXX and whether PT. XXX is not viewed as unlawful by insolvency creditors, Supervisory Judges and curators if it wishes to carry out a court decision of permanent legal force to pay off its debts to YYY Company.

2. Method

In this legal research , it is focused on two angles of the research aspect, namely the first aspect; normative legal research that includes research on legal principles, research on legal systematics, research on legal systematics degree of legal synchronization, legal history research, comparative legal research. In this study, the authors conducted research on aspects of normative legal research and sociological or empirical legal research. The data used in this study are secondary data. 1.Primary legal materials, i.e. binding materials consist of:

a. Civil Code (KUHPer);
b. Trade Law;
c. Law No. 37 of 2004 concerning Insolvency and Postponement of Debt Payments;
d. Law No. 40 of 2007 concerning Limited Liability Companies;
e. Decisions on case disputes at the South Jakarta District Court, consisting of:

1. South Jakarta District Court Decision No. 439/Pdt.G/2001/PN. Jkt.Sel. dated June 12, 2001 between Coal Planning & Mining Corporation and PT. Asia Pacific Fiber.
2. Decision of the DKI Jakarta High Court No.65/Pdt/2002/PT. DKI. dated October 15, 2002 between Coal Planning & Mining Corporation and PT. Asia Pacific Fiber.
3. Decision of the Supreme Court of the Republic of Indonesia No.3093 K/PDT/2003 dated May 17, 2003 between Coal Planning & Mining Corporation and PT. Asia Pacific Fiber.
4. Review Decision No. 368 PK/PDT/2007 in the Supreme Court of Repiblik Indonesia dated January 8, 2009 between Coal Planning & Mining Corporation and PT. Asia Pacific Fiber.

f. Decisions on Bankruptcy Applications at the Central Jakarta Commercial Court, consisting of:
    1. Decision of the Commercial Court at the Central Jakarta Commercial Court No.43/Bankruptcy/2004/PN. Niaga/Jkt.Pst dated December 20, 2004 between the Applicants of PT. Bahana Pembina Usaha Indonesia with Respondent PT. Asia Pacific Fiber.
    2. Decision of the Supreme Court of the Republic of Indonesia No.01 K/N/2005 dated December 24, 2004 dated February 15, 2005 between the Applicant PT. Bahana Pembina Usaha Indonesia with Respondent PT. Asia Pacific Fiber.
    3. Decision on Review of the Supreme Court of the Republic of Indonesia No. 04 PK/N/2005 dated May 18, 2005 between the Petitioners of PT. Bahana Pembina Usaha Indonesia with Respondent PT. Asia Pacific Fiber.
    4. Determination of the Central Jakarta Commercial Court No. 43/PAILIT/2004/PN. TRADE. JKT. PST. Jo. No. 01 K/N/2005. Jo.No. 04 PK/N/2005 dated March 3, 2005.
    5. Determination of the Central Jakarta Commercial Court No. 43/PAILIT/2004/PN. TRADE. JKT. PST Jo. No. 01 K/N/2005 Jo. No. 04 PK/N/2005 dated April 15, 2005.
    6. Determination of the Central Jakarta Commercial Court No. 43/PAILIT/2004/PN. TRADE. JKT. PST Jo. Np. 01 K/N/2005 Jo. No. 04. 04 PK/N/2005 dated November 16, 2005.
    7. Determination of the Central Jakarta Commercial Court No. 43/PAILIT/2004/PN. TRADE. JKT. PST Jo. Np. 01 K/N/2005 Jo. No. 04. 04 PK/N/2005 dated November 18, 2005.

2.Secondary legal materials, namely legal materials that provide explanations of primary legal materials, such as: books, research results, and other scientific works or opinions of legal experts.

3.Tertiary legal materials, are legal materials that provide explanations and instructions on primary legal materials and / or secondary legal materials, including: Legal dictionaries, Encyclopedias and Newspapers.

3. Results and Discussion

1. Implementation of Civil Court Decisions That Have Permanent Legal Force (*inkracht van gewijsde*)

The realization of a healthy judiciary as part of the ihtiar to uphold the supermajority of law thus not only demands a good and clean state administration order and is subject to the law but also needs to be fostered a social culture that upholds the law. This is important because efforts to restore a healthy judicial system as the administering of judicial power have the primary duty of receiving, examining and adjudicating every case brought against it. In carrying out this main task, especially in examining, adjudicating and resolving problems related to efforts to guarantee proposed by parties including the problem of implementing judgments (execution) are problems that are often faced and become one of the weak points in the judicial environment.

Since obtaining a judgment that has permanent legal force (*inkracht van gewijsde*) in a civil case between YYY Company as the Plaintiff and PT. XXX, then the decision of the Supreme Court of the Republic of Indonesia No. 3093 K / PDT / 2003 dated May 17, 2003 Jo. Decision of the PK of the Supreme Court of the Republic of Indonesia which won the YYY Company by declaring PT. XXX has committed a default to pay USD 2,400,000.00 (two million four hundred US Dollars) to YYY Company. To be able to carry out the judgment that has permanent legal force, according to M. Yahya Harahap, S.H. stated:

> "The execution or execution of a judgment is an act committed forcibly against the losing party in the case. Usually a new execution action is a problem if the losing party is the defendant. At the execution stage the defendant's position turns into an "executed party". If the losing party is the plaintiff's side, then usually even according to logic, no judgment needs to be executed,. This is in accordance with the nature of the dispute and the status of the parties to a case. The plaintiff acts as the party who asks the court to have the defendant punished for surrendering an item, vacating a house or piece of land, doing something, stopping something, or paying a sum of money."

Based on the opinion of M. Yahya Harahap, S.H., what kind of verdict can be "carried out". According to the principle, the judgments that can be executed are:

1. Judgments that have acquired a fixed force of law (*res judicata*);
2. Because only in a judgment that has legal force does there still be a *fixed* and definite relationship between the litigants;
3. Cause the legal relationship between the litigants is fixed and certain:
   - The legal relationship must be obeyed; and
   - Must be met by the punished party (the affected party).
4. How to comply with and fulfill the legal relationship established in a judgment that has acquired permanent legal force:
   - May be done or performed "voluntarily" by the defendants;
   - If reluctant to exercise voluntarily, the legal relationship set out in the judgment must be executed "by force" with the help of "legal force:

So according to the principles and aspects of law enforcement against judgments that have obtained permanent legal force (*inkracht van gewijsde*), PT. XXX should and should be obedient to carry out the content of the judgment by accepting manifestly the will to execute the judgment because the executable judgment is condemnator. The ruling contained a "condemnator." Only judgments of a condemnator nature can be executed, that is, judgments whose amar or dictum contains an element of "condemnation".

In general, a judgment can be considered condemnator if the amar or dictum of the judgment contains an element of "condemnation". The judgment imposes a sentence on the defendant, and the sentence imposed is in the form of a relationship or legal action that must be "obeyed" and "carried

out and "fulfilled" by the defendant (the defeated party). To facilitate the understanding of understanding a condemnator ruling, it is better to propose a "reference" that characterizes the condemnator's decision. From the reference to these characteristics, it will soon be known, whether the verdict is a condemnator or a declarator. If one of the characteristics in question is contained in the amar or dictum of the judgment in question is condemnator, and to him is attached executory power. This is in accordance with the principle: in any judgment of a condemnator nature, in itself is attached executory power. Therefore, in a judgment of a condemnator nature, the judgment may be executed if the defendant does not wish to execute the judgment voluntarily.

There are several characteristics that are references to the verdict that are indicative of the condemnator's decision. The characteristics that can be used as indicators of determining a verdict are condemnator, in the amar or dictum of the verdict there is an order punishing the losing party, which is formulated with the sentence:

- Punishing or ordering the "handing over" of an item.
- Punishing or ordering the "emptying" of a piece of land or house.
- Punishing or ordering to "do" a certain deed.
- Punishing or ordering the "termination" of an act or circumstance.
- Punishing or ordering the "payment" of a certain amount of money.

That is a characteristic that can be used as a reference guideline to determine the characteristics of court decisions that are condemnator. If any of these characteristics are contained in the judgment, the judgment is condemnator.

Judgment in the civil case of tort between YYY Company as Plaintiff and PT. XXX as a Defendant has obtained permanent legal force (*inkracht van gewijsde*) under Judgment No. 439/Rev.G/2000/PN. Jak. dated June 12, 2001, which has been corroborated to the stage of pk judgment from the Supreme Court, it has decided in its judgment as follows :

1. Grant Plaintiff's suit in part;
2. Declaring Defendant to have committed default;
3. Punishing the Defendant to **pay to the** Plaintiff the sum of :
   a. Money of USD. 2,400,000.00 (two million four hundred thousand US Dollars);
   b. Loss of 10% per annum of the USD amount. 2,400,000.00 (two million four hundred thousand US Dollars) from February 24, 1998 until paid in full;
   c. Statutory interest of 6% per annum of USD.2,400,000.00 (two million four hundred thousand US Dollars);
4. Punishing the Defendant to pay the costs incurred in this case which until now have been estimated at Rp.239,000,- (two hundred and thirty-nine thousand rupiah);
5. Dismissed the lawsuit in its entirety.

Against the judgment that has permanent legal force (*inkracht van gewijsde*), YYY Company has made efforts to get PT. XXX immediately complied with and executed the judgment which had been of permanent force until the issuance of the Decree from the Chief Justice of the District Court No.439/Rev.G/2000/PN. Jak.Sel dated August 3, 2007 (*Determination of the Chief Justice of the South Jakarta District Court No. 439/Pdt.G/2000/PN. Jkt.Seln dated August 3, 2007 about Aanmaning to PT. Asia Pacific Fiber*, 2007) whose content of the determination ordered the Bailiff of the South Jakarta District Court to give a reprimand (aanmaning) and summon PT. XXX for within 8 (eight) days after receiving the challenge to fulfill the contents / sounds of the South Jakarta District Court Decision No. 439 / Pdt.G / 2000 / PN. Jak.Sel dated June 12, 2001 which has obtained permanent legal force. However, since the tegoran (aanmaning) was carried out, it is currently PT. XXX ignored it and the South Jakarta District Court was unable to resume the execution process of the judgment that had obtained permanent legal force.

2. The constraints of the implementation of judgments of permanent legal force as a reason for the existence of peace decisions that have been holomoged to the peace mechanism in insolvency law.

The lapse of time for civil case disputes in the South Jakarta District Court to the final level in the Supreme Court between YYY Company and PT. XXX i.e. On October 28, 2004, PT. ZZZ as the Bankruptcy Petitioner has filed an application for a bankruptcy statement against PT. XXX as the

Bankruptcy Respondent at the Central Jakarta commercial court with case register No. 43/Bankruptcy/2004/PN. Niaga/Jkt.Pst (*Registration of Bankruptcy Cases in the Commercial Registrar at the Central Jakarta Commercial Court No.43/Bankruptcy/2004/PN. Commerce/Jkt.Pst Stairs; October 28, 2004.* , n.d.) . Application for bankruptcy statement filed by the applicant PT. ZZZ in connection with the transaction with the purchase of securities in the form of *a promissory note* issued by the Bankruptcy Respondent PT. XXX. Upon the issuance of three letters each; Number 0161-Number 000331 with a nominal principal of USD 1,000,000.00, (one million US Dollars) due date July 15, 1998; Number 0162-Number000332 with a nominal principal of USD 1,000,000.00, (one million US Dollars) due date July 15, 1998; Number 2570/PEP/07/97 with a nominal principal of USD 1,000,000.00, (one million US Dollars) maturity date of July 31, 1998, resulting in a total debt of USD 3,000,000.00, (three million US Dollars). And it has been collected and it has matured as the conditions required in the bankruptcy declaration application are filed. The Panel of Judges at the first level in the application for a bankruptcy statement at the Central Jakarta Commercial Court has examined and tried by deciding to reject the petitioner's bankruptcy declaration application and charging the petitioner a case fee which was read on December 20, 2004 (Decision of the Commercial Court *at the Central Jakarta Commercial Court No.43/Bankruptcy/2004/PN. Commerce/Jkt.Pst dated December 20, 2004.* , 2004a) .

PT. ZZZ as the Applicant filed a legal remedy by filing an appeal against the judgment in the first instance at the Central Jakarta Commercial Court on December 24, 2004 with the deed of appeal application number 25/Cash/bankruptcy/2004/PN. Niaga.JKT.PST. and received by the Supreme Court of the Republic of Indonesia with register No. 01 K/N/2005 (*Commercial Cassation Registration at the Supreme Court of the Republic of Indonesia No. 25/Cash/Bankruptcy/2004/PN. Niaga.Jkt.Pst and received by the Supreme Court of the Republic of Indonesia No. 01 K/N/2005 Stairs December 24, 2004.* , 2004b) . Furthermore, the Supreme Court of Justice of the Supreme Court of the Republic of Indonesia in case register No. 01 K/N/2005 on February 15, 2005 has examined, tried and decided: granting the Petitioner's application for a part; stated Respondent PT. XXX is insolvent with all its legal consequences; order the Commercial Court at the Central Jakarta District Court to appoint a Supervisory Judge from the Court Judge at the Central Jakarta District Court and the Curator; sentenced the respondent to pay the costs of the case at the judicial level (*Supreme Court of the Republic of Indonesia Decision No. 01 K/N/2005 Of December 24, 2004. February 15*, 2005, 2005). Against this cassation decision PT. XXX has also filed an extraordinary remedy i.e. Review No.04 PK/N/2005, which the Supreme Court of Justice in case register No.04 PK/N/2005 dated May 18, 2005 has rendered a judgment rejecting the application for Judicial Review of the petitioner for review of PT. XXX, thus PT. XXX was declared bankrupt with all its legal consequences (*Pk Decision of the Supreme Court of the Republic of Indonesia No.04 PK/N/2005 dated May 18, 2005.* , 2005) .

Based on the Supreme Court decision No. 01 K / N / 2005 which stated PT. XXX is bankrupt with all its legal consequences, the Central Jakarta Commercial Court has made a determination No. 43/BANKRUPTCY/2004/PN. TRADE. JKT. PST dated March 3, 2005 (*Central Jakarta Commercial Court Determination No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No. 01 K/N/2005. Jo. No. 04 PK/N/2005 Dated March 3*, 2005, 2005a) on the appointment of Supervising Judges and Curators. To supervise and manage and settle PT. XXX (in bankruptcy). Based on the determination from the Central Jakarta Commercial Court, the bankruptcy process of PT. XXX must carry out the process that must be passed in the insolvency mechanism starting from announcement, receipt of bills made by the curator, verification of bills, determination of creditor fees and the holding of creditor meetings in order to follow the steps and resolve various issues related to insolvency experienced by insolvent debtors ranging from the amount of debt that is still an issue to the determination of a list of permanent creditors to a fixed amount of debt from each classification of creditors, both separatist, preferred and concurrent creditors with a total number of creditors of 147 (*Central Jakarta Commercial Court Determination No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. No. 01 K/N/2005. Jo. No. 04 PK/N/2005 Dated April 15, 2005.* , 2005a) .

As stipulated in insolvency in Law 37 of 2004, in the creditor meeting that took place the bankrupt debtor PT. XXX submitted a peace plan at a meeting of creditors to provide an opportunity for all creditors to see, discuss and study the offer of peace proposals submitted by the insolvent debtor. After going through the process of discussing the peace plan until the fourth time in the

creditors' meeting, finally all debtors agreed after previously *conducting a* vote mechanism to get approval as stipulated in the insolvency law. Until finally the approval of the peace plan submitted by the bankrupt debtor PT. XXX was brought to trial by a Panel of Judges to obtain a holomogation determination of the PT. XXX based on judgment No. 43/BANKRUPTCY/2004/PN. COMMERCE/JKT. PST Jo. No.01 K/N/2005 dated November 16, 2005 concerning the Decision of the Holomogasi Peace of PT. XXX (*Central Jakarta Commercial Court Determination No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. Np. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated November 16, 2005.* , 2005b) . So that the peace has been binding on all creditors and debtors and has an insolvency law impact on PT. XXX becomes terminated. Furthermore, by the Curator of peace, it has been announced in 2 newspapers and contained in announcements in the state news of the Republic of Indonesia (Determination of the *Central Jakarta Commercial Court No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. Np. 01 K/N/2005. Jo. No. 04 PK/N/2005 Dated November 18, 2005.* , 2005) .

On the basis and process of insolvency law and the existence of a peace decision that has been homologated by the Central Jakarta Commercial Court, PT. XXX does not accept to voluntarily enforce the contents of civil judgments that have permanent legal force (*inkracht van gewijsde*), even though the Chairman of the South Jakarta District Court has issued Decree No.439/Pdt.G/2000/PN. Jkt.Sel. dated August 3, 2007 regarding an order to the Bailiff of the South Jakarta District Court to carry out tegoran (aanmaning) to PT. XXX to carry out the contents of the judgment of the court which has fixed legal force No. 439/Rev.G/2000/PN. Jak.Sel. dated June 12, 2001. The reason behind the refusal to implement the content of the court's decision is because the civil procedural law mechanism through judicial decisions that have legal force must still be subject to the bankruptcy law mechanism, namely Law Number 37 of 2004 concerning Kepalitan and PKPU as a rule that more specifically regulates the mechanics of settlement or payment to companies that have received a peace decision that has been holomogated as an effort to resolve for payment of all obligations of the Debtor to all its Creditors.

Keberatan PT. XXX is supported by the Curator in order to oversee the implementation of the Holomogated Judgment of the Peace Court No. 43/BANKRUPTCY/2004/PN. COMMERCE/JKT. PST Jo. No.01 K/N/2005 dated November 16, 2005 concerning the Decision of the Holomogasi Peace of PT. XXX. With argumentation as a reason for rejection, namely the provisions of article 15 paragraph (4) Jo. Article 113 of Law Number 37 of 2004 concerning Insolvency and PKPU which states:

Chapter 15 verse (4) :

"Within a period of no later than 5 (five) days after the date the bankruptcy declaration decision is received by the Curator and Supervisory Judge, the Curator announces in the State Gazette of the Republic of Indonesia and at least 2 (two) daily newspapers are determined by the Supervisory Judge, regarding the summary of the bankruptcy declaration decision which contains the following:

a. the name, address, and occupation of the Debtor;
b. the name of the Supervising Judge;
c. name, address, and occupation of the Curator
d. the name, address and occupation of the interim Committee of Creditors, if appointed; and
e. the place and time of the first meeting of the Creditors"

Article 113

(1) "Not later than 14 (fourteen) days after the judgment of the bankruptcy declaration is pronounced, the Supervising Judge shall determine :
    a. deadline for filing bills;
    b. the deadline for tax verification to determine the amount of tax liability in accordance with laws and regulations in the field of taxation;
    c. day, date, time, and place of the Creditors' meeting to hold a receivables matching.
(2) The grace period between the date referred to in paragraph (1) of letter a and letter b shall be at least (fourteen) days".

Based on the Supreme Court decision No. 01 K/N/2005, dated February 15, 2005 which declared PT. XXX bankruptcy with all its legal consequences, then insolvency against PT. XXX includes the proceedings that all claims for rights and obligations bearing bankruptcy property must be filed by or against the curator. Thus, the Supervising Judge has issued Determination No. 43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. 01 K/N/2005 dated March 4, 2005 concerning the implementation of the First Creditor Meeting on March 18, 2005 and the Deadline for Filing Bills on April 15, 2005 and the Implementation of the Verification Meeting on April 15, 2005 and the Implementation of the Verification Meeting on Stairs; April 29, 2005. On the basis of the Determination of the Supervisory Judge, the Curator has announced it in 2 (two) national daily newspapers, namely Kompas Daily and The Jakarta Post Daily on March 7, 2005 and contains the announcement in the State Gazette of the Republic of Indonesia.

Since it was announced on 2 (two) National daily and State News of the Republic of Indonesia, YYY Company has not followed and implemented the provisions contained in article 15 paragraph (4) Jo. Article 113 of Law No.37 of 2004 concerning Insolvency and PKPU, in terms of proper and proper implementation of the provisions of the article has been announced in the national daily news and announcements of the State News of the Republic of Indonesia which are legally considered to be known by everyone. YYY Company should have submitted the bills and obligations of PT. YYY. XXX to the curator. Denial of PT. XXX to carry out the contents of the court's legal judgment which has permanent legal force No. 439/Rev.G/2000/PN. Jak. dated June 12, 2001, also based on the provisions contained in article 29 of Law No.37 of 2004 concerning Insolvency and PKPU which states:

> "A lawsuit in Court filed against the Debtor insofar as it is intended to obtain the fulfilment of the obligations of the insolvent estate and the case is ongoing, is dismissed in favor of the said judgment of the declaration of insolvency against the Debtor".

So that based on the provisions in article 29 of Law No.37 of 2004 concerning Insolvency and PKPU YYY Companies and District Court Bailiffs cannot execute court decisions that have permanent legal force as applicable to parties who are not in bankruptcy status. Therefore, article 29 clearly regulates all demands for the implementation of the contents of the judgment of the court for the sake of the law. So that if the YYY Company wants its bills to be paid, there is no other way to follow the procedure as stipulated in the provisions of the insolvency law, namely article 113 of the Insolvency Law and PKPU and all the necessary processes have passed time and cannot be repeated for the sake of legal certainty as stipulated in article 113 of the Insolvency Law and PKPU.

Bankruptcy proceedings of PT. XXX which led to the acceptance of the bankruptcy debtor's peace plan which was followed up with the issuance of the homologated Peace Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005. The judgment concerns the interests of 147 concurrent Creditors who deserve precedence because they have followed the process and mechanism of insolvency law as well as the peace mechanism of the creditors' meeting which resulted in the Peace Judgment which is also legally binding for the benefit of more creditors.

Although based on the provisions of article 166 paragraph (1) of Law No. 37 of 2004 concerning Insolvency and PKPU which states:

> "In the event that the ratification of the peace has acquired permanent legal force, the insolvency ends".

Then the insolvency of PT. XXX is to carry out the implementation of the contents of the holomogated Peace Judgment with no exception including paying all the obligations of creditors as contained in the annex to the contents of the Peace judgment i.e. paying the obligations of 147 concurrent creditors, restructuring new debts with the issuance of new debts on the Accounts Payable Creditors and Preferential Creditors.

It can be ascertained that PT. XXX cannot implement the Decision of the South Jakarta District Court dated No. 439/Pdt.G/2000/PN. Jak.Sel dated June 12, 2001 which has permanent legal force

and the Determination of the Chief Justice of the District Court No.439/Rev.G/2000/PN. Jak.Sel dated August 3, 2007, whose content of the determination ordered the Bailiff of the South Jakarta District Court to give a reprimand (aanmaning) and summon PT. XXX for within 8 (eight) days after receiving the determination to fulfill the contents / sounds of the Decision of the South Jakarta District Court dated No. 439 / Pdt.G / 2000 / PN. Jak.Sel dated June 12, 2001 which has obtained permanent legal force. The non-implementation of the court decision order is based on an order from the Central Jakarta Commercial Court Decision as a decision that is also binding and applies specifically to PT. XXX to pay and settle its obligations to 147 Creditors as contained in the contents of the holomogated Peace Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005. In the peace judgment, YYY Company is not listed as a creditor.

Non-observance of the Judgment which has the force of law remains Judgment No. 439/Rev.G/2000/PN. Jak.Sel dated June 12, 2001 by PT. XXX and, moreover, the bailiff of the South Jakarta District Court is also no longer able to continue the execution efforts due to legal arguments and legal reasons as submitted by PT. XXX. Then of course this has not only harmed YYY Company for the certainty of payment of its rights which has long been stuck not getting justice and legal certainty, but also the legal authority, namely our judicial institution in carrying out its responsibility to provide legal certainty and justice for the community. This event is certainly important to answer as a certainty that the law is still working and there is no overlap between the law in civil procedure and the law in the judicial process itself.

3. The legal position of YYY Company as a creditor (in civil cases) is equated with that of other concurrent creditors listed in the Holomogated Peace Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005.

To be able to answer the position of YYY Company Law in answering the issue of the position of YYY Company as stated in number 2 above, it is first necessary to clearly define who and what is the position of YYY Company in bankruptcy law, even though in fact YYY Company is not included in the list of Creditors as mentioned in the annex to the Peace Decision that has been holomogated No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005.

Based on article 2 paragraph (1) and its explanation, Law No. 37 of 2004 concerning Insolvency and PKPU, what is meant by "Creditors" in this paragraph are sparatis Creditors, preferred Creditors and concurrent Creditors. The creditor himself is a person who has receivables under an agreement or law that can be collected before the court. In this case, YYY Company is not a creditor who has privileges or is called a Sparatis Creditor nor is it a creditor who deserves precedence as stipulated in the legislation relating thereto or called a Preferred Creditor. So that it can be ascertained that the position of YYY Company is in the concurrent creditor class, namely creditors who have the right to get repayment jointly without the right to take precedence.

With the status as a concurrent creditor, YYY Company is entitled to get the right to get repayment from PT. YYY. XXX which is equally positioned to obtain repayment with 147 other concurrent creditors whose names are contained in the holomogated Peace Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005. The status of concurrent creditors in YYY Company is legally guaranteed even though the name of YYY Company is not listed in the holomogated Peace Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005. Legal certainty to obtain equal standing as a concurrent creditor even if his name is not contained in the holomogated Peace Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005 is regulated in article 153 of Law No. 37 of 2004 concerning Insolvency and PKPU which states:

> "The changes that followed therein, neither regarding the number of creditors nor the amount of receivables, affected the validity of the acceptance or refusal of peace".

based on the provisions of this article, the holomogated Peace Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16,

2005, is not only bound by the contents contained in the Perdamian Judgment, but also Putsuan Perdamain can be open to an increase in the number of creditors and the amount of receivables as a result of the addition of new creditors which of course results in an increase in the number of receivables. The addition of the number of creditors can noticeably change the composition of the number of creditors and the amount of receivables directly. And upon such changes this clause guarantees that the changes will not affect the lawfulness of a peace which has been produced.

Article 2 (1) of Law No.37 of 2004 concerning Insolvency and PKPU and the provisions in the Civil Code have legally answered what legal status is attached to the YYY Company in the insolvency mechanism and peace process that has resulted in a Peace Decision that has been monopolized No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005. The concurrent creditor status attached to the YYY Company can also be legally ensured to be binding on the entire peace process that occurs by producing a holomogated Peace Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005. The legal position of YYY Company as a concurrent creditor is also legally binding on the Peace Decision as stipulated in article 153 of Law No. 37 of 2004 concerning Insolvency and PKPU, that the settlement of the number of creditors and the amount of receivables (because the YYY Company is not listed in the Peace Decision) does not affect the validity or not of peace.

The provisions in article 153 of Law No. 37 of 2004 concerning Insolvency and PKPU, not only provide legal certainty for the status of concurrent creditors of YYY Company for changes in the number of creditors and receivables that do not affect the validity or not of a settlement before producing a Peace Decision. But more than that the insolvency institution reaffirmed the legal position of the creditor which is still possible to attend despite the presence of the creditor (YYY Company) to demand his right to get payment from PT. XXX only emerged after the Peace Judgment was produced with a verdict that had been holomoged.

Based on article 162 of Law No. 37 of 2004 concerning Insolvency and PKPU states:

> "The peace passed applies to all Creditors who have no right of precedence, with no exceptions, whether or not they have filed for insolvency".

The provisions contained in this article 162, it cannot be doubted that the law is present and can provide legal protection for creditors who actually still have receivables to the debtor. The provisions of article 162 provide legal certainty and real space for YYY Company to regain its right to obtain payments from PT. YYY. XXX despite the real efforts on the part of PT. XXX "obscures" its responsibility to settle its obligations to the Company on the grounds of delaying until the completion of pt. XXX completed the holomogasted Peace Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005. As well as blaming YYY Company for not following the insolvency legal process and procedures.

The provisions of this article 162, provide legal certainty and position for the YYY Company even though its name is not listed in the holomogated Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005, the Perdamian Judgment is still declared valid and binding if all creditors whether they are filing for bankruptcy or not in this case are YYY Companies. By continuing to bind the holomogated Perdamian Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005 to the legal interests of YYY Company, then requires PT. XXX is not only to fulfill the entire repayment of the receivables of its creditors whether the name is in the Judgment of Peace or whose name is not stated in the Judgment of Peace. So that the provisions of article 162 have answered the legal status of YYY Company to obtain the fulfillment of its rights in the mechanism of settlement and payment of its receivables in the container of insolvency institutions. So it is wrong if PT. XXX refused to make payment for the execution of a civil judgment that had permanent legal force by postulating a waiver of the legal aspects of insolvency.

4. Legal remedies that can be made by YYY Company as well as the fulfillment of its rights through the insolvency institution.

Certainty and legal protection in insolvency law against creditors whose names are not listed in the Peace Decision as stipulated in the provisions of article 153 Jo. Article 162 of Law No. 37 of 2004 concerning Insolvency and PKPU to obtain their rights as the name of the creditor is contained in the Peace Decision even though it does not follow the insolvency legal process. A valid peace applicable to all creditors is certainly intended to be the content of the Peace Judgment which remembers for the debtor to obey its contents as the proposal of the settlement is submitted by the debtor and accepted by the creditor until it produces a settlement decision. The legal binding of the contents of the peace to be enacted by the debtor, ensures that the fulfillment of the contents of the agreement also applies to creditors whose names are not listed in the Judgment. Thus, the content of the settlement decision applies universally to all concurrent creditors to be carried out by PT. XXX. If PT. XXX has been reminded by the concurrent creditors of YYY Company to demand the fulfillment of their rights in accordance with / the same as the same payment stage mechanism as other concurrent creditors whose names are contained in the peace judgment, then the law must provide protection to YYY Company to provide sanctions or legal consequences / legal remedies that can be taken / carried out by YYY Company so that the insolvency law / insolvency institution can impose penalties on PT. XXX as a result of its obligation to make payments to the YYY Company by following the process and payment mechanism that has been stated in the Peace Judgment even though the YYY Company is not contained in the Perdamian Judgment.

The imposition of sanctions as a result of the negligence of one of the parties to carry out the obligations that have been regulated and considering that legally is certainly considered / important to be given to the party who has been harmed for the neglect of the implementation of the obligation. Without the right to be able to pursue legal remedies for waivers of obligations that cause losses to the aggrieved party, the legal status and position held by the YYY Company is not enough to provide legal protection for anyone who is bound by the agreement. Likewise with the concurrent creditors of YYY Company, although the provisions in article 153 Jo. Article 162 of Law No. 37 of 2004 concerning Insolvency and PKPU provide legal certainty and legal position in a series of insolvency proceedings, but this is not enough without being accompanied by legal protection to be able to sue PT. XXX legally if real PT. XXX with the imposition of legal sanctions for the waiver of the rights of the YYY Company. The existence of legal remedies that can provide sanctions, then of course it will ensure that PT. XXX (the debtor) does not ignore other creditors not contained in the Judgment. Legal remedies with the threat of sanctions are a form of certainty that can provide justice so that the provisions of articles 153 and 162 do not become articles that are visible / exist but cannot provide real certainty and protection.

Such legal certainty and protection must apply equally to all concurrent creditors without discriminating so that the law applies fairly. For this reason, any violation of the waiver of the fulfillment of any concurrent creditor rights by PT. XXX, whether listed in the Perdamian Decision or not listed, can provide an opportunity for every concurrent creditor to take the same legal remedies, namely by making legal remedies demanding the annulment of a peace that has been passed as stipulated in several articles in Law Number 37 of 2004 concerning Insolvency and PKPU, including:

> Article 170 (1) which states :
> "Creditors may demand the annulment of a peace that has been passed if the Debtor neglects to fulfill the contents of the peace."
> Article 171 which states :
> "Demands for cancellation of settlement must be filed and determined by means of, as referred to in article 7, article 8, article 9, article 11, article 12 and article 13 for the application for a declaration of bankruptcy".

If the legal remedy and umbrella against the claim of waiver of the right of the YYY Company to be able to carry out the execution of a civil judgment can be carried out by efforts and mechanisms of insolvency law by making an attempt to annul a peace, then the important question to be answered based on the provisions of article 170 paragraph (1) is the content of the Amended Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005 which was violated by PT. XXX in the context of the execution of a civil execution judgment as demanded by the Company YYY ?. Because if there is no element of negligence in fulfilling the contents of the Perdamian Decision that can be proven by YYY Company, then of course the existing

legal remedies will not be eligible to be able to apply for the cancellation of the peace which can result in PT. XXX is insolvent with all legal consequences.

To be able to prove the negligence of PT. XXX in carrying out the contents of the Perdamian Decision associated with the implementation of the YYY Company's civil execution judgment, it is important for the YYY Company to prove it juridically the existence of PT. YYY's negligence. The XXX. For this reason, it is necessary to carefully look at the Peace Judgment of the Holomogation Decision No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005 in the Annex to the Debt Restructuring Proposal No. 167-A/bankruptcy-Dir/X/2005 (Milk-Merek_2015_pn. Commerce Jkt.Pst.P.P.23., 2015) as an integral part of the holomogated Perdamian Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005.

In Debt Restructuring Proposal No. 167-A/bankruptcy-Dir/X/2005 made by PT. XXX and has been approved by the concurrent creditors on page 3 it is stated :

> "**Amortization** : Payment of principal ciclan made at the end of a 12-month period beginning on the fourth anniversary of the Restructuring date. The amount of installments corresponds to the percentage of principal as follows: Th1= 0.0%, Th2= 0.0%, Th3= 0.0%, Th4= 5.0%, Th5= 17.5%, **Th6= 17.5%, Th7=17.5%, Th8=20.0%, Th9=22.5%".**

Listening to the contents of page 3 of the Debt Restructuring Proposal No. 167-A/bankruptcy-Dir/X/2005 as an appendix to the holomogated Perdamian Judgment No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No.01 K/N/2005 dated November 16, 2005, it can be sumir proven by PT. XXX has neglected to carry out the contents of the peace in the context of fulfilling its obligations to the YYY Company, namely starting from the deadline for the issuance of the Determination of the Chairman of the South Jakarta District Court No.439/Pdt.G/2000/PN. Jak.Sel dated August 3, 2007, whose content of the determination ordered the Bailiff of the South Jakarta District Court to give a reprimand (aanmaning) and summon PT. XXX to carry out the contents of the decision of the South Jakarta District Court Court No. 439/Pdt.G/2000/PN. Jak.Sel dated June 12, 2001 which has obtained permanent legal force. So that based on the reference to Amortization page 3 of the Debt Restructuring Proposal No. 167-A / bankruptcy-Dir / X / 2005, it is calculated from the aanmaning of the Determination of the Chairman of the South Jakarta District Court No.439 / Pdt.G / 2000 / PN. Jak.Sel dated August 3, 2007 PT. XXX must pay to
YYY Company in the 4th year i.e. from the date until August 3, 2011 amounted to 5.0% of USD 2,400,000.00 or USD 12,000.00 and for the 5th Year i.e. August 3, 2012 amounted to 17.5% of USD 2,400,000.00 or USD 420,000.00, then the 6th Year i.e. August 3, 2013 amounted to 17.5% of USD 2,400,000.00 or amounted to USD 420,000.00. The 7th year i.e. August 3, 2014 was 17.5% of USD 2,400,000.00 or USD 420,000.00 and the 8th year of August 3, 2015 was 20% of USD 2,400,00.00 or USD 480,000.00. So that the total that must be paid by PT. XXX to YYY Company as of 2015 the total is USD 1,752,000.00 (one million seven hundred and fifty-two thousand United States Dollars).

Although from the total payment does not write off any negligence of PT. XXX since the payment of the 4th year that did not pay to the Company YYY so that legal remedies for cancellation of the contents of the peace can be filed through insolvency efforts against PT. XXX since August 3, 2011. Based on these legal facts, it can be proven that YYY Company not only has legal status as a concurrent creditor who is recognized as valid in the perdamian decision, but also has the right to file legal remedies in the form of a claim for cancellation of the settlement if PT. XXX neglected to pay to YYY Company for the implementation of the contents of a civil judgment that has obtained permanent legal force in the mechanism of insolvency proceedings through the insolvency institution.

4. Conclusion

In this research and writing hukum the author implies the following:

1. The bankruptcy judgment handed down by the court actually gives the insolvent debtor the opportunity to be given a settlement to restructure the debt offered in the settlement proposal to be decided by the creditors at the creditors' meeting. The judgment of the settlement which has been holomogated by the commercial court is not only binding on all creditors, both the Sparatis Creditors, the Preferred Creditors and the Confucian Creditors who have been recorded by name in the peace judgments that have been holomoged, but also the inactivated bylaws are binding on all parties who declare themselves to be creditors whose existence is outside/not listed by name in the peace judgment that has been holomogated by the commercial administration. aforementioned. With the acceptance of the settlement resulting in a judgment that has been holomogated resulting in an end of the settlement, the insolvent debtor cannot be of the view that his obligations and responsibilities are attached only to the pursuit of his responsibility to pay the debt to the creditor who is bound by the peace judgment. The framers of the law have anticipated this situation with the inclusion of provisions as stipulated in article 153 and article 162 of Undnag-Law No. 37 of 2004 concerning Insolvency and PKPU which gives place to all creditors who have a legal relationship with the debtor to be placed in the process of the settlement decision mechanism even though the creditor does not follow the insolvency process. So that legal certainty and justice can be obtained by all creditors who have a legal relationship with the debtor in the bankruptcy mechanism or not. As the principle contained in insolvency law, namely the principle of *Creditorium Parity* , namely the equality of the position of creditors to determine that creditors have equal rights to all debtor's assets. Although to obtain the fulfillment of this right, creditors take steps and legal remedies that are in accordance with both insolvency law and civil law.
2. The legal consequences of a holomogated commercial judgment that is binding on all creditors, whether they are filing for bankruptcy or not, of course, include consequences for the implementation of the fulfillment of the contents of the bankruptcy judgment containing the obligation of the bankrupt debtor to carry it out. The impact of negligence in the implementation of the settlement decision made by the debtor not only results in legal remedies for the cancellation of the settlement which results in the bankruptcy being reopened by the creditor. Legal remedies to demand the cancellation of the perdamian due to the negligence of the debtor in carrying out the contents of the perdamian judgment are not only given to creditors whose names are included in the perdamian judgment, but also to all creditors whose names are not contained in the peace judgment as long as the creditor who submits legal remedies demanding the cancellation of the settlement can prove manifestly the existence of the debtor's negligence which is manifestly proven from the content of the perdamian judgment with tangible evidence possessed by the creditor in the implementation of the agreement and the legal relationship that occurs with the debtor. As the principle contained in the insolvency law i.e. the *principle of Pari Pasu Prorata Parte* which gives the property of the debtor is a joint guarantee to the creditors of the proceeds must be distributed proportionately between them, unless between the creditors there is one who by law must take precedence in receiving the payment of the bill.

References

Law Number 37 of 2004 concerning Insolvency and Postponement of Debt Payment Obligations, Statute Book of the Republic of Indonesia of 1998 Number 135, Supplement to the Statute Book of the Republic of Indonesia Number 3778), (2004) (testimony of Indonesia).

Indonesia, M. A. R. (2003). Cassation Registration with case Register number No. 3093 K/PDT/2003 at the Supreme Court of the Republic of Indonesia dated July 22, 2003.

Commercial Cassation Registration at the Supreme Court of the Republic of Indonesia No. 25/Cash/bankruptcy/2004/PN. Niaga.Jkt.Pst and received by the Supreme Court of the Republic of Indonesia No. 01 K/N/2005 on December 24, 2004. , (2004) (testimony of the Supreme Court of the Republic of Indonesia).

Decision of the Supreme Court of the Republic of Indonesia No. 01 K/N/2005 on December 24, 2004. February 15, 2005. , (2005) (testimony of the Supreme Court of the Republic of Indonesia).

Decision of the Supreme Court of the Republic of Indonesia No. 01 K/N/2005 on December 24,

2004. February 15, 2005, (2005) (testimony of the Supreme Court of the Republic of Indonesia).

Decision of the Supreme Court of the Republic of Indonesia No.04 PK/N/2005 dated May 18, 2005. , (2005) (testimony of the Supreme Court of the Republic of Indonesia).

Decision of the Supreme Court of the Republic of Indonesia No. 3093 K/PDT/2003 dated May 17, 2006. , (2006) (testimony of the Supreme Court of the Republic of Indonesia).

Registration for Judicial Review with No. 368 PK/PDT/2007 at the Supreme Court of the Republic of Indonesia dated April 19, 2007. , (2007) (testimony of the Supreme Court of the Republic of Indonesia).

Pk Decision of the Supreme Court of the Republic of Indonesia No. 368 K/PDT/2007 dated January 8, 2009. , (2009) (testimony of the Supreme Court of the Republic of Indonesia).

Commercial Cassation Registration at the Supreme Court of the Republic of Indonesia No. 25/Cash/bankruptcy/2004/PN. Niaga.Jkt.Pst and received by the Supreme Court of the Republic of Indonesia No. 01 K/N/2005 on December 24, 2004. , (2004) (testimony of the Supreme Court of the Republic of Indonesia Registration of Commercial Cassation in the Supreme Court of the Republic of Indonesia No. 25/Cash/bankruptcy/2004/PN. Niaga.Jkt.Pst and received by the Supreme Court of the Republic of Indonesia No. 01 K/N/2005 on December 24, 2004., (2004) (testimony of the Supreme Court of the Republic of Indonesia).esia).

Registration of Civil Cases in the civil registrar at the JakartaSelatan District Court No.439/Pdt.G/200/PN. Jkt.Sel. dated 9 Otober 2000. , (2000) (testimony of Jakarta District Court).

Jakarta, District Court. (2001). South Jakarta District Court Decision No.439/Pdt.G/200/PN. Jkt.Sel. dated June 12, 2001.

Registration of Appeal in civil registrar at the JakartaSelatan District Court No.65/PDT/2002/PT. DKI, dated June 25, 2001. , (2001) (testimony of Jakarta District Court).

Decision of the DKI Jakarta High Court No.65/Pdt/2002/PT. DKI. dated October 15, 2002. , (2002) (testimony of Jakarta District Court).

Determination of the Chairman of the South Jakarta District Court No. 439/Pdt.G/2000/PN. Jkt.Seln dated August 3, 2007 regarding aanmaning to PT. Asia Pacific Fiber, (2007) (testimony of Jakarta District Court).

Registration of Bankruptcy Cases in the Commercial Registrar at the Central Jakarta Commercial Court No.43 / Bankruptcy / 2004 / PN. Commerce/Jkt.Pst stairs; October 28, 2004. , (testimony of the Jakarta Commercial Court).

Decision of the Commercial Court at the Central Jakarta Commercial Court No.43/Bankruptcy/2004/PN. Commerce/Jkt.Pst dated December 20, 2004. , (2004) (testimony of Jakarta Commercial Court).

Determination of the Central Jakarta Commercial Court No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated March 3, 2005, (2005) (testimony of Jakarta Commercial Court).

Determination of the Central Jakarta Commercial Court No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. No. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated April 15, 2005. , (2005) (testimony of Jakarta Commercial Court).

milk-merek_2015_pn. Commerce jkt.pst.p.p.23., (2015).

Determination of the Central Jakarta Commercial Court No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. No. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated April 15, 2005. , (2005) (testimony of Jakarta Commercial Court Central Jakarta Commercial Court Determination No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. No. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated April 15, 2005., (2005) (testimony of the Central Jakarta Commercial Court). Center).

Decision of the Commercial Court at the Central Jakarta Commercial Court No.43/Bankruptcy/2004/PN. Commerce/Jkt.Pst dated December 20, 2004. , (2004) (testimony of the Central Jakarta Commercial Court).

Registration of Bankruptcy Cases in the Commercial Registrar at the Central Jakarta Commercial Court No.43 / Bankruptcy / 2004 / PN. Commerce/Jkt.Pst stairs; October 28, 2004. , (2004) (testimony of the Central Jakarta Commercial Court).

Determination of the Central Jakarta Commercial Court No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST. Jo. No. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated March 3, 2005, (2005) (testimony of the Central Jakarta Commercial Court).

Determination of the Central Jakarta Commercial Court No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. Np. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated November 16, 2005. , (2005) (testimony of the Central Jakarta Commercial Court).

Determination of the Central Jakarta Commercial Court No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. Np. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated November 18, 2005. , (2005) (testimony of the Central Jakarta Commercial Court).

Determination of the Central Jakarta Commercial Court No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. Np. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated November 18, 2005. , (2005) (testimony of Pengadila Niaga Central Jakarta).

Determination of the Central Jakarta Commercial Court No.43/BANKRUPTCY/2004/PN. TRADE. JKT. PST Jo. Np. 01 K/N/2005. Jo. No. 04 PK/N/2005 dated November 16, 2005. , (2005) (testimony of Pengadila Niaga Central Jakarta).

Subhan, H. (2009). Insolvency Law, Principles, Norms, and Practices in the Judiciary, (Jakarta : Perdana Media Group, 2009), .ibid. p 140.