

## **Permanent Postponement of Debt Payment Obligations as a Restructuring of Problematic Credit/Financing Rescue by Judicial Decision**

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### **Abstract**

*The Postponement of Debt Payment Obligations (PDPO) is regulated by Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. This law is necessary for the interests of the business world in resolving debt issues fairly, quickly, openly, and effectively. The Postponement of Debt Payment Obligations is the right of every Debtor who is unable or anticipates being unable to continue paying their overdue debts and is subject to collection. The Postponement of Debt Payment Obligations is a proposal submitted to the Creditors to postpone payment obligations to obtain the approval of the creditors. Therefore, The Permanent Postponement of Debt Payment Obligations is a restructuring of credit/financing decided by the Commercial Court for a fair resolution of credit/financing. According to John Rawls, fairness is achieved when there is fairness. Justice is also related to the principle of legality, which means that all actions and policies of the state and its officials must be based on the law. Therefore, the Postponement of Debt Payment Obligations must contain legal certainty that is based on legality. Hence, the question arises as to how the law regulates the occurrence of The Permanent Postponement of Debt Payment Obligations as a Credit/Financing Restructuring that provides justice for creditors and debtors. The research method used in this study is a normative method, which is a method to uncover legal issues presented and draw conclusions to provide input on how things should be.*

**Keywords:** *Permanent PDPO, Restructuring, Judicial Decision.*

### **INTRODUCTION**

Law No.37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations is a renewal of the provisions on bankruptcy and debt payment obligations originally regulated in the Law on Bankruptcy (Faillissements-verordening Staatsblad 1905:217 juncto Staatsblad 1906:348) which was revoked by the enactment of the new bankruptcy law and the Suspension of Debt Payment Obligations. The amendment was made because the Bankruptcy Law (Faillissementsverordening, Staatsblad 1905:217 juncto Staatsblad 1906:348) which was a legacy legislation of the Dutch East Indies government, was no longer following the needs and legal developments of society for debt settlement.

It is acknowledged that the development of trade and the influence of global capital owned by entrepreneurs, in general, mostly consists of loans from various sources, such

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as banks, capital investments, bond issuances, and other methods allowed by applicable laws and regulations. This condition has created issues regarding debt settlement. The monetary crisis that affected Asian countries, including Indonesia, since the mid-1997, has posed significant challenges to the national economy and trade. Therefore, April 22, 1998, marked a new milestone concerning provisions on bankruptcy and debt payment obligation suspension, with the issuance of Government Regulation instead of Law No. 1 of 1998 on Amendments to the Bankruptcy Law, which was later enacted as Law No. 4 of 1998 on Bankruptcy and Debt Payment Obligation Suspension.

Bankruptcy is a general seizure of all assets of the Bankrupt Debtor, which is managed and liquidated by a Curator under the supervision of a Supervisory Judge as regulated by the Bankruptcy Law. As a general seizure, for the legal subject declared bankrupt, all of their assets are seized and subsequently used to settle their debts. This principle of generalized seizure is related to the principles of universality and territoriality, which means that a bankruptcy ruling from a court in a country applies to all the debtor's assets, both within the country where the bankruptcy ruling is issued and abroad. Article 212 of the Bankruptcy Law & PDPO states that a Creditor who, after the declaration of bankruptcy, collects full or partial payment of their debt from assets included in the bankrupt estate located outside the territory of the Republic of Indonesia, which are not pledged to them with priority rights, must reimburse the bankrupt estate for everything they have obtained.

Bankruptcy Law also adheres to the principle of debt collection, as evidenced by the provision of general seizure. According to Henry Campbell Black in Black's Law Dictionary, "bankrupt is the state or condition of one who is unable to pay his debts as they are, or be become due" (Black, 1968). The Bankruptcy Law also upholds the principle of equal treatment of creditors, known as the principle of *paritas creditorium*, ensuring equal status among creditors under the bankruptcy law (Muhadi, 2003). This principle is further supported by the principle of debt pooling, where the debtor's assets are distributed proportionally among the creditors.

The debtor's assets, which are an important part of bankruptcy and Postponement of Debt Payment Obligations, serve as collateral for the debt received by the debtor or the credit/financing provided by the creditor. Article 1131 of the Civil Code states that all property owned by the debtor, whether movable or immovable, existing or future, shall serve as collateral for all individual obligations. These obligations may arise from both statutory provisions and agreements that give rise to debt. According to Article 1 Paragraph (6) of Law No. 37 of 2004 on Bankruptcy and Postponement of Debt Payment Obligations, debt is an obligation expressed or capable of being expressed in a certain amount of money, whether in Indonesian currency or foreign currency, both current and contingent, arising from an agreement or law, and must be fulfilled by the debtor. Failure to fulfill this obligation entitles the creditor to seek satisfaction from the debtor's assets. Based on Supreme Court Decision No. 03K/N/1998, as summarized by Adrian Sutedi, the concept of debt does not include other forms of non-performance that do not originate from the legal construct of lending (Adrian Sutedi, 2009).

In bankruptcy law, the principle of balancing the interests of creditors and debtors is emphasized, with a focus on achieving a win-win solution through the Postponement of the Debt Payment Obligations process. This principle is provided by the law because bankruptcy can be detrimental to the debtor's business. However, the principle dictates that the debtor's and creditor's interests should be prioritized through PDPO to ensure the smooth operation of their businesses. Therefore, before being declared bankrupt, debtors are allowed to delay their obligations by filing a request for Postponement of Debt Payment Obligations. With PDPO, debtors are still given the chance to continue their business through debt restructuring based on court decisions. The difference between restructuring based on an agreement between creditors and debtors, and PDPO is that in

PDPO, the restructuring of credit/financing is based on a Court of Commerce decision. PDPO is regulated in Chapter II of the Bankruptcy Law, specifically Articles 222 to 279.

In PDPO decisions, adherence to principles is essential. These principles are as follows: 1) The Balance Principle, which prevents the misuse of bankruptcy institutions and regulations by debtors and creditors acting in bad faith. 2) The Continuity of Business Principle, which allows debtors to continue their business operations. 3) The Justice Principle, which ensures fairness for all parties involved. 4) The Integration Principle, emphasizes that the formal legal system and substantive law form a cohesive unit within the national civil law and civil procedural law system.

Postponement of Debt Payment Obligations is a procedure provided by the law to help debtors avoid bankruptcy. It is a part of credit/financing restructuring. In PDPO, the debtor submits a proposal for a settlement, which includes the restructuring of credit/financing. According to Article 222 paragraph (2) of Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, a debtor who is unable to pay their overdue debts or anticipates being unable to do so may file for PDPO. This means that a debtor can initiate PDPO proceedings by submitting a request before a creditor files for bankruptcy or after a bankruptcy petition has been submitted by a creditor but has not yet been decided by a judge.

Article 212 of the Bankruptcy and Postponement of Debt Payment Obligations (PDPO) Law states that PDPO is the right of every debtor who is unable to pay their overdue debts or anticipates being unable to do so. They may apply for a postponement of debt payment obligations with the intention, in general, of proposing a settlement plan that includes an offer to pay all or part of the debt to concurrent creditors. PDPO can also be voluntarily initiated by a debtor who has anticipated their inability to repay their debts.

For creditors, the main concern in providing credit/financing is ensuring the safe and profitable return of the loaned funds. Therefore, PDPO serves as a remedy for problematic credit/financing through the restructuring of credit/financing determined by a judge. In light of the above discussion, it is worth considering the legal issue of how the law regulates the occurrence of The Permanent Postponement of Debt Payment Obligations as a Credit/Financing Restructuring that provides fairness to both creditors and debtors.

## **METHODS**

The research utilized in addressing the presented issues employs the normative legal research method. Hadin Muhjadi and Nunuk Nuswardani (Muhjad & Nuswardani, 2012), state that "normative legal research is an in-depth examination of legal issues from the perspective of legal science, focusing on the study of established legal norms." Peter Mahmud Marzuki (Peter Mahmud Marzuki, 2007) defines legal research as "a process of discovering legal rules, legal principles, and legal doctrines to address the legal issues at hand." In this dissertation, the legal problem or issue refers to how the law regulates the occurrence of Postponement of Debt Payment Obligations as a restructuring of credit/financing that provides fairness to both creditors and debtors.

Bambang Sunggono refers to this research as "legal research" and cites Pollack's opinion that the main objective of legal research is to examine whether a specific normative postulate can be used to solve a particular legal problem in concrete terms by testing the provisions in the Bankruptcy and Postponement of Debt Payment Obligations Law. All of these efforts are undertaken to resolve the presented legal issues. The intended outcome is to provide recommendations regarding what should be done.

## DISCUSSIONS

The principle of freedom of contract in civil law allows for the freedom to enter into agreements of any kind, including restructuring agreements for credit/financing, as long as they do not violate the provisions of Article 1337 of the Civil Code. Article 1337 states that a cause is prohibited if it is prohibited by law, contrary to morality, or against public order. Therefore, in credit/financing restructuring, it is important not to violate the provisions of Article 1337 of the Civil Code mentioned above. Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations is intended to avoid legal disputes arising from the seizure of the debtor's assets when multiple creditors are simultaneously demanding their debts from the debtor. Creditors holding tangible security rights may enforce their rights by selling the debtor's property without considering the interests of the debtor or other creditors. This is done to prevent fraud committed by a creditor or even the debtor itself.

Peter J.M. Decleroq states that a bankruptcy petition must present facts and circumstances that provide prima facie evidence that the debtor has ceased to pay its debts. This is considered to be the case if there are at least two creditors, one of whom has a claim that is due and payable, and the debtor is unable, refuses, or simply does not pay (Peter J.M Decleroq, 2002). Peter J.M. Decleroq's opinion is also regulated in the Bankruptcy and Postponement of Debt Payment Obligations Law, which stipulates that a debtor with two or more creditors who fail to fully pay at least one overdue debt that can be collected shall be declared bankrupt by a court decision, either upon the debtor's request or the request of one or more creditors. The public prosecutor may also file the petition for public interest. The Bankruptcy and PDPO Law also provides specific provisions for financial institutions that affect the public. Specifically, in the case of banks as debtors, only Bank Indonesia is allowed to file a bankruptcy petition. If the debtor is a securities company, stock exchange, clearing and guarantee institution, or storage and settlement institution, the petition can only be filed by the Capital Market Supervisory Agency. If the debtor is an insurance company, reinsurance company, pension fund, or state-owned enterprise engaged in the public interest, the petition can only be filed by the Minister of Finance.

Bankruptcy essentially involves the settlement of credit/financing, as the debtor is no longer authorized to manage their business. However, concerning PDPO is primarily an effort to maximize the rescue of credit/financing. PDPO serves as a credit/financing rescue mechanism because it allows the credit/financing process to continue through a win-win solution. Munir Fuady emphasizes that PDPO is a suspension of payment or a period granted by law through a commercial court decision to facilitate the debtor's repayment of debts. Therefore, PDPO is a type of moratorium, specifically a legal moratorium in this case (Munir Fuady, 2014). Sutan Remi Sjahdeini states that in PDPO, the debtor still has the authority to carry out legal acts and transfer their assets as long as they obtain the administrator's approval (Sutan Remi Sjahdeini, 2006).

In bankruptcy and PDPO proceedings, there are specific time limits determined by the law. Therefore, time limitations in these bankruptcies and PDPO proceedings are crucial. The general outline of the time limits for filing bankruptcy and PDPO petitions is as follows.

Article 222 of the Bankruptcy Law states that a Debt Payment Suspension can be filed by a Debtor who has more than 1 (one) Creditor. A Debtor who is unable or anticipates being unable to continue paying their overdue and collectible debts may apply for a debt payment suspension, to propose a reconciliation plan that includes a partial or full debt payment offer to the Creditors. This application must be accompanied by a list specifying the nature and amount of the receivables and the Debtor's debts, supported by sufficient evidence, and may also include the reconciliation plan. In the case of a Debtor being a Bank, Securities Company, Stock Exchange, Clearing and Guarantee Institution, Custodian and Settlement Institution, Insurance Company, Reinsurance Company,

Pension Fund, or State-Owned Enterprise operating in the public interest, only they can apply debt payment suspension.

Within a maximum of 3 (three) days from the date of registration of the petition referred to in Article 224, paragraph (1), the temporary suspension of debt payments shall be granted and a supervising judge of the court shall be appointed. In addition, one or more administrators shall be appointed together with the debtor to manage the debtor's property. Immediately after the decision on the temporary suspension of debt payment is issued, the court, through the administrators, must summon the debtor and the known creditors by registered mail or by courier to a hearing to be held no later than the 45th (forty-fifth) day from the date of the decision on the temporary suspension of the debt payment.

The administrators must immediately announce the decision of temporary suspension of debt payment in the State Gazette of the Republic of Indonesia and at least 2 (two) daily newspapers designated by the supervisory judge. The announcement must also include an invitation to attend the hearing, which is a meeting of the judges' deliberation, stating the date, place, and time of the hearing, the name of the supervisory judge, and the names and addresses of the administrators. The temporary suspension of debt payment is effective from the date of the decision on temporary suspension of debt payment and continues until the date of the hearing of the judges' deliberation.

According to Article 230 of the Bankruptcy Law, if the period of temporary suspension of payment of debts expires because the creditors do not agree to a permanent suspension of payment of debts or its extension, and no agreement on the composition plan has been reached by the deadline specified in Article 228, paragraph (6), the administrators shall inform the supervising judge through the court, who shall declare the debtor bankrupt not later than on the following day.

PDPO, based on a judge's decision before the bankruptcy petition is pronounced by the creditors, may occur when a debtor who has two or more creditors fails to fully pay at least one overdue and collectible debt and is declared bankrupt by a court decision, either on its motion or on the motion of one or more creditors. In the PDPO, based on the judge's decision, before the bankruptcy petition is filed by the creditors, it occurs when a creditor files a bankruptcy petition against the debtor in the Commercial Court, provided that there is a debtor who has 2 (two) or more creditors and one of them fails to pay in full. The bankruptcy decision must be issued no later than 60 days after the bankruptcy petition is filed. Within 14 (fourteen) days from the date of the bankruptcy declaration decision, the supervising judge shall determine: a. the deadline for filing claims; b. the deadline for the tax audit to determine the number of tax liabilities under the tax regulations; c. the day, date, time and place for the creditors' meeting for debt settlement.

The application for a temporary debt payment suspension shall be submitted to the Court and signed by the applicant and their attorney. In the case where the applicant is a Creditor, the Court must summon the Debtor through a process server with a registered express letter no later than 7 (seven) days before the hearing. The reconciliation plan may be attached to the PDPO application. In the case where the application is filed by the Debtor, the Court must grant a temporary debt payment suspension/Temporary PDPO no later than 3 (three) days from the date of registration of the application.

In case the petition is filed by a creditor, the court must grant the petition for temporary debt suspension (Temporary PDPO) not later than 20 (twenty) days from the petition registration date. Thereafter, the court, through the administrator, shall summon the debtor and the known creditors by registered mail or courier to appear at the hearing, which shall be held no later than on the 45th (forty-fifth) day from the date of the pronouncement of the decision on the temporary suspension of payment of debts. If the debtor fails to appear at the hearing referred to in paragraph (4), the temporary suspension of debt payment shall expire, and the court shall declare the debtor bankrupt at the same

hearing. If the PDPO is still granted, the extension period should not exceed 270 (two hundred and seventy) days from the date of the temporary PDPO decision. The purpose of this Temporary PDPO is: 1) to immediately achieve a state of standstill, facilitating consensus between the creditors and the debtor regarding the debtor's intended plan of arrangement; 2) to provide the debtor with an opportunity to develop a plan of arrangement along with all necessary preparations if the plan of arrangement was not included in the previous PDPO filing; 3) the Temporary PDPO is effective from the date of the establishment of the Temporary PDPO and continues until the last hearing held on the 45th day after the establishment of the Temporary PDPO.

In the Bankruptcy Law and PDPO context, there are two meanings related to the term "reconciliation." If reconciliation is related to "bankruptcy," then it refers to the regulation of the liquidation and distribution of bankrupt assets. However, in the context of PDPO, reconciliation means the settlement of debt payments, including credit restructuring/financing for creditors and debtors. Thus, even if a debtor has been declared bankrupt, they can still propose reconciliation, provided that the reconciliation is submitted within at least 8 (eight) days before the debt verification schedule. No later than 45 days from the Temporary PDPO, the Court through the administrators must summon the Debtor. If the Debtor does not attend, the Debtor must be declared BANKRUPT. If the debtor and creditors are present, the Reconciliation Plan prepared by the Debtor is discussed. Subsequently, a hearing/voting is conducted for the proposed Reconciliation Plan by the Debtor. If the creditors are unable to make a decision, the period can be extended for up to 270 days from the date the Temporary PDPO decision is pronounced. Furthermore, the Permanent PDPO is determined by the court based on: 1) a Quorum of the meeting (1/2) of the total concurrent creditors present, with a quorum of decision-making (2/3) of those present. 2) Quorum of the meeting (1/2) of the total separate creditors present, with a quorum of decision-making (2/3) of those present. 3) In case of disputes, it is decided by the Supervisory Judge.

If the creditors do not approve the plan within 270 days, the debtor must be declared bankrupt. If the settlement plan is approved by the creditors within 270 days, the permanent PDPO is established. The permanent PDPO is the fair credit/financial restructuring decision made by the court and is not based solely on an agreement between the creditors and the debtor.

The Permanent PDPO is created after the above-mentioned hearing process is conducted and the court's decision establishes the transformation of the Temporary PDPO into the Permanent PDPO. After the creditors approve this permanent PDPO, the settlement plan becomes an agreement agreed upon by the parties and should not exceed 270 days, including extensions, from the date of the determination of the temporary suspension of debt payments.

Based on the PDPO described above, we can conclude that there are two PDPOs: temporary and permanent. The Temporary PDPO is a temporary PDPO that provides creditors and debtors with an opportunity to negotiate the settlement of the debtor's debt to the creditors. On the other hand, permanent PDPO is essentially an agreement reached by creditors and debtors on the settlement of debt payment obligations. After the PDPO is approved by the commercial court, the debt is restructured between the debtor and the creditors.

Regarding Article 235, paragraph 1, which states "No legal remedy can be filed against the decision to suspend debt payment obligations." Meanwhile, Article 293, paragraph 1, states "No legal remedy is available against the Court's decision based on the provisions in Chapter III unless otherwise stipulated in this Law." There is a Constitutional Court ruling in Decision Number 23/PUU-XIX/2021 stating that the Panel of Judges in a written decision declared that Article 235, paragraph (1), and Article 293, paragraph (1) of the PDPO Law are contradictory to the 1945 Constitution. Both articles do not have

binding legal force as long as they are not interpreted as "allowing a cassation appeal against the Decision to Suspend Debt Payment Obligations filed by the creditor and rejecting the debtor's settlement offer."

The Permanent PDPO is an agreement between the Debtor and the Creditors to settle the debtor's obligation through the suspension of debt payment (Permanent PDPO), making it fairer as it is decided by a judge. Abdul Ghofur Anshori states that the ultimate goal of the law is justice. Therefore, all efforts related to the law must be directed toward finding a legal system that is most suitable and under the principle of justice. John Rawls refers to justice as fairness. John Rawls, an adherent of Utilitarianism as stated by Priyono, which is cited by Darji Darmodiharjo, argues that justice is fairness. Meanwhile, Ulpianus (200 AD) defines justice as the firm and constant will to give each one his due (*iustitia est constants et perpetua voluntas ius suum cuique tribuendi*).

Based on the above-mentioned theories of justice, the process of permanent PDPO decision is fair as stated by John Rawls, since the bankruptcy or PDPO process has the same procedure without distinguishing between the parties filing for bankruptcy and PDPO as described above. In the above-mentioned bankruptcy and PDPO procedures, creditors must pay attention to the deadline for submitting proofs of debts and participate in the verification of debts and voting in court sessions that require decisions, including the approval of decisions related to bankruptcy or permanent PDPO. There are no special privileges for creditors filing bankruptcy or PDPO, as long as they are related to their position as creditors. Any benefits that may exist are only as initiators and, for the first time, as leaders or conditioners of the trustee or administrator who is closer to these creditors, but beyond that, they still have the position of ordinary creditors. Finally, the Permanent PDPO, which is an agreement between the creditors and the debtor decided by a judge, is a fair agreement, especially from the perspective of Ulpianus, since the PDPO has given each party its due.

## CONCLUSIONS

The Permanent Postponement of Debt Payment Obligations (PDPO) is essentially a process of restructuring debt/credit/financing between creditors and debtors, decided by the Commercial Judge. Therefore, this Postponement of Debt Payment Obligations binds the parties and other third parties involved. As a judicial decision, the PDPO must be understood as a fair decision for both the creditors and the debtors. This legal status is important for creditors and debtors because it has undergone a judicial assessment, which is legally required to be objective and fair. It is different when the restructuring of credit/financing is done unilaterally by the creditors and debtors, for example, only towards one creditor. This can harm other creditors, and the restructuring of credit/financing may not be objective and fair. With such conclusions, it is reasonable that the PDPO decision, which has been made fairly and objectively by the Judge and not by the creditors and debtors themselves, should not be challenged by third parties, including law enforcement unless there are deviations from the principles of PDPO.

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