

ABSTRACT

Application for Postponement of Obligation To Pay Debt (PKPU) can be instituted to Commercial Court if the debtor or one of the creditors estimate that the debtor cannot pay his debts which has been due and can be collected. One of the case of debt and credit which has been settled through the process of PKPU is the case which has been adjudicated in Homologation judgment No. 01/PKPU/2016/PN Niaga Jkt.Pst. This case PKPU by PT. Kembang Delapan Delapan Multifinance (Petitioner) that the payment of debt either the principal as well as the interest cannot be paid in accordance with the payment which has been agreed in the joint financing agreement to its creditors the majority of them are banks. The said Application for Postponement of Obligation to Pay Debt (PKPU) having been instituted, has been received by the Commercial Court. Further the Debtor of PKPU submits a plan a reconciliation that consists of restructuring of principal debt. Upon the said proposal which has been submitted, the creditor Wants that Chandra Yaliya as Director who acts as Personal Guarantor who guarantees the said reconciliation agreement be implemented. After the said reconciliation agreement has been approved by the majority of the creditors in taking the vote, the proposal of the said reconciliation is then legalized by the court, and become a homologation which then becomes a title that binds the parties, either the creditor with the debtor as well as the personal guarantor. This research studies and discussed about the process of institution of the application for PKPU, the process of homologation in PKPU and the legal consequence occurred from homologation to the personal guarantor to case the Debtor of PKPU has made a default/non fulfilment to the reconciliation agreement. This research is a normative law research with the type of case study approach. The data used is a secondary data and tertiary legal material. The gathering of the data is done with examination of data, reconstruction of data and systematic of data which further is done analysis qualitatively the existence of economic deceleration which blows to industry and company business causing the Applicant of PKPU experiences obstacle in paying the debt which has been due and can be claimed is the creditors thereof. The said application has met the qualifications in instituting application for PKPU as provided in Article 222 UUK PKPU so that the judge does not find any reason to refuse the said application. The Debtor of PKPU later files a plan of reconciliation that covers an offer of part or whole payment of the debt to the creditors which further is done debt restructuring that covers mechanism of payment of principal debt and decrease of interest level, extension of period of paying off of the debt, conversion of debt to shares and the existence of third party as personal guarantor in implementing the said reconciliation agreement. The legal consequence occurred by existence of Personal Guarantor which has waived his special right in the reconciliation agreement gives a right to the creditor to directly claim to the Personal Guarantor if the reconciliation agreement. The legal remedy that can be done by the creditor to the Personal Guarantor is a common civil legal remedy by instituting a lawsuit of default /non-fulfillment or bankruptcy legal remedy as long as the requirement of two or more creditors and existence of the debt is due and can be collected has been met.