

Legal Position of Syndicated Creditors in Submitting Claims on Debtors in the Application Process for Postponement of Debt Payment Obligations (PKPU) and the Legal Impact

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Abstract

The arrangement of parties who can file claims in the process of suspension debt payment obligations has been regulated in Article 270 of Law number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The arrangement of parties who can file bills in the suspension of debt payment process still causes several problems in its implementation. This occurs in the suspension of debt payment process against debtors in syndicated loans which still creates uncertainty in its implementation because the suspension of debt payment Law does not specifically regulate it but only provides an explanation, so it is important to raise the issue regarding the party authorized to file claims against debtors in credit. Syndication. Meanwhile, the method used in this research is normative juridical research by examining library materials, namely the Civil Code and the suspension of debt payment Law. The suspension of debt payment Law has definitively determined the parties who can file claims, but to file claims in syndicated loans still creates dualism that arises due to the distinctive characteristics of syndicated loans, namely that there are agents who act as attorneys for syndicated participants to represent their interests. In principle, there is only one creditor in a syndicated credit agreement, namely a credit syndicate represented by an agent. Because the agent represents the interests of the syndicated participants, the agent has strong authority to take legal actions including submitting and registering claims to the Management in suspension of debt payment with the approval of the majority creditors.

Abstrak

Pengaturan pihak yang dapat mengajukan tagihan dalam proses penundaan kewajiban pembayaran utang ("PKPU") telah diatur dalam Pasal 270 Undang-Undang nomor 37 tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang ("UU KEPAILITAN-PKPU"). Pengaturan terhadap pihak yang dapat menjadi mengajukan tagihan dalam proses PKPU masih menimbulkan beberapa masalah dalam pelaksanaannya. Hal ini terjadi pada proses PKPU terhadap debitur dalam kredit sindikasi yang masih menimbulkan ketidakpastian dalam pelaksanaannya oleh karena dalam UU KEPAILITAN-PKPU, belum mengatur secara khusus melainkan hanya berupa penjelasannya saja, sehingga penting untuk diangkat permasalahan perihal pihak yang berwenang mengajukan tagihan terhadap debitur dalam kredit sindikasi. Adapun, metode yang digunakan dalam penelitian ini adalah penelitian yuridis normatif dengan meneliti bahan-bahan kepustakaan yakni Kitab Undang-Undang Hukum Perdata (KUHP) dan UU KEPAILITAN-PKPU. UU KEPAILITAN-PKPU secara definitif telah menentukan pihak-pihak yang dapat mengajukan tagihan, namun untuk mengajukan tagihan dalam kredit sindikasi masih memunculkan dualisme yang timbul akibat karakteristik khas yang dimiliki kredit sindikasi yaitu terdapat agen yang bertindak sebagai kuasa dari peserta sindikasi untuk mewakili kepentingannya. Pada prinsipnya, perjanjian kredit sindikasi hanya terdapat satu kreditur yaitu sindikasi kredit yang diwakili oleh agen. Dikarenakan agen mewakili kepentingan-kepentingan dari peserta sindikasi, maka agen mempunyai kewenangan yang kuat untuk melakukan tindakan hukum termasuk mengajukan dan mendaftarkan tagihan kepada Pengurus dalam PKPU dengan persetujuan kreditur mayoritas.

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1. INTRODUCTION

1.1 BACKGROUND

Along with the pace of economic growth and development, the capital needs of business actors are becoming very large. Therefore, a financing model is needed in the form of collaboration between several banks to provide credit together in the form of syndicated credit. Providing syndicated credit is considered the right step because it can accommodate the very large funding needs of debtors. Syndicated credit is a credit provided by two or more financial institutions/banks with the same terms and conditions and the same agreement documentation.

PKPU can occur because of increasingly rapid economic growth and development which gives rise to debts and receivables as a result of debtors' efforts to increase capital to improve performance. In many PKPU legal problems, a debt arises as a result of the debtor's financial flow being jammed so that the debtor is unable to carry out its obligations to pay the debt to the creditor as the party providing the loan facility. To overcome this, a debt restructuring mechanism is needed that can guarantee repayment of debts, namely PKPU.

Based on article 222 of the BANKRUPTCY-PKPU Law, a PKPU application can be submitted by the debtor himself or by creditors, provided that the debtor has more than 1 (one) creditor and cannot or is not expected to be able to continue paying his debts which are due and can be collected. .

PKPU can also occur to debtors in syndicated loans, because the debtors are unable to carry out their obligations to pay off their debts to creditors in syndicated loans. What is unique about syndicated credit is that there is an agent who is authorized to take action and/or exercise a right in connection with the syndicated credit agreement on behalf of the syndicated participants. As representatives of syndicated participants, agents play an important role in syndicated credit. Agents appointed and appointed by syndicated participants function to carry out legal relations with debtors and are responsible for operational management of syndicated credit. Each syndication participant does not have a direct legal relationship with the debtor, because legal relationships can only be carried out by agents as representatives of the syndication participants. Because they are not directly related to debtors, syndication participants do not have the right to reprimand or collect principal bills and interest from debtors who are in arrears in payment. All legal actions can only be carried out and managed by agents.

In a syndicated credit, there are several parties involved, namely creditors consisting of several banks, debtors who need financing and agents, namely banking creditors who are appointed as representatives of the syndicated creditor participants. In the PKPU process, creditors who have claims against debtors can submit and register their claims with the Management, as regulated in article 270 of the BANKRUPTCY-PKPU Law. Meanwhile, regarding credit facilities with a syndicated credit mechanism, the BANKRUPTCY-PKPU Law does not specifically regulate the parties authorized to submit and register bills to the Management, so the problem arises as to whether bills from syndicated credit can be submitted individually by syndicated credit participants who are creditors in syndicated loans without the approval of other creditors (especially creditors appointed as agents).

Considering that there are still no statutory regulations governing parties in syndicated creditors who have the authority to submit and register their claims to the management in the PKPU process, this creates legal uncertainty. So, based on the problems mentioned above, this paper was prepared with the title: "JURIDICAL REVIEW OF THE LEGAL STANDING OF SYNDICATION OF CREDITORS' CLAIMS ON DEBTORS IN THE

APPLICATION PROCESS FOR DELAY OF DEBT PAYMENT OBLIGATIONS (PKPU)".

2. RESEARCH METHOD

Legal science is a prescriptive and applied science. As a prescriptive science, legal science studies the objectives of law, the values of justice, the validity of legal rules, legal concepts and legal norms. As an applied science, legal science sets procedural standards, provisions and guidelines in implementing legal rules. The research method used in writing this paper is doctrinal legal research (normative juridical). Doctrinal legal research is research on law that is conceptualized and developed on the basis of the doctrine adhered to by the conceptualizer. In Indonesia, this doctrinal method is already commonly referred to as a normative research method as opposed to research methods that are considered empirical (non-doctrinal research).

In this research, the data collection analysis used by researchers is literature study. Literature study is a collection of data carried out through written data using an analysis of a research object. Through this instrument, data can be obtained from books and lecture materials that the author has that are related to this paper.

The next data that is used as material for writing this paper is secondary data, namely data that is ready to use, the form and content of which have been prepared by previous authors and can be obtained without being bound by time and place. This writing analysis uses content analysis, which is a technique for analyzing writing or documents by systematically identifying the characteristics or characters and intended messages contained in a writing or document obtained either from books or mass media.

The author wrote the paper to discuss legal issues in the area of authority to submit claims by syndicated creditors in the PKPU process. The author then looked for problems related to the authority to submit syndicated creditor claims in the PKPU process which was then outlined into the problem formulation in this paper. In doing this, the tool used in data collection is library research, namely data collection carried out through written data. In this literature study, the author studied various literature such as books, journals, and legal regulations related to law to gather as much knowledge and insight as possible, especially those related to the main issues being raised.

In an effort to solve the main problem in this writing, the author looked for sources of data, information and knowledge needed. The main thing that is needed is to find out how the legal system used in Indonesia provides legal certainty for syndicated creditors in terms of PKPU as regulated in the PAPERTY-PKPU Law. Through the literature study carried out, the author will obtain secondary data and other data which can be used as a basis for analyzing the main problem being written. The aim of literature study is to optimize theory and related materials in determining the direction and objectives of research as well as concepts and other theoretical materials that are appropriate to the context of the research problem. The data used in this research is secondary data obtained from:

1. Primary Legal Materials

These are legal materials that have binding force on society. The primary legal material used in this research is Law number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

2. Secondary Legal Materials

Materials that provide explanations of primary legal materials such as research results and papers from legal experts in other banking fields. Secondary sources in this research are books and other written sources that are closely related to the problem under study, including the syndicated credit grant agreement that will be written.

3. Tertiary Legal Materials

The tertiary legal materials used are all materials that provide instructions or explanations for primary and secondary legal materials or are also known as supporting legal materials in research.

After obtaining all the necessary information and explanations, the author can draw conclusions. This conclusion is used to answer the main problem in the writing and also to provide suggestions that may be useful regarding syndicated credit issues in PKPU.

3. DISCUSSION

JURIDICAL REVIEW OF BILL SUBMISSION IN THE PKPU PROCESS

Article 270 of the BANKRUPTCY-PKPU Law is the basic rule for creditors in submitting and registering claims in the PKPU process, namely:

- (1) *Bills must be submitted to the Management by submitting a bill or other written evidence stating the nature and amount of the bill accompanied by supporting evidence or a copy of that evidence.*
- (2) *Regarding bills submitted to the Management as intended in paragraph (1), the Creditor may request a receipt from the Management.*

Furthermore, based on article 271 jo. Article 272 of the BANKRUPTCY-PKPU Law, for bills that have been submitted and registered, the administrator must match the bills with the debtor's books. After being checked, the administrator must make a list of receivables containing the name, residence of the creditor, the amount of each receivable, an explanation of the type of receivable (secured or not), and the administrator's statement regarding whether the claim is acknowledged or denied. Meanwhile, the calculation of the amount of receivables submitted by the creditor to the management is the total value of the receivables up to the day the temporary PKPU decision is pronounced, as regulated in article 273 of the BANKRUPTCY-PKPU Law. The basis for this is in principle, when in the PKPU process, namely after the temporary PKPU decision is read, all of the debtor's business activities must be suspended. If the debtor wants to continue his business activities, this must be based on approval from the management, as mandated in article 240 of the BANKRUPTCY-PKPU Law.

Based on the list of receivables that have been determined by the management, creditors have the right to dispute the value of receivables that are recognized in full, recognized in part, or denied by the management, as regulated in article 279 of the BANKRUPTCY-PKPU Law. If there is a denial, then based on article 280 of the BANKRUPTCY-PKPU Law the supervisory judge will determine the value of the creditor's receivables.

The BANKRUPTCY-PKPU Law has definitively regulated clearly the parties who can submit bills and the procedures for submitting them, however the submission and registration of bills in syndicated credit still creates dualism due to differences in interpretation regarding the submission and registration of bills which must be submitted by the agent as the representative of the participant of Syndicated creditors or can be submitted by each creditor.

Dualism arises due to the unique characteristics of syndicated credit, namely, each syndicated participant does not have a direct relationship with the debtor, but the existing legal relationship is a credit syndicated relationship with the debtor, thus the legal relationship is only carried out by the bank appointed as agent, whose duty is to carry out actions related to the aquo credit agreement on behalf of the syndicate participants. Therefore, syndicated creditor participants do not have the right to reprimand or collect credit payments from debtors. All legal actions can only be carried out by agents.

JURIDICAL REVIEW OF SUBMISSION OF BILLS FOR SYNDICATION CREDITORS IN THE PKPU PROCESS

a. Syndicated Creditors

There is a difference in understanding between "Credit Syndication" and "Credit Syndication", credit syndication consists of several financial institutions, which were formed to provide funds for credit financing to a company that needs credit to carry out its projects. Thus, there is only one creditor in a credit syndication, namely the credit syndicate. Credit syndication participants function as fund providers, not as credit providers. Syndicated credit is defined as credit provided by 2 (two) or more financial institutions whose terms and conditions of agreement have been determined to be similar, generally documented and administered by an agent.

In general, the provision of syndicated credit is mostly carried out by state-owned, national private and foreign banks. The Bank considers collaborating with other banks to provide syndicated credit, not only to share risks with other banks but also to avoid violations of LLL (Maximum Lending Limit). Providing syndicated credit is intended to diversify risks because each bank will share funds based on the results of an analysis of the bank's ability to provide funds.

Apart from that, there are several parties involved in syndicated credit, namely:

- a. *Arranger*, is the bank that regulates the application for credit, offers participation to other banks, and monitors it until the syndicated credit agreement is signed;
- b. Debtor, namely the party who has debt due to an agreement with the creditor;
- c. Creditors, namely syndicated participants as providers of funds in syndicated credit who have receivables due to agreements with debtors, consisting of:
 - (a) *Lead Manager*, namely the bank that acts as coordinator and manages syndicated credit, with the largest number of credit participation;
 - (b) *Participants*, namely syndicated participating banks that participate in providing credit according to the portion they can afford.
- d. The Guarantor/Underwriter is the party who undertakes to provide a certain amount of funds to overcome the possibility that some or all of the required credit amount is not available; And
- e. Agent, is a bank or financial institution appointed and authorized to take action and/or exercise a right in connection with a syndicated credit agreement on behalf of syndicated participants, consisting of:
 - (a) *Facilities agent*, agent who administers and operates credit and is tasked with managing the implementation of syndicated credit and its administration;
 - (b) *Security agents*, the agent responsible for binding guarantees and documentation, and monitoring such guarantees;
 - (c) *Escrow agent*, the agent responsible for establishing, administering and monitoring intermediary accounts used in syndicated loans.

Obtaining debt syndicated credit will be more efficient and simpler without having to deal with many banks because you only need to deal with one bank which acts as an arranger. After all processes in the credit application are completed and the syndicated credit agreement is signed, the arranger's task is complete. After the arranger's duties end, one of the banks is then appointed as an agent who is the representative of the syndication participants to maintain relations with the debtor and is tasked with administering and supervising the use of credit after the syndicated credit agreement is signed by the parties. In Indonesia's positive legal order, there are no regulations that specifically and clearly regulate syndicated credit. This is because syndicated credit is formed through an agreement which in practice refers to article 1320 point 1 of the Civil Code, which requires an agreement from the parties in making the agreement. Based on its nature, article 1338 number 1 of the Civil Code states that all agreements made legally are valid as law for those who make them. The word 'All' contains the meaning of "freedom of contract", which means complete surrender regarding the content and form

of the agreement to be made by the parties, including setting it out in a standard contract form. The word 'legally' means making a legally valid agreement that is binding. Therefore, the obligations that arise in a syndicated credit agreement are binding on both parties, namely the creditor and the debtor.

b. Agent's Position in Syndicated Credit

An agent is born from the appointment of the principal and/or through the agreement of the parties. The principle of an agent is to be an intermediary who is authorized to carry out certain legal acts or enter into agreements with third parties and in essence the agent is the principal's proxy. In syndicated credit, the appointment of an agent begins after the syndicated credit agreement is signed and then one of the parties is appointed to be the agent for the syndicated credit. The party appointed as agent is one of the banks participating in the syndication, but this is not always the case. Syndication participants can also appoint other parties who are not participants in the syndication to become agents. In the practice of syndicated credit in Indonesia, the bank participating in the syndication appointed as agent is a commercial bank which has the position of lead manager.

The appointment of a bank agent aims to guarantee the interests of all banks, because the banks participating in the syndication have the same interests so that a syndication is formed, in this syndication there is only one vote and it can be said that one syndication is one vote. When an agent is appointed, the agent will represent the actions and interests of the syndicated participants to ensure that the syndicated participants receive repayment *pari passu pro rata* for all loans given to debtors.

Based on Article 1795 of the Civil Code, the granting of power of attorney can be done specifically, meaning it only concerns one or more specific interests. It can also be done in general, namely covering all purposes of granting power of attorney. The granting of power of attorney carried out by the agent is a special type of granting of power, because the contents of the grant of power of attorney are outlined in detail and contained in the syndicated credit agreement.

Legally, the relationship between an agent and a credit syndicate is a relationship between the proxy and the authorizer. This is based on a criterion inherent in the agent, namely that the agent acts for and on behalf of the credit syndicate in accordance with the concept of granting power of attorney (Article 1792 of the Civil Code).

c. Authority to submit syndicated creditor claims in PKPU

As explained in the previous chapter, submitting syndicated creditor bills in the PKPU process still raises problems due to differences in interpretation regarding the submission and registration of bills that must be submitted by an agent as a representative of the syndicated creditors or can be submitted by each creditor.

Dualism arises due to the unique characteristics of syndicated credit, namely, each syndicated participant does not have a direct relationship with the debtor, but the legal relationship that exists is the credit syndicated relationship with the debtor, thus the legal relationship is only carried out by the bank appointed as agent, who is in charge of to carry out actions related to the *aquo* credit agreement on behalf of the syndicate participants. Therefore, syndicated creditors do not have the right to reprimand or collect credit payments from debtors. All legal actions can only be carried out by agents.

Every legal action carried out by an agent has been determined in the agreement between the syndicated participant and the agent concerned. The agreement determines the limitations of what is under the agent's authority and other agent actions which must first obtain approval from the majority creditors and all syndicate participants. This is in accordance with the provisions of article 1338 of the Civil Code which determines that

every agreement is valid as law for those who make it. Apart from executing collateral, in submitting and registering debtor claims in PKPU, agents are required to obtain approval from syndicated creditors.

The submission of syndicated credit bills in PKPU basically falls back on the provisions of articles 1320 and 1338 of the Criminal Code. However, previously the management as the authority to accept or dispute claims still refers to the provisions of articles 270 to 280 of the BANKRUPTCY-PKPU Law, which regulates that if there is a syndicate of creditors, the party authorized to submit and register the claims is the respective creditor. As long as nothing else is agreed in the syndicated credit agreement deed, the provisions of articles 270 to 280 of the Bankruptcy Law and PKPU are used. However, as long as it does not conflict with the law, the agreement that has been agreed upon in the syndicated credit agreement deed is used. This is based on the principle of "Lex Specialist derogat Lex Generalis" which means that specific regulations trump general regulations.

So to be able to find out which party can submit and register a bill in the PKPU process, you must look at the contents of the syndicated credit agreement. If the agreement has specified that the agent is authorized to submit, then this is not a problem because it has been agreed in the agreement itself, however if it turns out that it has been agreed that each creditor has the right to apply, this will not be a problem. So the parties involved in the syndicated credit agreement are bound and subject to the agreement. This is related to the provisions of article 1338 point 1 of the Civil Code which states that all agreements made legally are valid as law for those who make them.

Returning to the principle of syndicated credit itself, generally the person who submits and registers the bill is the agent, because basically in a syndicated credit agreement there is only one creditor, namely the credit syndicate who is represented by the agent, and because the agent represents the interests of the syndicate participants, the agent has the authority strong authority to take legal action including submitting and registering claims with the approval of the majority of creditors.

4. CLOSING

4.1 Conclusion

The party who has the authority to submit and register bills in the PKPU process is the agent, because the agent as a representative of the syndicated creditors represents the interests of the syndicated creditors so that he has strong authority to take legal action, including being the party who submits and registers the bills against the PKPU debtor. in syndicated credit.

4.2 Suggestions

When making a syndicated credit agreement, the parties should pay attention to and include in more detail the clause regarding the party authorized to submit a bankruptcy application. This is to avoid disputes between syndicated creditors and agents and to ensure legal certainty. Even though articles 270 to 280 of the BANKRUPTCY-PKPU Law state that each creditor has the authority to submit and register claims, these articles do not yet provide a guarantee of legal certainty because generally in the agreement itself there are clauses that indirectly strengthen agent to be able to submit and register bills in syndicated credit.

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