



COMMERCIAL COURT'S AUTHORITY TO EXAMINE PKPU CASES BASED ON INTERNATIONAL DEBT AGREEMENT

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Abstract

Based on Article 1338 paragraph (1) of Civil Code, parties are given the freedom to regulate terms of agreement. However, an issue arises in the event that a foreign creditor aims to file PKPU application against debtor domiciled in Indonesia as there is choice of law and choice of forum clauses in debt agreement. The purpose of the study is to analyze choice of foreign law in PKPU cases and the authority of Commercial Court in examining PKPU cases if choice of forum has been determined. Research methodology is normative juridical, analytical descriptive research specifications, stages of research using primary legal materials and secondary legal materials, as well as data collection through literature studies and interview. The results showed that choice of law clause cannot be used as a reason for rejecting PKPU application because choice of law is set aside against coercive state provisions and there are exclusion limitations in PKPU cases according to KKMA 109/2020. In addition, Article 303 of the KPKPU Law stipulates that Commercial Court has the right to examine PKPU cases though there is a choice of forum clause.

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INTRODUCTION

Basically, every human being has the instinct to continue to fulfill their needs for living in society. To ensure that their living needs are met, it is common for people to make business as their source of livelihood in order to meet their economic needs. Regarding to business activities, it is clear that business owner needs capital to be able to carry out their business activities. Related to this, debt scheme is one of the ways for business actors to obtain capital, whether it is done by borrowing from individuals, banks, financial institutions, and so on (Fadilla, Gultom, & Rahmawati, 2022). Loan or debt schemes are commonly used by business actors either to develop or start business activities from loans they obtained, especially if the company's capital or cash is insufficient to carry out business activities. In practice, business actors often seek loans from foreign parties, whether it is from banks or

from individuals/companies that are willing to lend. This is done if the business actor has difficulty in getting enough loans from parties in their country.

Debtors and creditors enter into debt agreements with the intention that the existence of debts and receivables can be clearly proven through a written agreement. With the signing of the agreement, a legal relationship arises and legal consequences arise for the debtor and creditor, that the debtor must pay the debt according to the maturity date agreed by both parties, while the creditor must provide the loan to the debtor. With the existence of a debt scheme as a way to obtain capital, there are many cases of failure by debtors to pay their debts according to the agreement. There are various factors that prevent debtors from being able to carry out their obligations to pay off debts according to the agreed maturity date. The debtor either intentionally or unintentionally default on the debt agreement that has been made by the parties. This is a detrimental to the creditor as the party who should have get repayment of the loan that has been given to the debtor according to the maturity date in the agreement.

There are several ways to resolve these debt cases, including by deliberation for consensus, mediation, conciliation, or adjudication as an alternative to dispute resolution, also through arbitration or district courts. Methods for settling debt disputes can be included in the loan agreement based on the agreement of both parties. In the event that the debtor truly unable to pay their debts due to cash flow problems and other matters, bankruptcy law and suspension of debt payment obligations (Penundaan Kewajiban Pembayaran Utang/PKPU) exist to resolve debt cases. Bankruptcy and PKPU as debt settlement mechanisms are regulated based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (KPKPU Law). Basically, bankruptcy is a condition when a debtor is deemed unable to pay his debts to creditors (Shubhan, M.H., 2008). Based on by R. Subekti and R. Tjitrosudibio opinions in their book entitled "Legal Dictionary", bankruptcy is a condition where the debtor has stopped paying his debts (Subekti, Tjitrosudibio, 1973). KPKPU Law also regulates the definition of bankruptcy, that bankruptcy is a general confiscation of all the assets of the bankrupt debtor whose management and settlement are carried out by the curator under the supervision of the Supervisory Judge as stipulated in this law.

PKPU is also an alternative for debtors and creditors to settle debt cases. PKPU is regulated in Chapter III of the KPKPU Law starting from Article 222. In the KPKPU Law, there is no definition of PKPU, but several experts have tried to provide a definition of

PKPU. Munir Fuady gave the understanding of PKPU (suspension of payment/surveillance van betaling) as a period given by law through a decision made by Commercial Court judge, that during this period debtors and creditors are given time to discuss ways the debtors can pay debts, either in part or in whole, as well as restructuring these debts if necessary (Fuady, 2017).

In the settlement of debt cases through PKPU, the spirit shared by the PKPU mechanism is peace, that the debtor is given the opportunity to submit a peace plan proposal containing methods of payment to their creditors. Proposals for a peace plan can be submitted in bankruptcy or PKPU cases, however, in bankruptcy cases, it is intended to avoid execution of debtor's assets as a way to pay off the debtor's debts (Afriana & Mantili, 2017). If the creditor intends to submit an application for PKPU, they must be able to prove that the debtor has at least 2 (two) creditors and has not paid off at least 1 (one) debt that is due and collectible. As previously explained, written agreements are commonly used by PKPU applicants as evidence the existence of debt.

In accordance with the principle of freedom of contract contained in Article 1338 paragraph (1) of the Civil Code, the parties to a debt agreement have the freedom to enter into an agreement containing terms agreed upon by the parties, provided that the agreement is legally made, on the basis of good faith, no abuse of circumstances, and does not conflict with public order or decency (Khoiriyah & Santoso, 2017). Moreover, to avoid confusion over jurisdictions and forums if there is any dispute in the future, the parties can agree on which law and forum that will resolve the dispute over the debts of both parties. In practice, legal problems often occur when there is a choice of law and a choice of forum agreed upon by the parties to resolve cases arising from debt agreements, but on the other hand the creditor intends to get payment for receivables through PKPU by submitting a PKPU application against debtors domiciled in Indonesia to the Commercial Court, which is a court within the general justice court that has the authority to examine and decide on case for bankruptcy and PKPU applications, as well as other cases in the commercial sector (Hidayat & Afriana, 2021).

Basically, choice of law is the freedom of parties to determine which law applies in their international agreement, while choice of forum is to determine which court/forum is authorized to resolve disputes arising from agreement (Memi, 2017). Syamsudin M. Sinaga, who is a former judge of Commercial Court and former Director General of General Legal Administration at the Ministry of Law and Human Rights, stated that although there was an

exception or response from the respondent (debtor) who said that the Commercial Court was not authorized to examine and decide this case on the grounds that there is already choice of forum clause, the Commercial Court judge may reject the exception. Other clauses contained in the agreement, such as the choice of law clause, also do not need to be considered or can be set aside by the judge (Sinaga, 2012). This is because PKPU actually has legal consequences for all creditors and is different from the settlement of ordinary civil cases which are only related to the parties in dispute.

In practice, there is still a debate among practitioners in PKPU cases where there is a choice of law and choice of forum clauses in debt agreement, especially those involving foreign parties in them. This is considering that the issue regarding the applicability of choice of law and choice of forum in the PKPU case intersects with provisions of international private law in the qualifications of agreements. In reality, there is another problem, that KPKPU Law does not explicitly regulate the enforcement of choice of law in PKPU cases. Meanwhile, Article 303 of the KPKPU Law only regulates arbitration as a choice of forum, that Commercial Court still has the authority to examine and resolve bankruptcy cases from parties bound by an agreement that contains an arbitration clause, as long as Article 2 paragraph (1) of the KPKPU Law as a material requirement for the application are fulfilled (Hijriya, 2011). Regarding the problems described above, the author is of the opinion that there is concern over legal uncertainty if no clear resolution is obtained regarding the issue of choice of law and choice of forum in PKPU cases.

Researches related to bankruptcy/PKPU cases which have a foreign element/authority of the Commercial Court in it is "Kewenangan Pengadilan Niaga dalam Memeriksa dan Memutus Perkara Permohonan Pernyataan Pailit" written by Serlika Aprita (2019) which focuses more on analyzing the legal consequences of bankruptcy based on the decision of the Commercial Court to the execution of the bankrupt debtor's assets at District Court. In addition, there is a study entitled "Application of Cross Border Insolvency in Bankruptcy from the Legal Perspective of Indonesian Civil Procedure Law" written by Hendri Jayadi Pandiangan (2019), which discussed legal action that should be taken if debtor's assets are outside the Indonesian jurisdiction in the legal procedural perspective. Moreover, Shafira Hijriya (2011) researched "Kompetensi Pengadilan Niaga dalam Menyelesaikan Perkara Kepailitan yang Memuat Klausula Arbitrase", discussing the authority of Commercial Court in bankruptcy cases where the debt agreement contains an arbitration clause.

Taking into account the description above, these researches actually has differences from the research that will be discussed by the authors in terms of title, subject matter, and conclusions. This study is therefore contain novelty. Considering that this research is fundamentally different from the author's discussion regarding choice of law and choice of forum as a response to the PKPU respondent, especially since so far the authors have not found any legal journals or other legal writings that have the same topic as the author's discussion, the authors are of the opinion that it is important to study further this topic regarding choice of law and choice of forum in relation to the PKPU case, in order to create legal certainty for interested parties, as well as optimal law enforcement by authorized parties. In this matter, the author is interested in taking the following title: "Commercial Court's Authority to Examine PKPU Cases Based on International Debt Agreement" which will be analyzed by KPKPU Law and its derivative rules, as well as international private law principles. This work aims to address the following two issues: (i) Does choice of law clause in debt agreement can be used as a reason for rejecting the PKPU application? Moreover, (ii) How is the authority of Commercial Court in examining PKPU cases if choice of forum has been determined?

RESEARCH METHODS

This research employs a descriptive qualitative approach. Qualitative approach was chosen to depict and analyze the social phenomena related to the Islamic personality principles in religious court cases of inheritance which cannot be examined through quantitative methods. The study begins with data, utilizing theory as an explanatory tool, which then generates new theory. Conducted at the Jember Religious Court, the research subjects are the judges in the court. Primary data sources are obtained through the analysis of relevant verdicts, while secondary data sources include legal materials such as regulations, court judgments, books, journals, and other relevant documents.

Data collection techniques include interviews, observations, and documentation. Data analysis follows the Miles and Huberman model, consisting of data reduction, data presentation, and conclusion drawing. Data validity is ensured through source triangulation by cross-checking data credibility from various sources.(J. Moleong, 2017) The research process is divided into three stages: the pre-research stage to prepare the research plan, the research stage to collect data according to the plan, and the post-research stage to present and

analyze the data, resulting in research findings presented in the form of a scientific paper.(Sugiyono, 2019)

DISCUSSION

The In this study, the authors use a normative juridical approach that focused on the use of literature or secondary data which included primary and secondary legal materials (Soekanto, 2019). The authors use research specifications of analytical descriptive, namely by describing the results of research based on applicable laws and regulations, and aligned with the theories and habits carried out in positive law (Soekanto, 2019). This research's orientation is prescription of the legal issues that is faced (Marzuki, 2017). The study uses both legislation approach and conceptual approach. Primary legal sources are used in this study, include KPKPU Law, Decree of Supreme Court Chairman Republic of Indonesia Number 109/KMA/SK/IV/2020 concerning Enforcement of the Guidebook for Bankruptcy and Suspension of Debt Payment Obligations Cases Settlement (KKMA 109/2020), and principles of private international law. Books, draft legislation, research findings, and other resources pertaining to legal topics in this study are used as secondary legal materials, whereas secondary legal materials used to explain primary legal materials (Soekanto, 2021). The researches use a data analysis method in the form of qualitative normative juridical analysis, normative because it focuses on laws and regulations that apply as positive legal norms, while qualitative because data analysis is carried out by means of literature studies and interviews.

RESULT AND DISCUSSION

Choice of Law as a Reason for Rejecting PKPU Applications

As for providing legal certainty regarding the agreement that has occurred, written agreements are important for the parties to make in order to create justice, order, and legal certainty (Sinaga, 2018). For parties who have legal standing in different countries, it is very customary to determine the choice of law or law that applies to the agreement. The main purpose of regulating the choice of law is to uphold the interests of the parties to the agreement. With the discretion to set the provisions of the agreement based on the principle of freedom of contract, the parties are free to determine parameters of the contract, including how the dispute will be resolved with the intention of making it easier for parties in the event of a dispute arising from the agreement in the future.

The problem arises when a choice of law has been determined on debt agreements involving parties domiciled in Indonesia with foreign party, but the law chosen by the parties is the law of the country where the creditor is and not where the debtor is located. This raises the urgency of reviewing which laws should apply in the event of a dispute in the form of default by debtors on their debts in accordance with the stipulated agreement. This also raises a question, namely in the event that the dispute is resolved according to the law in the creditor's country, whether the settlement will apply and bind the debtor who is not domiciled in that country.

When there is a default by the debtor, creditors can seek their rights through ordinary civil and special civil case settlement mechanisms, that the opening of case resolution through bankruptcy or PKPU in the event that the debtor's cash flow is not qualified to pay its debts to creditors. Referring to the choice of law that has been agreed upon by the parties in the debt agreement, resolving cases through ordinary civil law mechanism can refer to the choice of law, but because the choice of law is not in the debtor's country as a potential defendant in the case, it is necessary to analyze which law should apply and whether the case can be resolved according to the law in the debtor's country.

In the event that the applicant intends to propose a PKPU application, namely debt restructuring based on the peace plan submitted by the debtor, the evidence that will be used by creditors as PKPU applicants is evidence of debt originating from agreements and regulations, considering that the KPKPU Law adheres to the broad definition of debt based on Article 1 point 6 of the KPKPU Law, that debt in KPKPU Law is an obligation expressed or can be expressed in an amount of money both in Indonesian currency and foreign currency, either directly or debt that will arise in the future or contingent, which arises due to an agreement or law and which must be fulfilled by the debtor and if not fulfilled it gives the right to the creditor to get its fulfillment from the debtor's assets. Especially for debt agreements which there is an existence of different legal standing between the parties, it will raise questions if the choice of law is not Indonesian law as the debtor's position country, while PKPU is submitted by creditors to the Commercial Court which basically has the right to examine and decide based on KPKPU Law and other positive Indonesian laws. This often causes debate between the parties, whether the respondent can filed an exception that Commercial Court is not authorized to examine and decide the case considering that the choice of law that was already chosen by the parties in foreign law.

Basically, the basis for the determination of choice of law is principle of freedom of contract which according to Indonesian positive law is regulated in Article 1338 paragraph (1) of the Civil Code, that the parties to the debt agreement have the freedom to enter into an agreement containing the provisions agreed by the parties, provided that the agreement is made legally following the provisions of Article 1320 of the Civil Code regarding the legal terms of the agreement, on the basis of good faith, and not contrary to public order or decency. Side by side with the principle of freedom of contract, in regulating choice of law it is also necessary to pay attention to the limitations and provisions of a choice of law that can be used by the parties, namely: (1) choice of law must not conflict with public order; (2) selected and used in good faith; (3) the parties can only determine the choice of law within the scope of agreement and cannot be determined for other areas of law; (4) choice of law does not apply to the scope of employment agreement; (5) choice of law is prohibited from contradicting civil law regulations of a public law nature; (6) the choice of law must not conflict with regulations regarding foreign exchange traffic, exports, and house rents; and (7) not regulated with the intent to engage in legal smuggling (Memi, 2017).

The existence of limitations as a guideline for the parties aims to ensure that the agreement can be effective and legally enforced, so that the flexibility of the parties to choose choice of law clause that applies is not completely limited. Countries around the world should not object to such restrictions, given that their choice remains valid as long as it does not conflict with their own national legal systems. Looking at some countries such as the Netherlands and the United States, legal restrictions on this option in many countries can be found. The need for choice of law and choice of forum in the United States must be related to the agreement and must not violate the laws in force in the United States (Praiugo, 2020). Regarding the limitations mentioned above, it is clear that there is a prohibition on choice of law contrary to public order and intended for legal smuggling by regulating choice of law in an agreement, but in practice, there is a submission from the respondent PKPU regarding choice of law in debt agreements that do not refer to the position of Indonesian debtors, saying that cases should be resolved not based on Indonesian law through Commercial Court. In reality, there is a disparity in the judge's decision, which there is a difference in the judge's consideration and decision regarding the exception choice of law. Referring to the limitations of choice of law, that although the principle of freedom of contract provides justification for the parties to determine rules that will be set forth in the agreement of both parties, choice of law must still not be contrary to public order and is intended for legal smuggling. That is, the

choice of law must not override coercive provisions. In the event that the choice of law determined by the parties conflicts with the positive law of Indonesia as the debtor's country of position, then choice of law cannot be applied to the case, so it needs private international law to answer which law should be used.

According to private international law, in determining which law will be used to resolve cases is to determine the point of link. First of all, it must be seen as to the primary link point, that the case does have a foreign element and is a private international law event. Qualifications are carried out on the existing facts, i.a.: nationality, ship and aircraft flags, legal domicile, residence, nationality, and choice of law (Purwadi, 2016). In cases involving legal entities as litigants, it can be seen whether the legal domicile of both parties is different countries and whether the parties have chosen a choice of law because the two parties have different state positions. After obtaining the fact that there is a primary link point and the event is a private international law, then it is necessary to collect facts that will later determine which law applied to resolve the case (secondary link point). The way to determine the applicable law is to involve ship's flag, nationality, domicile, permanent residence, or place of origin of the legal subject, the location of the object, location of the legal act (*locus actus*), location of the emergence of implementation of the agreement (*locus solutionis*), the location of the official legal act (*locus celebrationis*), and the location where the lawsuit is filed (*locus forum*).

For parties who had agreed, especially to a debt agreement, it is important to see the position/residence of the debtor (the basis of presence) and the place where the debtor's property is located (principle of effectiveness), so that the law to be used will be able to effectively resolve the case and the decision can be executed (*executable*). In the event that the debtor is domiciled and the debtor's property is located in Indonesia, based on private international law, the most appropriate choice of law used by both parties in resolving cases is Indonesian law, so that creditors can seek payment of debts owned by debtors through ordinary civil procedural law and special civil such as bankruptcy and PKPU. This is also based on the fact that Indonesian procedural law recognizes the principle of *sequitur forum rei* and *lex rei sitae* which emphasizes the residence/position and property of the defendant. Meanwhile, if the creditor can estimate the respondent's inability to continue paying its debts and intends to settle the case through PKPU based on Indonesian law against the debtor, there are conditions for granting the PKPU application that must be considered by the creditor as the applicant in this case.

The conditions are: (1) PKPU applications are submitted by debtors who have more than 1 (one) creditor or by creditors (Article 222 paragraph (1) of the KPKPU Law); (2) PKPU applications are filed against debtor who are expected to be unable to continue paying their overdue and collectible debts, in order to open the possibility of debtors submitting a peace plan containing an offer to pay part/all of the debts to its creditors (Article 222 paragraph (2) jo. Article 222 paragraph (3) of the KPKPU Law); (3) there are facts or circumstances that are proven simply that the requirements as referred to in Article 2 paragraph (1) of the KPKPU Law have been fulfilled (Article 8 paragraph (4) of the KPKPU Law); (4) the applicant has legal standing in submitting a PKPU application in accordance with Article 2 of the KPKPU Law; (5) PKPU applications must be submitted to the Court as referred to in Article 3 of the KPKPU Law, signed by the applicant and by their advocate (Article 224 paragraph (1) of the KPKPU Law); and (6) the jurisdiction of Commercial Court as the forum where the PKPU application is filed is appropriate and in accordance with the Presidential Decree of the Republic of Indonesia Number 97 of 1999 concerning the Establishment of Commercial Courts in Ujung Pandang District Court, Medan District Court, Surabaya District Court, and Semarang District Court (Aprita, 2019).

If above material and formal requirements have been met, the PKPU application should be granted by the Commercial Court judge, considering the nature of PKPU evidence which is simpler than the mechanism for settling debts through ordinary civil law settlement. The exception regarding choice of law filed by the respondent stating that Commercial Court should not have the right to examine and decide case because choice of law has been agreed by both parties in the debt agreement should also not be accepted by the severing judge. This also refers to the provisions of KKMA 109/2020 which regulates exceptions in PKPU cases, that PKPU respondents can only file exceptions when it relates to court competence. Court competence means that the court has the authority to examine and decide cases on the basis of authority and imposition of duties (absolute competence) and jurisdiction (relative competence). In this case, choice of law is not about the absolute competence or relative competence of the court, but about the law used in resolving cases, so the exclusion of choice of law should not be acceptable.

In conclusion, choice of law cannot be used as a reason for rejecting PKPU applications because there are limitations to choice of law can be used that choice of law cannot override coercive provisions from the state, the enactment of legal determinations that will be used to resolve cases through secondary link points (referring to the place of residence

of the debtor and the debtor's property located), and there are limitations on exceptions in PKPU cases, which is court competence.

The Authority of Commercial Court in Examining PKPU Cases Which Contained Choice of Forum Clause in Debt Agreement

Based on Article 8 paragraph (4) of the KPKPU Law, PKPU adheres to the nature of simple proof. Simple proof in this case is by proving the fact that debtor has two or more creditors who have at least one debt that has matured and the debt can be collected. Simple proof in this case is referred to as summative proof (Andani & Pratiwi, 2021). As for PKPU ruling, it basically applies to all creditors of PKPU debtors, that all debts owned by creditors are restructured by pouring new debt payment provisions through a peace plan that will be submitted by debtor to creditors. In Indonesia, there is a special court under the District Court that has absolute authority to examine and decide business-related cases including bankruptcy and PKPU. The basis for the establishment of Commercial Court is stated in Article 25 paragraph (1) jo. Article 27 of the Law Number 48 Year 2009 concerning Judicial Power (Law on Judicial Power), that a special court under the Supreme Court can be established under the general court, religion court, military court, and state administrative court. The explanation of Article 27 paragraph (1) of the Law on Judicial Power states that the special court includes Commercial Court. The establishment of the Commercial Court itself refers to the Presidential Decree of the Commercial Court and the authority of Commercial Court to handle bankruptcy cases and PKPU refers to Article 1 point 7 of the KPKPU Law which stipulates that the court referred to in the KPKPU Law is Commercial Court.

Talking about choice of forum clause and its applicability to PKPU, Article 303 of the KPKPU Law has stipulated the elimination of resistance from PKPU respondent that Commercial Court is not authorized to examine and decide PKPU cases because of the choice of forum that has been chosen by the parties to the agreement, therefore even though there is a choice of forum clause, Commercial Court retains authority. Article 303 of the KPKPU Law is as follows: "The court remains authorized to examine and resolve applications for bankruptcy statements from parties bound by agreements containing arbitration clauses, as long as the debt on which the application for bankruptcy declaration is based has fulfilled the provisions referred to in Article 2 paragraph (1) of this Law."

The provisions of the KPKPU Law, which apply *mutatis mutandis* for bankruptcy and PKPU cases (unless otherwise stipulated), means that in PKPU cases, these provisions remain

in effect. In general, it can be seen that Article 303 of the KPKPU Law does not regulate in a limited way that choice of forum can not be ruled out to the authority of the Commercial Court, where arbitration is interpreted as a forum that is more specialized than ordinary courts, therefore the Commercial Court remains authorized even though the choice of forum is an institution other than arbitration. As for Article 3 paragraph (1) jo. Article 224 paragraph (1) of the KPKPU Law, the PKPU application must be submitted to the Commercial Court whose jurisdiction includes the area where the debtor's legal seat is, taking into account that PKPU application must be signed by the applicant and by their advocate. Referring to the regulation, it is clear that Commercial Court is given absolute authority to examine PKPU cases.

On the other hand, private international law has determined that there are limits to which choice of forum can be used. Based on the theory put forward by Huala Adolf, the limitations/provisions for the parties in determining the choice of forum are as follows: (1) it must not be an element of fraud, which good faith becomes a principle that must exist for the parties in making and agreeing on a forum that will be used in resolving cases arising from the agreement; (2) limitation of the authority of court in examining and deciding on the subject matter, referring to the absolute competence possessed by the court; (3) limitation of the authority of court in resolving cases that occur to the parties who have a dispute, namely related to restrictions on the authority possessed by the court; (4) forum non-conveniens, that the court has authority to not accepting to examine a case if there is another court/forum that is more appropriate as the institution that resolves case; (5) other forums have the authority to examine if choice of forum agreed by the parties is ineffective/unpassable/impossible to resolve the case that occurred; and (6) choice of forum must not violate public order (Adolf, 2010). The point that can be highlighted regarding this limitation is that the choice of forum cannot override the authority possessed by the more appropriate court in resolving cases, nor can it conflict with the public order of the state parties.

According to Indonesian positive law as the seat of the debtor, there is Article 118 HIR which regulates where the lawsuit must be filed, which is known as the principle of *sequitur forum rei* that the lawsuit is filed in the court in the jurisdiction of the defendant's residence (Randang, 2016). More specifically for bankruptcy and PKPU cases, Article 3 paragraph (1) of the KPKPU Law states that decisions on bankruptcy declaration applications and other matters related to and/or regulated in KPKPU Law decided by courts whose jurisdiction includes the area of debtor's legal seat. The court that is referred in the law refers

to Article 1 point 7 of the KPKPU Law is Commercial Court which is under the general judicial environment.

Furthermore, it is necessary to examine in advance whether a decision issued by a foreign court can apply and have legal consequences in other countries. There are 2 principles in each country, namely principle of territoriality and principle of universality. The principle of territoriality limits the validity of a decision outside the country. According to this principle, it only concerns parts of the property located within the territory of the state where the decision is made. Meanwhile, the principle of universality recognizes that a decision applies throughout other country. According to this principle, a decision that has been decided by a country has legal consequences anywhere, wherever a person is declared bankrupt and also his assets (Ervinna, 2015). In this case, countries have different principles, so it must be analyzed whether Indonesia adheres to the principle of territoriality or universality. Basically, a judgment issued by a court in other state cannot be executed in another, unless both countries are subject to an international treaty which stipulates that judgments can be recognized and executed in state parties to the international treaty. This is known as the principle of state sovereignty and the principle of reciprocity in international law.

Until now, Indonesia has not been a party to an international treaty that provides for this, therefore court decisions made by courts outside Indonesia cannot be executed in Indonesia. Talking about foreign court rulings in Indonesia, it is clearly stipulated in Article 436 RV that for decisions issued by foreign courts there is no executory power in Indonesia, because a court decision issued by a judge in a particular country is a reflection of the sovereignty possessed by that country, so that if it has been determined by the parties regarding settlement of disputes arising from the agreement and the case is decided by a foreign court, the decision cannot be executed in Indonesia referring to Article 436 RV.

That way, choice of forum clause cannot be used as a reason to reject PKPU applications, so the Commercial Court remains authorized to examine and decide PKPU cases against debtors who are legally domiciled in Indonesia, considering the provisions of Article 303 of the KPKPU Law which overrides the choice of forum clause in PKPU cases, absolute authority possessed by the Commercial Court based on Article 3 paragraph (1) jo. Article 224 paragraph (1) of the KPKPU Law, provisions/limitations of choice of forum clause can be used, that choice of forum cannot override the authority possessed by the court

that is more appropriate in resolving cases, and the decision cannot be executed if it is issued by a foreign court outside Indonesia.

CONCLUSION

Choice of law clause cannot be used as a justification for rejecting PKPU application because choice of law cannot conflict with the state's coercive provisions and considering exception's limitations in PKPU cases as per KKMA 109/2020. Additionally, the provision in Article 303 of the KPKPU Law stipulates that choice of forum clauses in debt agreements are not applicable in PKPU, thus the Commercial Court is still entitled to examine on PKPU cases even if there is a choice of law and/or choice of forum clause. Regulations regarding the applicability of the choice of law for bankruptcy and PKPU cases should be further regulated in the KPKPU Law, so that there is no longer any confusion about whether PKPU can be used as an attempt by foreign creditors to obtain their receivable by submitting a PKPU application to the Commercial Court using Indonesian law, and it is necessary to review Article 303 of the KPKPU Law which previously only regulated arbitration as choice of forum. It should be regulated more generally that any choice of forum does not override the absolute authority of the Commercial Court in examining and deciding on bankruptcy and PKPU cases where the debtor is domiciled in Indonesia.

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