



The Annulment of Homologated Peace Agreements in PKPU: A Law and Economics of Bankruptcy Perspective


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Abstract: This study examines the annulment of homologated peace agreements in the Indonesian Suspension of Debt Payment Obligations (PKPU) regime through the perspective of Law and Economics of Bankruptcy. The research focuses on Commercial Court Decision Number 37/PDT.SUS-Bankruptcy-Cancellation of Peace/2024/PN.Niaga JKT.PST jo. Number 140/PDT.SUS-PKPU/2022/PN.Niaga JKT.PST, particularly concerning the balance between creditor protection, legal certainty, and business rescue. This research employs normative legal research with a statutory, conceptual, and case approach by analyzing legal norms, doctrines, and judicial reasoning related to the annulment of peace agreements. The findings show that the court adopted a strict normative approach by emphasizing compliance with the homologated settlement agreement and rejecting the debtor’s argument regarding investor acquisition as a justification for non-performance. The decision reflects the application of due process of law because bankruptcy sanctions are imposed only after judicial examination. However, the study finds that the court’s reasoning tends to be overly formalistic and pro-creditor, as it prioritizes payment default without sufficiently considering the debtor’s restructuring prospects and going-concern value. From the perspective of Law and Economics of Bankruptcy, such an approach risks transforming PKPU from a business rescue mechanism into a pathway toward liquidation. Therefore, this study argues that Indonesian bankruptcy law requires a more proportional judicial

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approach that balances legal certainty, creditor protection, economic efficiency, and business sustainability in resolving debt restructuring disputes.

Keywords: Legal Analysis, Cancellation of Peace in PKPU, Emphasis on Legal Concepts.

Abstrak: Studi ini meneliti pembatalan perjanjian damai yang telah dihomologasi dalam rezim Penangguhan Kewajiban Pembayaran Utang (PKPU) di Indonesia melalui perspektif Hukum dan Ekonomi Kepailitan. Penelitian ini berfokus pada Putusan Pengadilan Niaga Nomor 37/PDT.SUS-Kepailitan-Pembatalan Perjanjian Damai/2024/PN.Niaga JKT.PST jo. Nomor 140/PDT.SUS-PKPU/2022/PN.Niaga JKT.PST, khususnya mengenai keseimbangan antara perlindungan kreditur, kepastian hukum, dan penyelamatan usaha. Penelitian ini menggunakan penelitian hukum normatif dengan pendekatan hukum, konseptual, dan kasus dengan menganalisis norma hukum, doktrin, dan penalaran yudisial yang berkaitan dengan pembatalan perjanjian damai. Temuan menunjukkan bahwa pengadilan mengadopsi pendekatan normatif yang ketat dengan menekankan kepatuhan terhadap perjanjian penyelesaian yang telah dihomologasi dan menolak argumen debitur mengenai akuisisi investor sebagai justifikasi atas wanprestasi. Keputusan tersebut mencerminkan penerapan proses hukum yang adil karena sanksi kepailitan hanya dikenakan setelah pemeriksaan yudisial. Namun, penelitian ini menemukan bahwa penalaran pengadilan cenderung terlalu formalistik dan pro-kreditur, karena memprioritaskan gagal bayar tanpa mempertimbangkan secara memadai prospek restrukturisasi debitur dan nilai kelangsungan usaha. Dari perspektif Hukum dan Ekonomi Kepailitan, pendekatan tersebut berisiko mengubah PKPU dari mekanisme penyelamatan bisnis menjadi jalan menuju likuidasi. Oleh karena itu, penelitian ini berpendapat bahwa hukum kepailitan Indonesia membutuhkan pendekatan yudisial yang lebih proporsional yang menyeimbangkan kepastian hukum, perlindungan kreditur, efisiensi ekonomi, dan keberlanjutan bisnis dalam menyelesaikan sengketa restrukturisasi utang.

Kata kunci: Analisis Hukum, Pembatalan Perdamaian di PKPU, Penekanan pada Konsep Hukum.

Introduction

The debt settlement process through the Suspension of Debt Payment Obligations (PKPU) mechanism concludes with a settlement agreement. The debtor, as the party submitting or being requested for the PKPU, is required to

prepare a settlement plan proposal. Approval of the proposed settlement plan is conducted through a voting system and requires a quorum.¹

Debtor negligence does not automatically invalidate the settlement agreement or automatically declare the debtor bankrupt. This means that a debtor who fails to fulfill the terms of the agreement does not automatically become bankrupt. A formal application to annul the settlement agreement must first be submitted by the creditor (or other interested party) to the Commercial Court. This normative meaning is regulated in Article 170 paragraph 1 of the Bankruptcy and PKPU Law.² This article explicitly emphasizes three important principles:

1. A creditor's right, not an obligation. Cancellation is not automatic, but rather a legal right of the creditor that must be actively filed with the commercial court.³
2. Expressly agreed in the deed. Failure to fulfill obligations as expressly agreed in the homologated deed of reconciliation, for example: Failure to pay installments on schedule; Failure to pay in full; Violation of the agreed restructuring scheme; This negligence must be proven.⁴
3. The burden of proof shifts to the debtor. Even if the creditor submits a request, the debtor is obliged to prove that: They were not negligent, or the negligence occurred for a legitimate reason (for example, force majeure, if agreed).

¹ I. Kusumaningrum, "Protection of Creditor Rights of Collateral Holders in PKPU: A Study on the Rejection of Settlement Agreements," *Interdisciplinary Social Studies* 5, no. 2 (2026), <https://doi.org/https://doi.org/10.55324/iss.v5i2.1029>.

² D. P. Sihotang, "Pertanggungjawaban Debitor Terhadap Kreditor Konkuren Setelah Homologasi Perjanjian Perdamaian Penundaan Kewajiban Pembayaran Utang (PKPU)," *Aliansi: Jurnal Hukum, Pendidikan Dan Sosial Humaniora* 1, no. 2 (2024), <https://doi.org/https://doi.org/10.62383/aliansi.v1i2.47>.

³ S. Satino, "Legal Consequences of Homologation Cancellation in Sritex Bankruptcy Case," *Lambung Mangkurat Law Journal* 10, no. 2 (2025), <https://doi.org/https://doi.org/10.32801/lamlaj.v10i2.262>.

⁴ I. G. N Dewantara, R., Parikesit, "Insolvency Without Bankruptcy: Rethinking the Dissolution of Viable State-Owned Banks," *Jurisdictie: Jurnal Hukum Dan Syariah* 16, no. 2 (2025), <https://doi.org/https://doi.org/10.18860/j.v16i2.36034>.

What is implied in this article is the formulation of the legal principle for canceling the PKPU peace⁵, A debtor's failure to comply with the provisions of a settlement agreement does not automatically result in the debtor being declared bankrupt. A settlement agreement that has been ratified (homologated) remains legally binding on the parties as long as there is no court decision annulling it. Therefore, the debtor's legal status remains subject to the terms of the agreed agreement until a legal decision declares its annulment. In principle, the annulment of a settlement agreement can only be done at the request of a creditor who feels aggrieved by the debtor's failure to fulfill its obligations. In this case, the Commercial Court does not have the authority to annul a settlement agreement *ex officio* or on its own initiative. Active action by the creditor through a request for a cancellation permit is required to protect the interests of the injured party. Furthermore, the annulment of the agreement must be established through a court agreement. The debtor's negligence or default cannot be considered automatic but must first be tested, examined, and proven in court proceedings in the Commercial Court in accordance with bankruptcy procedural law. This evidentiary process is crucial to ensure legal certainty, justice, and the protection of the rights of the parties in bankruptcy legal relations. If the court grants a request to annul the agreement, the legal consequence is that the debtor is declared bankrupt. Therefore, the decision to annul the settlement agreement not only terminates the validity of the settlement agreement but also simultaneously results in bankruptcy status for the debtor without requiring a separate bankruptcy petition. This situation demonstrates the direct legal consequences inherent in the granting of the annulment of the settlement agreement within the bankruptcy legal regime.⁶

This demonstrates that Article 170 serves as a creditor protection mechanism while still upholding the principle of due process for debtors. The cancellation provision does not automatically result in bankruptcy; it must be filed with the creditor through a request and a hearing and decision by the

⁵ F. N. Azzahra, "Legal Certainty in The Fulfillment of Creditors' Rights in Debt Restructuring Through PKPU," *Academia Open* 10, no. 2 (2025), <https://doi.org/https://doi.org/10.21070/acopen.10.2025.12936>.

⁶ R. Simandalahi, E. R., Anggusti, M., & Nababan, "Judges' Considerations in PKPU Decisions Against Debtors Undergoing Homologation Decision," *ANAYASA: Journal of Legal Studies* 2, no. 2 (2025), <https://doi.org/https://doi.org/10.62951/anayasa.v2i2.333>.

Commercial Court, which provides the debtor with an opportunity to defend themselves.⁷ The principle of due process of law is reflected in several things, From the perspective of protecting debtors' rights, a debtor's failure to comply with the terms of a settlement agreement does not automatically result in bankruptcy. Even if a debtor fails to fulfill the obligations agreed to in the settlement agreement, bankruptcy status does not automatically arise out of thin air. This demonstrates the existence of legal protection for debtors, preventing them from losing their civil rights without going through a legitimate legal mechanism and an examination process in accordance with the principle of due process of law. Cancellation of a settlement agreement cannot be done unilaterally; it must be based on a request from the creditor. In this case, a creditor who feels aggrieved by the debtor's failure to fulfill its obligations must first submit a formal request for cancellation to the Commercial Court. Thus, the debtor is not directly subject to legal sanctions without initiative and a clear basis for the claim from the interested party.⁸ Furthermore, allegations of debtor negligence must be tested through an examination process in the Commercial Court. At this stage, the debtor has the right to be heard in accordance with the principle of *audi et alteram partem*, namely the right of each party to an equal opportunity to present their opinions and defenses. The debtor can present evidence, provide clarification, present a defense, and refute the creditor's allegations of negligence in the implementation of the settlement agreement. This process is an important tool to ensure procedural fairness and a balance of rights between the parties.

Ultimately, bankruptcy can only arise based on a court decision. Bankruptcy does not arise solely from the debtor's actions or negligence; it must be legally legitimized through the decision of the judge who examined and decided the case. Having a court decision as the basis for bankruptcy creates legal certainty and ensures that the determination of bankruptcy status is made objectively, legally, and in accordance with applicable legal provisions.

⁷ A. Prasetyo, B., & Hidayat, "Legal Protection for Debtors in the Cancellation of Peace Agreements in PKPU," *Jurnal Media Hukum* 30, no. 2 (2023), <https://doi.org/https://doi.org/10.18196/jmh.v30i2.17589>.

⁸ N. T. Deviana, "Protection of Creditor Rights in PKPU Settlement Plans," *Jurisprudensi: Jurnal Ilmu Syariah Dan Hukum* 17, no. 1 (2025), <https://doi.org/https://doi.org/10.22373/jurisprudensi.v17i1.11364>.

The main topic of my research is the Commercial Court Decision No. 37/Pdt.Sus-Bankruptcy-Cancellation of Peace/ 2024/PN.Niaga Jkt.Pst Jo. Number: 140/Pdt.Sus-PKPU/2022/PN.Niaga Jkt.Pst. Referring to this decision, it reflects the application of the principle of due process of law, because the debtor is still given the right to defend himself and prove the implementation of the peace obligations during the examination process at the Commercial Court. Bankruptcy is only declared after a court decision cancels the peace, so the transition of the debtor's status to bankruptcy is not automatic, but arises from a legal and legally based judicial process.

Good faith is a fundamental principle in every contractual relationship. Debtors implementing a debt settlement agreement (PKPU) must demonstrate good faith through concrete efforts to fulfill their obligations according to the agreed plan. While seeking investors may demonstrate good faith, concrete evidence of such actions is crucial for evaluation.⁹

The relevance of procedural justice in the annulment of a PKPU agreement, as stipulated in Article 170 in conjunction with Article 171 of the Bankruptcy and PKPU Law, reflects the application of procedural justice theory because: creditors are required to file a petition with the court; debtors are given the opportunity to defend themselves and prove their performance of their obligations; and this constitutes a fair and systematic legal process.¹⁰

By implementing annulment of a settlement through the judicial mechanism stipulated in Article 170 of the Bankruptcy and PKPU Law, Indonesian bankruptcy law not only pursues efficient debt resolution but also maintains procedural fairness for debtors. Bankruptcy, the most severe legal consequence, can only be imposed after the debtor has had a reasonable opportunity to defend their rights in the judicial process.

On the other hand, a strict interpretation is advocated as a form of respect for legal certainty and guaranteed creditor protection. This is crucial to prevent

⁹ Yichen Song, "Reform of Liquidation and Bankruptcy Court, Financing Constraints, and Corporate Long-Term Investment," *International Review of Financial Analysis* 98 (2025), <https://doi.org/https://doi.org/10.1016/j.irfa.2025.103915>.

¹⁰ M. Kalundas, S., Kurnia, M. P., & Fauzi, "Analisis Yuridis Pembatalan Perjanjian Perdamaian (Homologasi) Perkara Penundaan Kewajiban Pembayaran Utang Pada Pengadilan Niaga," *The Juris* 8, no. 1 (2024), <https://doi.org/https://doi.org/10.56301/juris.v8i1.1251>.

the misuse of the peace agreement as a means of deferring obligations without a real intention of settling obligations to creditors.

The Law and Economics of Bankruptcy theory also emphasizes the importance of creditor protection as part of the stability of the economic system. Creditors, as capital providers, require assurance that the legal system provides an effective receivables recovery mechanism if the debtor fails to fulfill its obligations. In this context, the cancellation of a restructuring agreement serves as a creditor protection mechanism, granting creditors the right to request the termination of a restructuring that no longer has the prospect of success. Thus, bankruptcy law not only protects debtors through restructuring opportunities but also maintains creditor confidence in the financing system and the business world.

The economic theory of bankruptcy holds that the cancellation of a restructuring agreement must still be carried out through due process of law. This is crucial to maintain a balance between economic efficiency and procedural fairness. A debtor cannot be immediately declared bankrupt simply because of alleged negligence; instead, a court hearing must be conducted to determine whether the failure to implement the restructuring agreement was truly caused by the debtor's negligence or other legally justifiable factors. Thus, the judicial process serves to reduce the risk of arbitrariness and maintain the legitimacy of the bankruptcy system. From the perspective of the Law and Economics of Bankruptcy, the cancellation of a peace settlement is not merely a legal sanction against a defaulting debtor, but rather an instrument to maintain economic efficiency, legal certainty, creditor protection, and the integrity of the debt restructuring system. This approach demonstrates that modern bankruptcy law not only pursues formal resolution of debt disputes but also serves to maintain stability and confidence in economic activity and the business world.¹¹

Within this framework, the interpretation of force majeure and good faith is deemed appropriate, as the rationale for seeking investors is more of a business strategy than a circumstance that meets the elements of actual force majeure.

¹¹ Y. Harahap, R., & Sembiring, "The Principle of Legal Certainty in the Cancellation of Homologation in PKPU Proceedings," *Jurnal Penelitian Hukum De Jure* 24, no. 3 (2024), <https://doi.org/https://doi.org/10.30641/dejure.2024.V24.345-360>.

Method

This research is a normative legal research (doctrinal legal research) that positions law as a norm or rule governing human behavior in society. Normative legal research focuses on the study of legal principles, legal norms, and legal doctrine, particularly those related to the annulment of peace agreements in bankruptcy regimes and the suspension of debt payment obligations. In addition, this research also employs a case approach (case approach) by analyzing court decisions related to the annulment of peace agreements in PKPU proceedings, particularly Commercial Court Decision Number 37/PDT.SUS-Bankruptcy-Cancellation of Peace/2024/PN.Niaga JKT.PST jo. Number 140/PDT.SUS-PKPU/2022/PN.Niaga JKT.PST. The analysis of the court's considerations is conducted to examine how legal principles, doctrines, and statutory provisions are interpreted and applied by judges in resolving disputes concerning the cancellation of homologated peace agreements. Through this approach, the research not only examines legal norms in abstracto, but also evaluates their implementation in concreto within judicial practice. The study further analyzes the consistency of judicial reasoning with the principles of legal certainty, creditor protection, good faith, due process of law, and the theory of Law and Economics of Bankruptcy in the Indonesian bankruptcy system.¹²

Result and Discussion

In Law Number 37 of 2004, starting from Article 222, the Suspension of Debt Payment Obligations is a period granted by law through a Commercial Judge's decision where the creditor and debtor are given the opportunity to discuss the method of debt payment by providing a plan for payment of all or part of the debt, including if the debt is restructured.¹³

During the debt repayment suspension process, the debtor retains control of their assets, unlike a bankruptcy declaration. The purposes of the debt repayment suspension are as follows:¹⁴

¹² J. Efendi, J., & Ibrahim, "Metode Penelitian Hukum Normatif Dan Empiris," *Jurnal Rechtsvinding* 11, no. 3 (2022), <https://doi.org/https://doi.org/10.33331/rechtsvinding.v11i3.892>.

¹³ A. Ramadhan, F., & Wijaya, "Konsep Restrukturisasi Utang Dalam Penundaan Kewajiban Pembayaran Utang Menurut UU Kepailitan," *Jurnal Rechtsens* 12, no. 2 (2023), <https://doi.org/https://doi.org/10.56013/rechtens.v12i2.1987>.

¹⁴ Sunarmi, *Hukum Kepailitan* (Jakarta: Hukum Kepailitan, 2010).

1. The debtor can resolve the difficulties within a sufficient period of time and will ultimately be able to repay the debt at a later date;
2. For the creditor, a delay in debt repayment obligations means the debtor may receive full repayment of their debt, thus avoiding any loss.

This case began with a Debt Payment Suspension (PKPU) process that ended with the ratification of a settlement agreement (homologation). However, during its implementation, the debtor was alleged to have failed to fulfill its obligations as stipulated in the settlement agreement, leading the creditor to file a petition to annul the settlement agreement with the Commercial Court.

In the event of a petition to annul the settlement agreement, the Commercial Court then grants the debtor leeway to fulfill its obligations no later than 30 days after the decision granting the leniency is rendered (Article 170 paragraph (3) of the Bankruptcy Law).

Terms and procedures for payment of PKPU Debtors to Verification Creditors:

Table 1: Debt Payment Scheme Table Based on Creditor Verification Group

No	Verification creditor group	Principal debt nominal	PPN	Grace gradual period	Tenor	Fines/interest
1	Kelompok I I	Dibawah 200 juta	Tidak ada	15 bln	10 x (50%+20%+20%+10%)	1 bulan setelah lunas pokok
2	Kelompok 2	201-500 juta	Tidaka da refund	15 bln	20 X (50%+20%+20%+10%)	1 bln setelah lnas pokok dicicil 3X
3	Kelompok 3	501-1 miliar	Tidak ada refund	15 bln	30X (50%+20%+20%+10%)	1 bln setelah lunas pokok dicicil 4X
4	Kelompok 4	1.001 miliar01,5 miliar	Tidak ada refund	15 bln	40X (50%+20%+20%+10%)	1 bln setelah lunas pokok dicicil 5X

5	Kelompok 5	1.501 miliar- 2 miliar	Tidak ada refund	15 Bln	50 X	1 bln setelah lunas pokok dicipil 5X
					((50%+ 20%+2 0%+10)	

This table 1 explains the debtor's debt repayment settlement scheme based on the creditor verification grouping according to the principal amount. Each creditor group receives different arrangements regarding the debt amount, VAT/refund provisions, a 15-month grace period, a phased principal repayment period, and a mechanism for paying off fines or interest after the principal is settled. The larger the debt amount in each group, the longer the installment period provided, with phased payments and fines/interest settlement taking place after the principal is repaid according to the provisions of each group.

In the process of submitting a reconciliation plan based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), there are two possible outcomes that can occur: the reconciliation proposal is accepted by the creditor or the reconciliation proposal is rejected by the creditor. If the reconciliation proposal is rejected by the creditor, the consequence for the debtor is that the court will declare the debtor bankrupt. In this case, Article 163 of the UUK-PKPU expressly states that a debtor who has been declared bankrupt is not permitted to submit a new reconciliation plan if the previous reconciliation plan has been rejected by the creditor or its ratification (homologation) has not been approved by the court. This closes the opportunity for the debtor to re-offer a reconciliation in the bankruptcy process.

After a debtor's settlement application is rejected by creditors through a PKPU (Deferred Payment Order) and the debtor is declared bankrupt, the debtor's opportunity to obtain a settlement remains valid. However, this is provided that the case declared bankrupt does not involve articles such as:¹⁵

1. Article 285 of the Bankruptcy and PKPU Law: If the court refuses to ratify the reconciliation agreement, the debtor is declared bankrupt.

¹⁵ N Anita, S. N. & Sulisrudatin, "Hukum Kepailitan Dan Permasalahannya Di Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 7, no. 1 (2016).

2. Article 286 of the Bankruptcy and PKPU Law: A ratified reconciliation agreement binds all creditors, except secured creditors who do not agree to the reconciliation agreement.
3. Article 291 of the Bankruptcy and PKPU Law: If the court cancels the reconciliation agreement, the debtor must be declared bankrupt.

Once it is confirmed that the debt declared bankrupt does not involve Articles 285, 286, and 291, the process of proposing a reconciliation proposal can proceed, in accordance with Article 144 of the PKPU Law. The purpose of this reconciliation plan is to provide the debtor with the opportunity to improve the condition of their company and repay their debts according to their financial capabilities. This reconciliation plan is entirely dependent on the decision of the creditors, who have the right to vote to accept or reject the proposal.¹⁶

That because the Peace Agreement has been ratified by the Court, the Agreement applies and is binding on all Creditors as regulated in Article 286 of the Bankruptcy and PKPU Law as follows:

"The peace agreement that has been ratified is binding on all creditors, except creditors who do not agree to the peace agreement as referred to in Article 281 paragraph (2)."

Referring to Article 286 of Law 37/2004, the debtor and creditor have submitted themselves to the settlement agreement that has been homologated by the commercial court. Therefore, legally, because the settlement agreement has been homologated, or ratified by the commercial court, a PKPU cannot be filed a second time after homologation.¹⁷

That the Applicants are Creditors when the Respondent is in the Suspension of Debt Payment Obligations with the Fixed Receivables List of PT Adara Properti Indonesia and as regulated in Article 286 of the Bankruptcy and PKPU Law, this means that all Creditors, whether registered or not registered their claims in the PKPU Process, are parties who have the same rights to the Peace Agreement that has been ratified by the Court.

¹⁶ M. B. Lestari, P. A., & Kurniawan, "Perdamaian Dalam PKPU Sebagai Sarana Restrukturisasi Utang Debitor," *Jurnal Pacta Sunt Servanda* 5, no. 2 (2024), <https://doi.org/https://doi.org/10.23887/jps.v5i2.76214>.

¹⁷ Sutan Remy Sjahdeini, *Sejarah, Asas, Dan Teori Hukum Kepailitan* (Jakarta: Prenadamedia Group, 2016).

That the Applicants are Creditors who have debt claims against the Respondent as stated in the Peace Agreement.

Table 2: Table of Details of the Value of Creditors' Claims for PKPU Applicants

No	Name	Refund Amount (Rp Principal Value)	Interest/Penalty	Total
1	Ronny Tendean (Pemohon PKPU 1)	Rp.169.788.888	Rp.42.447.222	Rp.212.236.110
2	Inawati Suhardiman (Pemohon PKPU 2)	Rp.267.791.226	Rp.66.947.806	Rp.334.739.032

The Applicants Based on the Peace Agreement Ratified Through the Peace Ratification Decision 140/Pdt.Sus- PKPU/2022/PN.Niaga.Jkt.Pst Dated January 11, 2023, Based on the legal facts presented by the Petitioners, the Respondent has been proven to have failed to fulfill its obligation to pay the debt that was due and payable in November 2023. This payment obligation should have been carried out in accordance with the payment scheme agreed upon in the Settlement Agreement, which was subsequently validated through the homologation decision of the Commercial Court at the Central Jakarta District Court Number 140/Pdt.Sus-PKPU/2022/PN.Niaga.Jkt.Pst dated January 11, 2023. This failure to fulfill this payment obligation indicates a violation of the terms of the settlement agreement binding the parties.

Furthermore, the Respondent is also deemed to have failed to demonstrate good faith in fulfilling its legal obligations to the Petitioners. This is reflected in the failure to make payments as stipulated in the settlement agreement, despite the Petitioners having issued prior warnings through a Warning Letter dated November 16, 2023, and a Final Warning Letter/Sumison dated November 22, 2023. Therefore, the Respondent's actions can be viewed as negligence or breach of obligations agreed to in the agreement, which has obtained permanent legal force through homologation. Furthermore, the Petitioners explained that the previous case, decided by the Commercial Court Decision of the Central Jakarta District Court Number 140/Pdt.Sus-PKPU/2022/PN.Niaga.Jkt.Pst dated July 21, 2022, primarily concerned the refunds required by the Respondent to the Petitioners and other creditors. This refund arose because the Respondent failed to complete the

construction of the One Velvet Residence units as promised, thus creating a legal obligation for the Respondent to return the funds deposited by the purchasers or creditors.

That thus the Application submitted by 2 (two) creditors in their application requesting the Commercial Court to declare the Respondent bankrupt is very excessive and unfair because the Respondent still has attractive/promising prospects for the future. And based on the facts referred to, the Supreme Court has issued a Circular to all Commercial Courts in Indonesia to be careful in issuing Bankruptcy decisions to Institutions/Companies engaged in the property sector because it involves the interests of many people. There will be more benefits from not being declared bankrupt because it still has good prospects for the future so that the needs of all creditors who buy Apartment units can be met. Therefore, the Applicant's application is unreasonable and must be rejected.¹⁸

That's how the Application submitted by 2 (two) creditors in their application requesting the Commercial Court to declare the Respondent bankrupt is very excessive and unfair because the Respondent still has attractive/promising prospects for the future. And based on the facts referred to, the Supreme Court has issued a Circular to all Commercial Courts in Indonesia to be careful in issuing Bankruptcy decisions to Institutions/Companies involved in the property sector because it involves the interests of many people. There will be more benefits from not being declared bankrupt because it still has good prospects for the future so that the needs of all creditors who buy Apartment units can be met. Therefore, the Applicant's application is unreasonable and must be rejected.

The peace agreement that was agreed upon by the respondent as debtor with his creditors on November 28, 2022 (January 10, 2023) was ratified by the Commercial Court Decision at the Central Jakarta District Court Number: 140/Pdt.Sus-PKPU/2022/PN.Niaga.Jkt.Pst dated January 11, 2023, the main ruling of which is.

In essence:

¹⁸ E Harefa, J., & Situmorang, "Restrukturisasi Utang Melalui PKPU Sebagai Upaya Business Rescue Di Indonesia," *Jurnal Veritas et Justitia* 11, no. 1 (2025), <https://doi.org/https://doi.org/10.25123/vej.v11i1.8457>.

1. Ordering the Debtor PT Adara Properti Indonesia (PKPU Respondent) and all other Creditors to submit to, comply with, and implement the terms of the settlement agreement;
2. Declaring the Suspension of Debt Payment Obligations (PKPU) Number 140/Pdt.Sus-PKPU/2022/PN.Niaga.Jkt.Pst. to be legally terminated;
3. Ordering the Debtor PT Adara Properti Indonesia (PKPU Respondent) to pay court costs in the amount of Rp. 5,700,000 (five million seven hundred thousand rupiah).

Based on the evidence of the peace agreement and the decision to ratify the peace, the Respondent's obligations to be paid to Petitioner I (Ronny Tendean) amount to Rp. 212,238,110; which must be paid for 15 months; Petitioner II (Inawati Suhardiman) amount to Rp. 334,739,032, Erniwati Tin (another creditor amount to Rp. 267,000,000).

Based on the provisions above, because the peace agreement was ratified by the decision of the commercial court on January 11, 2023, then in November 2023 the respondent must pay 50% of the debt to the applicants and other creditors and finally in May 2024 the respondent is required to pay in full to its creditors including the applicants and other creditors. The reason the respondent/debtor refused to cancel the peace ratification decision because he was still looking for investors to build his apartment, according to the panel of judges, had no relevance to the request for cancellation of the ratification of this peace because - that since 2018 the Respondent had never built an apartment.

However, the Panel of Judges held that this reasoning had no legal relevance to the motion to annul the ratification of the settlement agreement. The Panel's consideration was based on the fact that the object of examination in a case of annulment of a settlement agreement is the fulfillment of obligations as expressly stipulated in the homologated settlement agreement, not the debtor's future plans, hopes, or efforts.¹⁹

The Panel of Judges emphasized that seeking investors is an internal business activity for the debtor and cannot be used as justification for negligence

¹⁹ R. F. Simanjuntak, "Analisis Perdamaian Dan Homologasi Dalam Penundaan Kewajiban Pembayaran Utang," *Jurnal Litigasi* 25, no. 2 (2024), <https://doi.org/https://doi.org/10.23969/litigasi.v25i2.7312>.

in fulfilling the maturity obligations of the settlement agreement. Therefore, the Respondent's reasoning cannot eliminate or postpone the legal consequences of the debtor's negligence, as stipulated in Article 170 of the Bankruptcy and PKPU Laws.

The Panel of Judges' considerations demonstrate that the court adopted a normative and objective approach, prioritizing legal certainty and compliance with the terms of the settlement agreement. This also confirms that the principle of due process of law is not interpreted as tolerance of debtor non-compliance, but rather as a guarantee that bankruptcy sanctions are based on concrete facts of violations, not speculation about the potential for future business recovery.²⁰

In the context of the cancellation of the PKPU (Bankruptcy and Debt Recovery Plan) settlement, the judge's approach in Decision Number 37/PDT.SUS-Bankruptcy-Cancellation of Peace/2024/PN.Niaga JKT.PST in conjunction with Number 140/PDT.SUS-PKPU/2022/PN.Niaga JKT.PST tended to adopt a strict legal approach, emphasizing whether or not there were violations of the terms of the homologated settlement. The judge considered that the debtor's inability to secure investors was not a reason to waive payment obligations, as this constituted a business risk for the debtor.

This approach can be compared with several other PKPU decisions that place greater emphasis on the debtor's business continuity and economic prospects. In several debt restructuring cases involving property companies and public companies, courts sometimes grant debtors more leeway to pursue additional restructuring if there is still a possibility of business recovery and long-term payment to creditors. This approach emphasizes the PKPU's function as a business rescue instrument rather than as a means of punishing the debtor. The judge's reasoning in this case reflects consistency with the principle of legal certainty, particularly that the homologated settlement agreement must be implemented and is binding on the parties, as stipulated in Article 286 of the Bankruptcy and PKPU Laws. However, upon closer examination, the decision tends to be overly formalistic, focusing solely on payment violations without thoroughly examining the debtor's economic condition and business prospects.

²⁰ Rohit Iyer, S. Veena, Prasad, "Exploring a Quasi-Absolute Priority Rule for Pay-Outs to Operational Creditors in Bankruptcy Resolutions: Evidence from India," *Global Finance Journal* 64 (2025), <https://doi.org/10.1016/j.gfj.2025.101074>.

The judge firmly rejected the debtor's argument that he was still seeking investors, arguing that such efforts were irrelevant to the maturing payment obligations. This approach is consistent with the principle of legal certainty, but can be criticized for failing to consider the primary purpose of PKPU as a means of restructuring and business rescue. According to the Law and Economics of Bankruptcy theory, debt restructuring should be viewed not only in terms of formal compliance with payment schedules but also in terms of the possibility of maintaining the company's going-concern value, which ultimately can provide greater benefits to all creditors.

Another criticism lies in the judge's lack of elaboration on the principle of proportionality. The decision to annul the settlement agreement automatically results in the debtor's bankruptcy, as stipulated in Article 291 of the Bankruptcy and Suspension of Payment of Debt. However, the judge failed to thoroughly consider the broader economic impact, particularly on consumers, workers, and other creditors, who would likely suffer greater losses if the company were to be declared bankrupt immediately.²¹

In contract law, force majeure is understood as a compelling circumstance that occurs beyond the control of the parties, cannot be predicted in advance, and cannot be avoided, thus preventing one of the parties from fulfilling their obligations. This doctrine is recognized in Articles 1244 and 1245 of the Civil Code, which in principle exempts the debtor from the obligation to compensate if the inability to perform is caused by such force majeure.²²

However, to be qualified as force majeure, the debtor must prove that:

1. The event is completely beyond the debtor's control;
2. The event was unforeseeable at the time the agreement was made;
3. The event directly causes the debtor to be unable to fulfill its contractual obligations;
4. There is no element of negligence or fault on the part of the debtor.

In the context of the cancellation of the PKPU peace agreement, the debtor's failure to fulfill the contents of the peace agreement cannot be justified

²¹ F. Wijanarko, A., & Rahmadani, "Proportionality Principle in Indonesian Bankruptcy Decisions: Balancing Creditor Rights and Business Sustainability," *Brawijaya Law Journal* 12, no. 1 (2025), <https://doi.org/https://doi.org/10.21776/ub.blj.2025.012.01.06>.

²² Husni Thamrin, "Landasan Yuridis Gugatan Pembatalan Perjanjian Build Operate Transfer," *Jurnal Ilmu Hukum The Juris II* 2, no. 1 (2018).

by the reason of worsening business conditions or the failure to obtain investors, because these circumstances generally constitute business risks inherent to the debtor and do not fulfill the element of force majeure.

In cases of revocation of a PKPU settlement, both the force majeure and good faith arguments must be rigorously tested. The debtor's reason for still seeking investors does not meet the force majeure criteria and cannot be considered an exercise of good faith that waives negligence. The risk of not securing an investor is essentially a business risk that the debtor must bear as a consequence of conducting business activities. Therefore, a debtor's failure to secure an investor cannot be used as a justification for avoiding or delaying payment obligations agreed to in the PKPU settlement agreement. Business risk is the debtor's internal responsibility and should not be borne by creditors, especially when payment obligations have been legally legitimized through a homologation decision.²³

On the other hand, a settlement agreement in a PKPU that has been ratified by the court has binding legal force for all parties, both debtor and creditor. Consequently, the contents of the agreement must be implemented in accordance with the terms, conditions, and payment scheme agreed upon. Failure to comply with the contents of the settlement agreement not only represents a contractual breach but also reduces the effectiveness of the PKPU's function as a debt restructuring mechanism aimed at providing certainty of settlement for the parties.

Furthermore, the principle of legal certainty for creditors requires that the homologated settlement agreement be strictly adhered to and consistently implemented. Compliance with court-approved agreements provides legal protection for creditors' rights to receive agreed-upon payments. Therefore, implementing homologation agreements is crucial for maintaining trust in the bankruptcy legal system and ensuring certainty and fairness in the relationship between debtors and creditors.²⁴

²³ Muhammad Rifqi Hidayat & Parman Komarudin, "Tinjauan Hukum Kontrak Syariah Terhadap Ketentuan Force Majeure Dalam Hukum Perdata," *Jurnal Hukum Dan Pemikiran* 17, no. 1 (2017).

²⁴ H. Eidenmüller, "Contracting for a European Insolvency Regime," *European Business Organization Law Review* 18, no. 2 (2017), <https://doi.org/10.1007/s40804-017-0064-1>.

Thus, the Panel of Judges' reasoning in rejecting the debtor's argument aligns with the doctrine of contract law and the principle of legal certainty in the bankruptcy regime.

The Commercial Court's interpretation in this case is normatively correct, but still leaves room for debate from a substantive justice perspective. This accuracy lies in the court's consistency in objectively applying the force majeure doctrine and the principle of good faith, thereby ensuring legal certainty for creditors.

However, going forward, a more proportional approach is needed, particularly in assessing the debtor's good faith in the context of debt restructuring, so that the purpose of the PKPU as a means of business rescue is not diminished. The assessment of good faith should consider not only formal compliance, but also the degree of sincerity and rationality of the debtor's efforts to realize the reconciliation, as long as it does not compromise legal certainty.

This ruling demonstrates a tendency toward a more pro-creditor approach. This is evident in the judge's emphasis on ensuring the implementation of homologation and protecting creditors' collection rights, without providing sufficient room for arguments about debtor business recovery. From a creditor protection perspective, this approach is justified because it provides legal certainty and prevents the misuse of the PKPU (Debt Recovery Order) as a means to postpone debt payments without any real intention of resolving the issue.

However, an overly pro-creditor orientation has the potential to shift the PKPU's function from being a restructuring instrument to merely a step toward bankruptcy. If every delay or failure in payment is immediately viewed as grounds for revocation of the settlement agreement without considering the possibility of business recovery, the debtor will lose the opportunity to effectively reorganize the business. Conversely, an overly pro-debtor approach also risks creating moral hazard. Debtors could exploit the PKPU to delay debt payments under the guise of restructuring without any certainty of payment to creditors. Therefore, the primary challenge in bankruptcy law is maintaining a balance between creditor protection and business rescue.²⁵

²⁵ S. Andersen, P., & Westgaard, "Creditor Protection versus Business Rescue in Modern Insolvency Law," *Journal of Corporate Finance* 89 (2025), <https://doi.org/https://doi.org/10.1016/j.jcorpfin.2024.102811>.

Conclusion

The annulment of a homologated peace agreement in PKPU proceedings reflects the dual function of Indonesian bankruptcy law: ensuring creditor protection while upholding due process of law. Commercial Court Decision Number 37/PDT.SUS-Bankruptcy-Cancellation of Peace/2024/PN.Niaga JKT.PST jo. Number 140/PDT.SUS-PKPU/2022/PN.Niaga JKT.PST confirms that debtor default does not automatically result in bankruptcy, but must first be tested through judicial examination. However, this study finds that the court adopted a highly formalistic and pro-creditor approach by emphasizing strict compliance with the homologated agreement without sufficiently considering the debtor's restructuring prospects and going-concern value. From the perspective of *Law and Economics of Bankruptcy*, such rigidity risks shifting PKPU from a business rescue mechanism into a mere gateway to liquidation. Therefore, Indonesian bankruptcy law requires a more proportional judicial approach that balances legal certainty, creditor protection, and economic efficiency. Judges should assess not only formal default, but also the debtor's genuine good faith and realistic prospects for business recovery, so that PKPU remains an effective instrument for restructuring rather than merely a procedural path toward bankruptcy.

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Author Contributions Statement

AA, contributed to the conceptualization of the study, data collection, data analysis, and manuscript drafting. NS contributed to the methodology, validation, and manuscript revision. All authors have read and approved the final version of the manuscript.

AI Usage Statement

The authors declare that the use of Artificial Intelligence (AI) in this research was limited to supportive functions, such as language editing, grammar checking, and improving clarity and readability. AI was not used to generate the main ideas, conduct substantive analysis, interpret data, or draw scientific conclusions. The authors take full responsibility for the originality, accuracy, and academic integrity of the entire content of this article.

Conflict of Interest

The authors declare that there is no conflict of interest regarding the research and publication of this article.

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