SUSPENSION OF PAYMENT DECISION CASSATION: DUE PROCESS OF LAW VS LEGAL CERTAINTY

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ABSTRACT

Purpose: This research aims to provide solutions related to the debate between due process of law and legal certainty in the Debt Payment Obligation Suspension process.

Theoretical reference: This research is based on Decision Number 23/PUU-XIX/2021 of the Constitutional Court of Indonesia, which opens the opportunity for debtors to appeal against non-voluntary decisions on Debt Payment Obligation Suspension.

Method: This research uses a qualitative approach with the use of positive law and a comparative approach.

Results and Conclusion: The research results indicate that granting debtors the right to file a cassation effort against Debt Payment Obligation Suspension decisions is wise but can create legal uncertainty in its implementation. Therefore, it is recommended that cassation efforts against Debt Payment Obligation Suspension decisions be accompanied by some additional regulations. This is important to maintain legal certainty in the Debt Payment Obligation Suspension process in Indonesia while respecting due process of law for all parties involved in Debt Payment Obligation Suspension cases.

Implications of research: This research has implications for addressing the debate between due process of law and legal certainty in the Debt Payment Obligation Suspension process.

Originality/value: This research has value in providing solutions to the existing debate surrounding the Debt Payment Obligation Suspension process, thus preserving legal certainty in the process.

Keywords: suspension of payment decision, cassation, due process of law, legal certainty.
INTRODUCTION

A higher utilization of debt suggests a heightened risk of the company encountering challenges in repaying its obligations (Tangngisalu et al., 2023). Resolving disputes related to debt is crucial and should be handled swiftly, efficiently, and with a strong foundation in legal certainty. In Indonesia, one of the mechanisms available for debt settlement is the Suspension of Debt Payment Obligations.

To shed light on this matter, an examination of data retrieved from the Case Tracing Information System at five Commercial Courts in Indonesia reveals a noteworthy trend. It indicates a consistent rise in requests for Suspension of Debt Payment Obligations throughout the period spanning from 2020 to 2022.

This can be seen in the following table:
Table 1. Data on Cases of Suspension of Obligations for Payment of Debt at 5 Commercial Courts 2020-2022

<table>
<thead>
<tr>
<th>No.</th>
<th>Commercial Court</th>
<th>Number of Cases of Postponement of Debt Payment Obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2020</td>
</tr>
<tr>
<td>1</td>
<td>Medan</td>
<td>44</td>
</tr>
<tr>
<td>2</td>
<td>Central Jakarta</td>
<td>438</td>
</tr>
<tr>
<td>3</td>
<td>Semarang</td>
<td>49</td>
</tr>
<tr>
<td>4</td>
<td>Surabaya</td>
<td>98</td>
</tr>
<tr>
<td>5</td>
<td>Makassar</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>633</td>
</tr>
</tbody>
</table>

Source: processed based on data from the Case Tracing Information System website for the Medan, Central Jakarta, Semarang, Surabaya and Makassar District Courts. Data taken as of February 1, 2023.

Based on the data from Table 1 above, it can be noted that the Suspension of Obligations for Payment of Debt is still one of the most popular debt-receivable dispute resolution instruments in Indonesia. This is due to the simple requirements for applying for Suspension of Obligations for Debt Payment. In addition, the period for the settlement of cases of Suspension of Payment of Debt Obligations is shorter and more certain according to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt when compared to the mechanism of lawsuits in court.

The simple requirements for submitting a request for Suspension of Debt Payment Obligations are expected to make the Suspension of Debt Payment Obligations an inclusive instrument for business actors experiencing financial difficulties but still having good intentions to restructure their financial obligations to their creditors (Asra, 2015).

The austere conditions for submitting a Postponement of Debt Payment Obligations do not always have a positive impact. Still, solvent debtors can be asked for a Suspension of Debt Payment Obligations by their creditors and are "held hostage" in the Debt Payment Obligations scheme. Like it or not, the debtor must be able to meet the demands of his creditors in a peace proposal. This condition is exacerbated by the absence of legal remedies that can be filed by the debtor against the decision of Suspension of Obligations for Payment of Debt handed down by the commercial court against him. The

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4 Article 222 of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt requires that the application for Suspension of Obligations for Payment of Debt be submitted by a debtor who is unable or predicts that he will not be able to continue paying his debts which are due and payable, to submit a settlement plan that includes an offer to pay part or all of the debt to the creditor, or a creditor who estimates that the debtor will not be able to continue paying his debts which are due and collectable, may request that the debtor be granted a postponement of debt payment obligations, to allow the debtor to submit a reconciliation plan which includes an offer to pay part or all of the debt to creditors.

5 Settlement of debt disputes through the default lawsuit scheme tends to take a long time because there is no certainty of the period regulated in Indonesian positive law. In practice, the lawsuit process from the district court level to the cassation at the Supreme Court can take up to 3 years. For the process of Suspension of Debt Payment Obligations, the Bankruptcy Law and Suspension of Debt Payment Obligations have set the period for examining an application for Suspension of Debt Payment Obligations at the Commercial Court, which is a maximum of 20 if creditors submit the Suspension of Debt Payment Obligations and three days if the Suspension of Debt Payment Obligations is submitted by the debtor, for details see Article 225 of the Bankruptcy and Suspension of Obligations for Debt Payment.
absence of opportunity for the debtor to file legal action against the decision on Suspension of Debt Payment Obligations tends to ignore justice for the debtor when linked to the principle of due process of law.

In 2021, the Indonesian Constitutional Court, in its Decision No: 23/PUU/XIX/2021, declared the provisions of Article 235 paragraph (1) and 293 paragraph (1) of the Bankruptcy and Suspension of Obligations for Payment of Debt unconstitutional. The two articles previously did not open opportunities for the debtor to file legal remedies for the Suspension of Debt Payment Obligations, allowing the debtor to file cassation against the decision for the Suspension of Debt Payment Obligations based on two conditions, namely: the application for Suspension of Debt Payment Obligations is involuntary and rejection of the debtor's peace bid proposal by the creditors.

Two conflicting views emerged regarding cassation in the Suspension of Debt Payment Obligations decision. The first flow is the current that is against the existence of cassation legal remedies for the Suspension of Debt Payment Obligations. Adherents of this view think the absence of cassation proceedings against the decision on Suspension of Debt Payment Obligations aims to guarantee legal certainty. The absence of cassation is also based on the argument that the bankruptcy process is distinguished from the Suspension of Debt Payment Obligations in the Bankruptcy Law and Suspension of Debt Payment Obligations. Therefore, the application for Suspension of Debt Payment Obligations can be processed simultaneously with the bankruptcy application in the Commercial Court so that the absence of an appeal against the decision for Suspension of Debt Payment Obligations is not a crucial matter. (Argawati, 2021b) The second current view, namely the current that is pro with the existence of cassation legal remedies against the decision on the Suspension of Debt Payment Obligations. The petitioner for judicial review of Articles 235 paragraph (1) and 293 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Act in principle is of the view that the absence of cassation proceedings results in the Suspension of Debt Payment Obligations as a mode for bankruptcy of the debtor. The debtor is vulnerable to being shackled by the decision on Suspension of Obligations for Payment of Debt and has the potential to be declared bankrupt even though the debt in dispute is not recognized by the debtor concerned. This denies the spirit of peace espoused in the Postponement of Debt Payment Obligations (Argawati, 2021a).
The absence of cassation proceedings against the Suspension of Obligation for Payment of Debt can also be associated with violating the principle of due process of law. The Law on Bankruptcy and Suspension of Obligations for Payment of Debt as a material and formal rule of law in cases of bankruptcy and Suspension of Obligations for Payment of Debt in Indonesia should protect the interests of debtors and creditors within the framework of the system of bankruptcy and Suspension of Obligations for Payment of Debt. The Constitutional Court's decision can be understood as an effort to realize the principle of due process of law in protecting the debtor's position from the potential exploitation of his creditors through the process of Suspension of Debt Payment Obligations. However, the Constitutional Court's decision also raises new problems, namely legal uncertainty in the process of Suspension of Debt Payment Obligations, particularly about the requirements and technicalities of submitting cassation legal remedies.

The decision of the Constitutional Court does not explain in more detail the conditions that must be met apart from the application for Suspension of Obligations for Payment of Debt which is involuntary, and the rejection of the peace proposal from the debtor. The Constitutional Court's decision does not explain the procedure for submitting a cassation request against the Suspension of Obligation for Payment of Debt. In addition, it needs to be explained which part of the Suspension of Debt Payment Obligation case will be re-examined at the cassation level at the Supreme Court. Will the Supreme Court re-examine the entire case? Or only against rejected peace proposals? The absence of an explanation of these matters can create legal uncertainty in resolving debt disputes with the Suspension of Obligation for Payment of Debts in Indonesia.

Previously several previous studies examined cassation efforts against the decision on Suspension of Debt Payment Obligations, for example, research conducted by Lumiere Rejeki Agustinus Pandiangan. Research from Pandiangan only analyzes the Constitutional Court Decision Number: 23/PUU-XIX/2021 about the permissibility of cassation proceedings against the decision on Suspension of Debt Payment Obligations. The view is that the decision of the Constitutional Court has reflected a sense of justice for the parties—further...
research by Antonius Sidik Maryono. Maryono's (Maryono et al., 2022) research explains that cassation efforts against the Suspension of Debt Payment Obligations can create uncertainty and injustice for parties with good intentions and obscure the essence of the Suspension of Debt Payment Obligations institution. (Maryono et al., 2022) This proposed research is different from previous research. This research focuses on achieving legal certainty in the process of Suspension of Debt Payment Obligations associated with the principle of due process of law after the Constitutional Court Decision Number 23/PUU-XIX/2021. This research will also use a comparative approach. Thus, this research is different from previous research.

Departing from the antinomy between legal certainty and the principle of due process of law related to the existence of cassation proceedings against the decision on Suspension of Debt Payment Obligations, this article intends to provide a middle ground or solution to the antinomy in question. Thus, legal certainty in the process of Suspension of Debt Payment Obligations is maintained without ignoring the principle of due process of law, which is detrimental to the debtor. This article will be written in the following systematic: 1) background explaining the reasons for choosing the topic, 2) research methods used in writing this article, 3) discussion section, which is the core of the article and 4) conclusions and suggestions.

2 METHODS

This research employs an intriguing normative legal approach, often referred to as library research or document study, which delves exclusively into written regulations and legal materials (Mappong & Lili, 2023). To unravel the complexities of the subject matter, this article adopts the normative research methods, with a particular focus on statutory and comparative methodologies (Yaqin, 2007; Marzuki, 2013).

The statutory approach has been carefully chosen to meticulously dissect the legal norms embedded within the laws and regulations governing cassation against the Postponement of Debt Payment Obligations in Indonesia. Meanwhile, the comparative approach adds an international dimension to our analysis, drawing comparisons with legal remedies practiced in the United States and France.

The United States serves as a pertinent reference point due to the striking similarities between Indonesia's Debt Payment Suspension Obligation system and the Chapter 11 mechanism in the United States (Anisah, 2008). Furthermore, France offers
valuable insights as a nation with a civil law tradition, a significant precursor to Indonesia's legal system (Wignjosobroto, 2014).

3 DISCUSSION

1. The Philosophical Basis for the Existence of the Suspension of Obligations for Debt Payment

In the business world, debtors who are drowning in a sea of debt, of course, all their financial burdens must be resolved immediately. Concerning the Coase Theorem, debtors experiencing financial difficulties must exit the market through a liquidation scheme, either selling their assets individually or as a whole, by looking at which process brings higher economic value to its creditors (Balcaen et al., 2012). Thus, the debtor's assets can be reused for more productive things rather than burdening the world's economy.\(^7\)

Debtors who are experiencing financial difficulties do not always have to be liquidated. Bankruptcy is indeed one way for debtors experiencing financial difficulties to escape the market. Bankruptcy law highly upholds negotiation and debt restructuring between debtors and their creditors (Jacoby, 2015). In most countries that adhere to the Continental European legal system, debtor business restructuring is still an aspiration rather than a reality. This is caused by the stigma of bankruptcy due to the failure of directors of bankrupt debtor companies who are not cooperative in the restructuring process. Therefore, in legal and economic parlance, as Sullivan, Warren and Westbrook stated, the stigma of bankruptcy is “a fee associated with filing a bankruptcy filing based on damage to reputation or violation of certain moral standards of the debtor” (Sullivan et al., 2010). As a result, business restructuring of debtors experiencing financial difficulties is rarely done. Creditors prefer to use the bankruptcy process to settle all debtor obligations. Nevertheless, in the increasingly rapid development of the business world, bankruptcy as a way of resolving debt disputes must be seen as an ultimum remedium (Sjahdeini, 2016). The concept of liquidation as a procedure for settling debts has been increasingly abandoned, especially since the concept of corporate rescue was introduced to the business world (McCormack, 2008).

In Indonesian law, corporate rescue was introduced through the Postponement of Debt Payment Obligations scheme. This is in line with one of the principles adhered to in

\(^7\) Ibid.
the Bankruptcy and Suspension of Obligations for Debt Payment, namely the principle of business continuity. The Bankruptcy and Suspension of Obligation for Payment of Debt Law does not define the Suspension of Obligation for Payment of Debt itself. Suspension of Debt Payment Obligations can be interpreted as the period given by the Commercial Court to debtors and their creditors to be able to negotiate various ways to settle debts from debtors to their creditors, either in part or in whole (Yitawati et al., 2021). This is in line with the opinion stating that the Suspension of Obligations for Payment of Debt is a legal moratorium because, by law, the decision on the Suspension of Obligations for Payment of Debt from the Commercial Court gives the debtor the right to postpone the time to pay all of his financial obligations to his creditors (Fuady, 2014).

During the period of Suspension of Obligations for Payment of Debt that has been granted, the debtor is allowed to submit a restructuring of all or part of his debt to his creditors. If the majority of its creditors accept the peace proposal submitted by the debtor and get approval from the court (homologation), then by law, the Suspension of Obligations for Payment of Debt from the debtor ends. The debtor will be able to resume his business as usual without having to fear the threat of bankruptcy. Conversely, suppose the debtor is unwilling or unable to take advantage of the stipulated period of Suspension of Debt Payment Obligations. In that case, the debt repayment process must be carried out using a bankruptcy (liquidation) mechanism (Yuliani, 2022). The debtor's inability to take advantage of the Debt Payment Obligation period, for example, does not submit a peace proposal at all, submits but is rejected by the majority of creditors. Debtors who have received ratification of the peace agreement with their creditors must also carry out the peace agreement in good faith. The failure or negligence of the debtor resulting in default on the peace agreement with his creditors in the context of Suspension of Debt Payment Obligations also results in the debtor by law going bankrupt and having to enter into the process of managing and settling the bankruptcy scheme.

Thus, the Suspension of Obligations for Payment of Debt must be interpreted as an effort given by law to the debtor in order to be able to renegotiate the method of repayment of his debts to all of his creditors. As previously explained, the modern concept

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8 The Bankruptcy and Suspension of Obligations for Debt Payment defines the principle of going concern as the provisions in the Law on Bankruptcy and Suspension of Obligations for Debt Payment which allow prospective debtor companies to continue. For more details, see the General Explanation section of the Bankruptcy Law and Suspension of Obligations for Debt Payment.

9 See Article 178 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt.
of bankruptcy law focuses on ways to save debtors rather than destroy them, which must be implemented in the bankruptcy law system (Lin, 2018). The concept of bankruptcy referred to is also in line with the opinion of Tajti. Tajti stated that restructuring and reorganization were common goals desired by the legal system from China to Western Europe, Hungary and various countries that previously adhered to a socialist system (Tajti, 2018).


The high number of applications for Suspension of Debt Payment Obligations at 5 Commercial Courts in Indonesia does not mean that creditors have appropriately utilised the Suspension of Obligations for Debt Payment.\(^\text{10}\) Suspension of Debt Payment Obligations in the Indonesian bankruptcy system is already at a level not in a condition to make the debtor's finances healthy but aims to bankrupt the debtor. Even though it should be known, debtor bankruptcy brings various negative impacts. Suppose the public knows that a debtor as a business actor has gone bankrupt. In that case, sales from the debtor will decrease because the business partners or partners of the debtor doubt their ability to carry out their obligations. The bankrupt debtor will also find it difficult to collect his receivables because the creditors will view the bankruptcy process as justifying them for not paying their debts to the debtor (Hoff et al., 2006).

The negative impact of debtor bankruptcy will, of course, make it difficult for debtors to run their businesses, ultimately impacting the national economy. Consumers and service users of bankrupt debtors can also turn to competitors from the bankrupt debtor because there is a threat from the stable availability of goods and services and the debtor's inability to guarantee guarantees for the goods and services he sells. The impact of bankruptcy also affects the morale of the debtor workers. Bankrupt debtors will find it challenging to hire new workers or maintain their existing ones. If possible, Workers with special abilities will also switch to competing business actors from the debtor.\(^\text{11}\)

Article 222 of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt gives authority to submit applications for Suspension of Obligations for Payment of Debt to debtors and creditors. That is, creditors can apply for a Suspension of Debt

\(^\text{10}\) Maryono et al., 2022
\(^\text{11}\) Ibid.
Payment Obligations to simply collect their receivables from the debtor without considering the impact of the decision on the Suspension of Debt Payment Obligations on the debtor and stakeholders. This condition is exacerbated by the provisions of Article 235 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations law which initially stipulates that no legal remedy can be filed against a decision on Suspension of Debt Payment Obligations. Article 293 paragraph (1) of the Law on Bankruptcy and Suspension of Obligations for Payment of Debt seems to be the last nail to be hammered on the "coffin" of the debtor in the case of Suspension of Obligations for Payment of Debt, which stipulates that no legal remedy is opened for the decision on Suspension of Obligations for Payment of Debt unless otherwise stipulated in the Bankruptcy and Suspension of Obligations for Payment of Debt Laws. As a result, injustice and uncertainty arise for debtors who have good faith in Indonesian bankruptcy law.

The Law on Bankruptcy and Suspension of Obligations for Payment of Debt give authority to creditors to apply for Suspension of Obligations for Payment of Debt, but on the other hand, does not provide legal protection to debtors in the form of filing legal remedies. The one who knows best the level of soundness and business prospects of the debtor is the debtor himself. This clearly shows the government's inaccuracy in using its power because it often creates various legal products whose norms collide and overlap. As the regulator, the government often disobeys the principles and ignores the synchronization of norms both vertically and horizontally (Simamora, 2022). The disobedience of the founders of the Bankruptcy Law and Suspension of Obligations for Payment of Debt itself resulted in losses for business people because existing regulations regarding the Suspension of Obligations for Payment of Debt do not provide legal certainty and have the potential to violate a sense of justice.

Suspension of Debt Payment Obligations is not intended as a means to bankrupt the debtor's company, which is still very healthy from a financial point of view. Postponement of Debt Payment Obligations is intended to overcome problems if the debtor company experiences financial difficulties, so it has difficulty fulfilling obligations to its creditors. Thus, the debtor is expected to be able to maintain his business and be able to pay off all of his obligations to his creditors (Warren, 1987).

Postponement of Debt Payment Obligations which was initially meant to allow debtors to offer a peace plan in the context of repayment of their debts turns out to be not...
that simple in practice. Creditors may reject the debtor's peace proposal without any meaningful reasons. The debtor is by law declared bankrupt and is not given the right to make any legal remedies. The absence of a legal basis guaranteeing the debtor's right to file legal remedies against the Suspension of Obligation for Payment of Debt has caused injustice to him. This contradicts the principle of due process of law.

The principle of due process of law is related to protecting human rights. No human being may be deprived of life, freedom and property by the government without a proper legal process (Crema & Solum, 2022). One of the essential elements of due process law is the opportunity to be heard or the "opportunity to be heard or defend oneself". An essential part of the opportunity to be heard is the right to appeal against the decision handed down to him (Lobsenz, 1985). Suppose it is associated with the absence of cassation efforts against the decision on Suspension of Debt Payment Obligations which was regulated initially as such in the Law on Obligations and Suspension of Debt Payment Obligations. In that case, this contradicts the principle of due process of law. The debtor may lose his property due to a legal vacuum that allows the debtor to protect the interests of his property against a decision on the Postponement of Debt Payment Obligations. This is a critical issue to answer.

Constitutional Court Decision Number: 23/PUU-XIX/2021 answers this problem. Providing an opportunity for debtors who are submitted for Suspension of Debt Payment Obligations and whose peace proposals are rejected by their creditors is like an oasis in a desert of injustice in the process of Suspension of Debt Payment Obligations. The opportunity to submit an appeal against the Postponement of Debt Payment Obligations is indeed in line with the principle of due process of law. However, the decision of the Constitutional Court in question is not a panacea, or a "magic cure" for all problems in the Suspension of Obligations for Payment of Debts, because it has the potential to create legal uncertainty in the process of Suspension of Obligations for Payment of Debts for both debtors, creditors and administrators.

3. Practices in Comparative Countries related to Appeals/Cassation Against Reorganization Decisions

Comparative law has an essential meaning in gaining an understanding of the workings of foreign legal systems (Eberle, 2011). The insights gained help explain different viewpoints that provide a comparator with an in-depth understanding of a legal system. (Eberle, 2011) In this article, a legal comparison is used to explain how the process
of appeal or cassation against a decision of a process similar to Suspension of Obligation for Payment of Debt is in the comparator country. The intended comparison countries are the United States and France.

a. United States of America

A process similar to the Suspension of Debt Payment Obligations in the United States is known as Chapter 11 or more popularly known as reorganization. In the reorganization process, debtors continue their business rather than being liquidated to pay off debts to their creditors (Doherty, 2022). The reorganization has a significant meaning not only for debtors and creditors but also for the interests of society at large (Cervantes, 2023). Both debtors and creditors can apply for reorganization to the bankruptcy court, whose jurisdiction includes the debtor's domicile. The debtor must submit a "reorganization proposal" for approval by his creditors. The reorganization proposal approved by most creditors becomes a binding contract, along with all the legal consequences for the debtor and creditors (Contino, 2022).

Suppose there are creditors or third parties who object to the decision the bankruptcy court gave regarding the application for Chapter 11 (reorganization). In that case, the objecting party can appeal to a higher court than the bankruptcy court. (United States Courts, n.d.) The court authorized to hear appeals against bankruptcy court decisions is the district court. Under certain conditions, an appeal can be submitted to the Court of Appeals or the United States Supreme Court. Several things must be considered before filing an appeal against the reorganization decision from the United States bankruptcy court, namely:

1) A party wishing to file an appeal must notify the bankruptcy court 30 (thirty) days after the verdict is pronounced.
2) The bankruptcy court will issue a stay order, which prevents the decision from being carried out while awaiting the outcome of the appeal decision.
3) The appeal process will be conducted in a district court in the same jurisdiction as the bankruptcy court.
4) The district court will review the bankruptcy court's decision and decide whether to agree, disagree, or try its decision on its own.
5) If the district court agrees with the verdict from the bankruptcy court, the party filing an appeal may proceed to the court of appeals.
6) The court of appeals will review the decision from the district court and decide whether to agree, disagree or try the decision from the district court on its own.

7) The court of appeals decision is final and binding unless the United States Supreme Court is willing to accept the case.

This describes the appeal process against the reorganization decision in the United States. The following section will describe the appeal process against a process similar to the Suspension of Payment of Debt Obligations in France.

b. France

In France, there are two processes similar to Suspension of Obligations for Payment of Debt, namely Sauvegarde, a process that can only be requested by the debtor and redressement judiciaire, which can be requested by the debtor, creditor or public prosecutor (Bastos et al., 2022). A decision regarding the reorganization of a debtor can be appealed by creditors, shareholders or even the debtor himself. An appeal against a debtor's decision to reorganize is submitted to a court of appeal. The court of appeal will review the decision from the court of first instance.

An appeal can only be filed with a clear basis. The party submitting an appeal must prove that the court of first instance made an error in applying the law or examining the facts in its decision. For example, the appellant may argue that the court of first instance needed to correctly apply the law regarding the requirements for a reorganization application or consider all relevant evidence (Éréséo, 2014). If the court of appeal agrees with the court's decision of the first instance, the reorganization process will continue. On the other hand, if the court of appeals cancels the court's decision of the first instance, the reorganization process will be stopped.

c. Lesson Learned

Based on the description of the comparison between the United States and France above, the following lessons can be drawn:

1) Both the United States and France provide opportunities for debtors, creditors and other interested parties to appeal against the reorganization decision of the court of first instance.

2) The party submitting an appeal must be able to prove that there was an honest mistake by the judge at the court of first instance in applying the law or considering the evidence.
3) The appeal decision against the reorganization decision is final and binding for all parties interested in the reorganization case.

4. Consideration of the Indonesian Constitutional Court in Decision Number 23/PUU-XIX/2021

Decision Number 23/PUU-XIX/2021 originated from a request by PT. Sarana Yeoman Sembada, represented by Sanglong alias Samad as the Main Director to test the norms of Article 235 paragraph (1) and Article 293 paragraph (1) of the Bankruptcy and Suspension of Obligations for Payment of Debt Law which are considered detrimental to debtors. The reason for submitting the judicial review was because the debtor, as a company that was still very healthy, was decided in a state of Suspension of Debt Payment Obligations submitted by the creditor without any authority to file legal action. The debtor was dropped with the status of Suspension of Debt Payment Obligations in the fourth case decision, where three previous cases had the same side, and the same evidence was rejected.

PT Sarana Yeoman Sembada was asked for Suspension of Debt Payment Obligations three times and was refused all. However, the Medan Commercial Court granted the fourth request for the Postponement of Debt Payment Obligations on December 15, 2020. Three previous cases have tried the same subject matter, namely:

a. Decision on Case Number 30/Pdt.SusPKPU/2019/PN.NIAGA.Medan;
b. Decision on Case Number 8/Pdt.Sus-PKPU/2020/PN.NIAGA.Medan; and
c. Decision on Case Number 18/Pdt.Sus-PKPU/2020/PN.NIAGA.Medan,

Regarding this decision, PT Sarana filed an appeal for cassation on February 18, 2021, and judicial review on February 23, 2021. However, it was rejected by the Medan Commercial Court, where the Substitute Registrar stated that the reason for the refusal was based on several provisions in the Bankruptcy and Suspension of Obligation for Payment of Debt Laws, among others:

a. Article 235, paragraph (1) reads: "Against the decision to postpone the obligation to pay debts, no legal remedy can be filed."

b. Article 293 paragraph (1) reads: "that against a Court decision based on the provisions in Chapter III, this legal remedy is not open, unless otherwise provided for in this Law."
c. Article 295 paragraph (1) reads: "that against a judge's decision that has obtained permanent legal force, a request for review can be submitted to the Supreme Court, unless otherwise provided for in this Law."

Thus the debtor cannot defend himself because the Bankruptcy and Suspension of Obligations for Payment of Debt Laws do not allow legal action to either appeal or review. This is detrimental to debtors and company stakeholders whose financial condition is unhealthy. More broadly, this will be detrimental to the interests of the national economy because companies that are still healthy can be threatened with bankruptcy due to applying for Suspension of Debt Payment Obligations which ends in debtor bankruptcy.

In its legal considerations, the Constitutional Court thinks that the debtor knows the most concretely regarding financial or financial capabilities. Apart from that, corrections can also be made to court decisions on requests for Suspension of Obligations for Payment of Debt submitted by creditors as part of the control mechanism over court decisions at lower levels, in the sense that there may be a "dispute" of the interests of the parties that has contentious nuances (mutual claims). Even the judge's decision at a lower level can lead to partiality, or at least there is a possibility of an error in the application of the law by the judge. The Constitutional Court thinks that a legal remedy is required against the application for Suspension of Obligations for Payment of Debt submitted by the creditor and the offer of peace from the debtor being rejected by the creditor.

Furthermore, the Constitutional Court stated that it is essential to emphasize that creditors can still apply Suspension of Obligations for Payment of Debt (Article 222 paragraph (1) of Law 37/2004) so that it is necessary to control the excellent faith of creditors so that they do not cause harm. This is because the existence of the debtor is also part of the business actor's role in maintaining economic stability so that the continuity of his business is maintained and is not misused. That way, the legal certainty of the instrument of Suspension of Obligation for Payment of Debt can truly be realized by the spirit of the Bankruptcy and Suspension of Obligation for Payment of Debt, which is to provide legal protection for business actors so that they are not easily bankrupt.

Finally, the Constitutional Court Number 23/PUU-XIX/2021 decision determined that: “Partially granted the Petitioner's request. Declare that Article 235 paragraph (1) and Article 293 paragraph (1) Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Debt Payment are contrary to the 1945 Constitution of the
Republic of Indonesia and do not have binding legal force, as long as they are not construed, "allowing cassation against the decision on Suspension of Obligations for Payment of Debt submitted by the creditor and rejection of the debtor's offer of peace," Meanwhile, the review of Article 295 paragraph (1) of Law 37/2004 was declared rejected.

5. The decision of the Constitutional Court of the Republic of Indonesia Number 23/PUU-XIX/2021 Generates Legal Uncertainty in the Postponement of Debt Payment Obligations in Indonesia.

The decision of the Constitutional Court of the Republic of Indonesia Number 23/PUU-XIX/2021, which was initially expected to bring "fresh air" to business actors and debtors with good intentions from threats from their creditors through the Postponement of Debt Payment Obligations mechanism, in fact still brings several legal uncertainties. Even though the nature of the Constitutional Court's decision is erga omnes, it is binding on all parties, persons, state institutions, and legal entities within the territory of the Unitary State of the Republic of Indonesia(Safa’at et al., 2010). Thus, a decision by the Constitutional Court raises new questions and even legal uncertainty, but it is still final and binding for all legal subjects in Indonesia. As for several uncertainties arising from the Ruling of the Constitutional Court of the Republic of Indonesia Number 23/PUU-XIX/2021, they include:

a. Legal Uncertainty over the Material of the Case to be Examined at the Cassation Level

Suppose the debtor submits a cassation lawsuit against the decision on Suspension of Obligation for Payment of Debt handed down by the Commercial Court against him. In that case, the question arises as to what matter the case will be examined by the Supreme Court. The Supreme Court only examines the law's application by lower court judges. The Supreme Court no longer examines the facts and evidence presented at the previous trial. Therefore, Supreme Court Justices are also known as "judex jurist" (Mardatillah, 2022).

Therefore, if the Supreme Court examines and adjudicates cassation cases against the decision on Suspension of Debt Payment Obligations, does the Supreme Court only examine the application of the law at the Commercial Court level regarding the requirements for applying for Suspension of Debt Payment Obligations as stipulated in the Bankruptcy and Suspension of Debt Payment Obligations? Even though the
Constitutional Court Decision Number: 23/PUU-XIX/2021 has stated that only the decision on Suspension of Obligations for Payment of Debt was submitted by the creditor and the rejection of the request for peace from the debtor can be submitted for cassation.

Thus, does this mean that the Supreme Court must also re-examine the reasons for rejecting the peace proposals submitted by debtors to their creditors? If this is indeed the case that must be examined, then there is a shift in the meaning of the Supreme Court from being a judex jurist to becoming a judex factie. Bearing in mind that the rejection of the peace proposal has nothing to do with the application of the law but rather the conditions and facts that emerged in the trial process at the Commercial Court. Questions regarding this matter have yet to be answered in the Constitutional Court Number: 23/PUU-XIX/2021 Decision. As a result, legal uncertainty arose regarding the authority and role of the Supreme Court in examining the Cassation case against the Suspension of Obligation for Payment of Debts.

b. Legal Uncertainty over the Status of the Debtor in the event that the Cassation Request is Granted

The Supreme Court can corroborate or try its own decisions from previous courts. Suppose it relates to the decision on the Suspension of Obligation for Payment of Debt handed down by the Commercial Court. In that case, the Supreme Court has the authority to uphold the decision on the Suspension of Obligation for Payment of Debt or to try it himself. If the Supreme Court grants the cassation request against the decision on Suspension of Obligations for Payment of Debt which has fulfilled the requirements set by the Constitutional Court Decision No: 23/PUU-XIX/2021, then legal uncertainty arises regarding the status of the debtor in question.

The legal uncertainty in question is whether the debtor concerned by law cancels the status of Suspension of Debt Payment Obligations and returns to the state before the request for Suspension of Debt Payment Obligations was submitted by the creditor or the debtor remains in a state of Suspension of Debt Payment Obligations while waiting for the settlement proposal from the debtor concerned to be examined by the Supreme Court eligibility? Again, this question was not answered by the Constitutional Court Decision Number: 23/PUU-XIX/2021, thus creating legal uncertainty regarding the legal status of the debtor if the cassation against the decision on Suspension of Obligation for Payment of Debt is granted.
c. Legal Uncertainty over the Status of Management in the event that the Suspension of Obligations for Payment of Debtors' Debts is Cancelled

Debtors declared in a state of Suspension of Debt Payment Obligations are no longer authorized to manage all of their wealth independently. The debtor must be accompanied by management in carrying out all legal actions on his wealth. If the debtor is declared in a state of Suspension of Obligations for Payment of Debt by the Commercial Court, then at that time, it is also obligatory to appoint who will be the administrator of the debtor in the Suspension of Obligations for Payment of Debt.

The administrators immediately started working when they received a post-decision decision on the Suspension of Debt Payment Obligations from the Commercial Court. If the debtor submits a cassation attempt, does the management continue to work on managing the debtor's assets or wait until there is a cassation decision? The next question is, what if the Supreme Court grants the cassation referred to? This also can create legal uncertainty regarding the status of the Management previously appointed by the Commercial Court. Is the Management concerned immediately stopped from taking care of the debtor, or must wait for the results of an examination by the Supreme Court of the peace proposal submitted by the debtor? Again, the Constitutional Court Decision Number: 23/PUU-XIX/2021 did not answer this matter.

d. Legal Uncertainty regarding Service Fees for Managers in the event of Suspension of Debtor's Debt Payment Obligations Canceled

Suppose the Supreme Court grants the cassation request against the decision on Suspension of Obligations for Payment of Debt submitted by the debtor, and it is assumed that the debtor's management has been dismissed from their duties even though they have started their duties. How is the calculation of the fee for services from the said administrator? Constitutional Court Decision Number: 23/PUU-XIX/2021 also does not provide an answer to this question; however, by applying an analogy to the provisions for curator fees as stipulated in Article 3 of the Regulation of the Minister of Law and Human Rights Number 18 of 2021 concerning Guidelines for Service Fees for Curators and Administrators.

Article 3 of the Regulation of the Minister of Law and Human Rights Number 18 of 2021 concerning Guidelines for Compensation for Curators and Administrators stipulates that if a bankruptcy declaration is rejected at the Cassation or Judicial Review level, the curator's service fee shall be borne by the Bankruptcy Petitioner or the Petitioner.
and the Debtor, the amount of which is determined by the Assembly. Judge. In this case, the amount of the Curator's Service Fee is determined at Rp. 4,000,000.00 (four million rupiahs) per hour, provided it does not exceed a specific percentage value of the bankruptcy estate.

The provisions above can be applied mutatis mutandis if the request for Suspension of Debt Payment Obligations against the debtor is rejected at the Cassation level. This means the Management is given compensation based on the previous working hours in managing the debtor's assets in a state of Postponement of Debt Payment Obligations. However, more detailed arrangements are needed to ensure legal certainty regarding management fees if the Supreme Court grants the Cassation against the Suspension of Obligation for Payment of Debt.

4 CONCLUSION

Based on the description in the previous section of this article, it can be concluded that the arrangement for cassation against the Suspension of Obligation for Payment of Debt in Indonesia is an excellent effort to provide a sense of justice for the debtor as part of the principle of due process of law. Nevertheless, cassation efforts against the decision on Suspension of Debt Payment Obligations still have the potential to create legal uncertainty. Therefore, it is suggested that the Government of Indonesia immediately amend the Bankruptcy and Suspension of Debt Payment Obligations Law to include norms related to case material that can be examined, the legal status of the debtor, certainty of management fees, and legal certainty of management status in the process of cassation on a decision on Suspension of Debt Payment Obligations. This arrangement is essential so that the cassation proceedings against the Suspension of Debt Payment Obligations in Indonesia can provide a sense of legal certainty for the stakeholders involved in the Suspension of Debt Payment Obligations case.
REFERENCES


