

The Annulment of Homologation in the Case of PKPU Application of Intidana Savings and Loan Cooperative in Review of Law Number 37 of 2004

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Abstract: The purpose of this research is to find out the annulment of homologation in the case of a PKPU application for KSP Intidana in terms of Law No. 37 of 2004. This research method is normative juridical which is guided by primary legal materials and secondary legal materials contained in a legislation. The results of the research show that first, the action of not accepting the annulment of homologation on the basis that the application submitted was premature is not in accordance with the provisions of the KPKPU Law because the concept of negligence as a reason for homologation annulment in the KPKPU Law is interpreted as an action where the debtor really does not fulfill the clauses agreed upon in the composition agreement, not waiting until the payment deadline expires. Secondly, the judge's action in not accepting the homologation annulment request submitted by KSP Intidana's creditors was inappropriate because it did not fulfil one of the principles of the decision in which the judge's decision must contain a clear basis.

Abstrak: Tujuan penelitian ini yaitu untuk mengetahui pembatalan homologasi dalam perkara permohonan PKPU koperasi simpan pinjam intidana ditinjau dari UU No 37 Tahun 2004. Metode penelitian ini yaitu yuridis normatif yang berpedoman pada bahan hukum primer dan bahan hukum sekunder yang terdapat di dalam suatu peraturan perundang-undangan. Hasil penelitian menunjukkan pertama, tindakan tidak diterimanya pembatalan homologasi atas dasar bahwa permohonan yang diajukan prematur tidak sesuai dengan ketentuan UU KPKPU karena konsep lalai sebagai alasan pembatalan homologasi dalam UU KPKPU diterjemahkan sebagai tindakan di mana pihak debitor benar-benar tidak memenuhi klausul yang telah disepakati di dalam akta perdamaian, bukan menunggu hingga batas waktu pembayaran berakhir. Kedua, tindakan hakim yang tidak menerima permohonan pembatalan homologasi yang diajukan oleh kreditor KSP Intidana adalah tidak tepat karena tidak memenuhi salah satu asas putusan di mana putusan hakim harus memuat dasar yang jelas.



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INTRODUCTION

In the current era of globalisation, people are increasingly trying to improve their ability to achieve the goals they dream of, by prioritising the principles of effectiveness and efficiency in terms of time and cost (Hasmawati, 2013). Community orientation that prioritises the principles of efficiency and effectiveness of time and cost has an impact on business licensing which is increasingly facilitated. The easier business licensing currently has implications for the increasing number of cooperatives established in Indonesia with increasingly diverse types of businesses. Recorded as of 2020, the number of cooperatives established in Indonesia touched 127,124 units (Annur, 2021).

One type of cooperative whose role is very close to fulfilling the daily needs of the community is a savings and loan cooperative. If you look at the definition of a savings and loan cooperative according to R.T. Sutyanta Rahardja Hadhikusuma, a savings and loan cooperative or known as a credit cooperative is one type of cooperative whose main activity is to provide storage and lending services for its members with the aim of advancing the welfare of its members (Hadikusuma, 2021). Savings and loan cooperatives can also be referred to as intermediary institutions that have a role to raise funds and channel them back to the community in accordance with the values and principles embedded in cooperative institutions.

With the increasing number of cooperatives in Indonesia, it does not mean that this economic institution is free from existing problems. The more cooperatives that are established today, the more problems that cooperatives have to face. One of the problems that many savings and loan cooperatives have faced lately is the problem of default. Generally, this default problem

occurs between savings and loan cooperatives and their members. The causes of default cases in savings and loan cooperatives are quite diverse, one of which is due to the Corona Virus Disease 2019 pandemic (hereinafter referred to as "Covid-19").

The impact of the decline in Indonesia's economic stability that occurred due to the Covid-19 pandemic caused the economic sector to collapse, misplacement of investment products, and internal problems of cooperative administrators that caused losses to its members. One of the saving and loan cooperatives that experienced liquidity difficulties that resulted in default of repayment of term deposits to its members was the KSP Intidana.

On 3 September 2015, KSP Intidana was granted a postponement of debt payment obligations (hereinafter referred to as "PKPU") by the Commercial Court at Semarang District Court, which was previously filed by Henry George Surjokentjono and friends. Upon the granting of the PKPU application, KSP Intidana and its creditors then agreed to sign a Agreement of Composition dated 7 December 2015 which was then accepted and ratified (homologated) on 17 December 2015. However, it later turned out that there were several other creditors who felt that their rights were harmed due to the clauses in the Agreement of Settlement dated 7 December 2015 which were not implemented in good faith by KSP Intidana. These creditors then filed a petition for annulment of the Agreement of Settlement dated 7 December 2015 which had previously been registered at the Commercial Court at Semarang District Court. However, despite clear indications of evidence that KSP Intidana had not fulfilled the provisions contained in the Agreement of Composition dated 7 December 2015

towards its creditors, the judge of the Commercial Court at the Semarang District Court rejected the request for annulment of the homologation of the Agreement of Composition dated 7 December 2015 by stating that the request of the creditors of KSP Intidana could not be accepted (*niet ontvankelijke verklaard*) because it was considered that this request was premature.

If there are indications of violations of the contents of the composition agreement, then based on the provisions in Article 170 paragraph (1) of the KPKPU Law, creditors who feel that the debtor does not have good faith or is negligent in fulfilling the contents of the composition agreement can submit a homologation annulment to the Commercial Court. Furthermore, to fend off the request submitted by this creditor, the debtor must prove that he was not negligent in fulfilling the contents of the composition agreement. If the judge grants the annulment of the homologation of the composition agreement, then in the same decision the debtor must be declared bankrupt and the debtor will automatically be in a state of insolvency (Anwar, 2010). A composition agreement that has been cancelled through a court decision no longer has binding force for both parties.

In the case of the application for annulment of the KSP Intidana composition homologation, the inadmissibility (*niet ontvankelijke verklaard*) of the application for annulment of the homologation submitted by the creditors of KSP Intidana means that the application is not followed up by the judge to be examined and tried. By not being followed up to examine and adjudicate the application of the creditors of KSP Intidana, a new problem arises where this condition can cause uncertainty about the return of creditors' receivables that have matured and the protection of creditors' rights arising from the homologation of the Agreement of Composition dated 7 December 2015.

RESEARCH METHODS

This research uses a normative juridical writing method that is guided by primary legal materials and secondary legal materials contained in a legislation. In this research, the research specification used is a descriptive analytical specification in which this specification is carried out by describing the facts on the problem under study. The data collection techniques used by researchers in this research are in the form of literature studies by searching for data as complete as possible from secondary data derived from primary and secondary legal materials that are relevant to related issues, then qualitative analysis is carried out.

RESULTS AND DISCUSSION

Analysis of the Non-Acceptance of the PKPU Petition of KSP Intidana's Creditors by the Commercial Court

One of the alternative methods provided for debtors who have defaulted on their debts that are due and collectible is through the PKPU mechanism. Based on the provisions of the KPKPU Law, PKPU provides a period for debtors, through a judge's decision, to conduct deliberations with their creditors regarding the procedure for paying all or part of their debts. This also includes a mechanism for restructuring all or part of the debts that have matured and are collectible.

In the timeline of debt repayment, if the debtor feels that he is unable to continue paying his debts, then he can apply for PKPU to the Commercial Court. The purpose of PKPU itself is essentially to achieve a composition between the debtor and the creditor and to avoid the debtor being in a state of bankruptcy and insolvency.

PKPU will be said to be useless if the parties do not actually implement the agreed composition. (Munir, 2010)

Composition in PKPU is realised in the form of a composition plan which generally contains offers from debtors to creditors regarding related debt restructuring programmes. The agreement regarding debt restructuring will lead to the formation of a composition agreement containing an agreement between the debtor and the creditor regarding the termination of the debtor's debt dispute (Munir, 2010).

Composition agreements here have the same concept as agreements in general. The composition agreement will only be considered valid and binding if it fulfils the legal requirements of the agreement contained in Article 1320 of the Indonesian Civil Code, which must contain the following elements:

1. Agreement to bind themselves (consensus)

This element will be fulfilled if the debtor and creditor really bind themselves in the agreement of their own free will and without any element of coercion (*dwang*), mistake (*dwaling*), and fraud (*bedrog*).

2. Capability to enter into an agreement (capacity)

This element will be fulfilled if the debtor and the agreed creditor are legal subjects who are capable of performing a legal act according to the provisions in civil law. This requirement will be fulfilled if the debtor is at least 21 years old and is not under guardianship.

3. The existence of a certain thing (certainty of terms)

This element will be fulfilled if the object in the composition agreement is clearly stated so as to provide certainty for both parties related to the implementation of the composition agreement concerned.

4. The existence of a lawful cause (legality)

This element will be fulfilled if in its making, the entire contents of the agreement do not conflict with the provisions in the existing positive law,

consisting of applicable laws and regulations, decency, and public order.

In addition to fulfilling Article 1320 of the Indonesian Civil Code, there are additional requirements mandated by the KPKPU Law for a composition agreement to be valid and binding for the debtors and their creditors. A composition agreement must fulfil:

1. The approval of more than 1/2 (half) of the total number of concurrent creditors whose rights are recognised or temporarily recognised present at the meeting of creditors as referred to in Article 268 including creditors as referred to in Article 280, which together represent at least 2/3 (two-thirds) of the total recognised or temporarily recognised claims of the concurrent creditors or their proxies present at the meeting;
2. Approval of more than 1/2 (half) of the total number of creditors whose debts are secured by pledge, fiduciary guarantee, mortgages, mortgages, or other property collateral rights present representing at least 2/3 (two-thirds) of the total receivables of such creditors or their proxies present at the meeting.

If the composition agreement has met the requirement of the creditors' voting approval, then the composition agreement must be ratified (homologated) by a judge at the Commercial Court. The Commercial Court is obliged to homologate a composition agreement. However, this provision can be waived if there are reasons that can be used to refuse the ratification of the composition agreement relating to the implementation of the composition agreement, the process of forming the composition agreement, or if the debtor's assets are not sufficient to guarantee the fulfilment of the receivables from its creditors.

If a composition agreement has been homologated by a judge at the Commercial Court, then the composition agreement will be binding for all creditors in the PKPU process. With the binding of the composition agreement for all creditors, the creditors automatically have rights and obligations arising from the enactment of the agreement. A valid and binding composition agreement applies like a law between the parties, in this case the parties in question are debtors and creditors (Sitio & Tamba, 2001).

In the event that one of the parties, especially the debtor, fails to fulfil the contents of the composition agreement, the debtor's actions can be categorised as default. If we look at the provisions contained in Articles 1243 and 1244 of the Indonesian Civil Code which regulate the provisions of default, if one of the parties to the agreement is in default, the party who feels aggrieved can file a lawsuit for compensation with the court. Default as one of the void conditions is always considered to be included as a void condition in an agreement so that the party who feels aggrieved due to the act of default can apply for annulment of the agreement. Because this provision is a regulating provision in the Indonesian Civil Code, it can be overridden if the parties to the agreement agree to override the provisions contained in Article 1266 of the Indonesian Civil Code.

In the case of PKPU, if there is a default or negligence committed by the debtor to its creditors, the aggrieved creditor can submit a request for annulment of homologation to the Commercial Court. In such a case, the party with the right and authority to determine whether or not a default has occurred is the judge. Furthermore, if the Commercial Court accepts the request for annulment of the homologation, then the judge at the Commercial Court is obliged to cancel the homologation agreement with clear reasons in the court decision regarding

the annulment of the homologation concerned. In the event that the Commercial Court accepts the annulment of the homologation, the parties to the cancelled composition agreement must return everything to its original state as if the agreement had never occurred.

In the PKPU case experienced by KSP Intidana, the creditors in the PKPU case of KSP Intidana filed a request for annulment of the Composition Agreement dated 7 December 2015 which had been homologated by the Semarang Commercial Court. The reason why the creditors filed for the annulment of the composition agreement to the Semarang Commercial Court was because the Composition Agreement dated 7 December 2015 contained a clause that did not provide legal certainty regarding the payment of the creditors' receivables by KSP Intidana. The clause in question is contained in the third sheet of Article 4 letter (a) in the Agreement of Composition dated 7 December 2015, which states that:

"Creditor (member) refunds are returned within a period of 5 (five) years without interest and in stages as follows: Nominal IDR50.000.001 (fifty million one rupiah) and above will be paid starting from the 61st month via transfer."

Based on Article 4 letter (a) in the Agreement of Settlement dated 7 December 2015, it is stated that the payment of receivables with a value above IDR 50.000.001 (fifty million one rupiah) and above will be made in the 61st month, namely in January 2021. If calculated mathematically, it is clear that there is information that the repayment for creditors who have receivables with a nominal value above IDR 50.000.001 (fifty million one rupiah) will only be made when it has passed the 5 (five) year period as stated in the initial part of Article 4 letter (a) in the Agreement of Composition dated 7 December 2015. This

causes the creditors of KSP Intidana as well as the applicants for annulment of composition in the case a quo will only be able to receive installments of repayment of their receivables starting in the 61st month after the composition agreement is homologated or more clearly in January 2021. This provision contradicts the clause at the beginning of Article 4 letter (a) in the Agreement of Composition dated 7 December 2015 which states that the debtor's receivables will be returned within 5 (five) years without interest and gradually.

The non-acceptance of the homologation annulment in the KSP Intidana case can be analysed by elaborating on the following points:

1. *The Concept of Negligence as a Reason for Annulment of Homologation Based on KPKPU Law in the PKPU Case of KSP Intidana*

In the case of a request for homologation annulment submitted by cooperative members as creditors as well as applicants in the case a quo, the request for homologation annulment was submitted on the grounds that the debtor had been negligent in fulfilling the composition agreement a quo. However, the judge at the Commercial Court stated that the application could not be accepted on the grounds that the application submitted by the members as creditors of KSP Intidana was premature. This is in relation to the Composition Agreement dated 7 December 2015 which states that the payment of the refund for the creditors who filed the application for annulment of homologation will only be paid when the 61st month has passed after the Composition Agreement was ratified. Since the application was submitted to the Commercial Court before the 61st month after the approval of the Agreement of Settlement, the judge declared the application inadmissible on the grounds that it was premature.

Article 170 paragraph (1) of the KPKPU Law provides the right for creditors in PKPU who feel aggrieved by their debtor because the debtor has failed to fulfil the composition agreement to submit a request for annulment of homologation to the Commercial Court. The full text of the article is as follows:

"Creditors may demand the annulment of a ratified composition agreement if the debtor fails to fulfil the contents of the composition agreement."

Based on this article, negligence is the main element that can underlie a request for annulment of the homologation of a composition agreement in court. The concept of negligence based on Article 170 paragraph (1) of the KPKPU Law above is interpreted as an action in which the debtor really does not fulfil the clauses agreed upon in the composition agreement. According to J. Satrio in one of his writings, the focus of the concept of negligence is on how a person declares his debtor in a state of negligence. The condition of 'being in a state of negligence' can have major consequences in a case, especially to give rise to the right for the creditor to demand the annulment of an agreement (Suparman, 2004).

If we look at the definition and concept of negligence in the KPKPU Law and then relate it to the case of a request for annulment of the homologation of the KSP Intidana agreement, negligence can be connoted as an action taken by the debtor (in the case a quo is KSP Intidana) without having to wait until the 5 (five) year time limit expires in accordance with the Composition Agreement dated 7 December 2015. With the act of negligence committed by KSP Intidana in terms of returning the receivables of its creditors based on the return scheme in the Agreement of Composition a quo, the judge should have granted the application submitted by the creditors of KSP Intidana, considering that the concept of negligence in PKPU is not

waiting until the payment deadline ends, but when there is an action that is not in line with the contents of the composition agreement, then it can already be categorised as negligence (Hasmawati,2013).

2. *The Agreement of Settlement in PKPU should provide certainty regarding payment for creditors.*

A composition agreement should be able to provide certainty in terms of returning receivables for creditors. This is because composition in PKPU is an effort taken to provide clarity on the settlement of debtors' debts to their creditors. The single composition principle adopted by the KPKPU Law makes composition in PKPU an exclusive matter because a composition plan can only be submitted once and if the composition plan is rejected, based on Article 289 of the KPKPU Law, the debtor can no longer submit a composition plan to its creditors.

Therefore, in preparing the composition plan, the debtor should pay attention to the following matters to be included in the agreement of composition (Subhan,2008):

- a) An offer that contains a win-win solution for both parties in the restructuring scheme;
- b) A clear description of the amount and value of the debt;
- c) Must include a clear grace period; and
- d) There is certainty that the composition of the debt payment offered can be executed reasonably without taking a long time.

In the a quo case, there was a mistake by the debtor in the content of the a quo Composition Agreement, where the debtor provided a scheme to return the creditors' receivables in the 61st month after the a quo Composition Agreement was ratified, whereas in the previous provision it was stated that the payment period was scheduled to be completed within 5 (five)

years. This provision will certainly create uncertainty regarding the repayment of creditors' receivables in the a quo case due to the unclear deadline for the return of receivables from KSP Intidana's creditors.

Considering that the purpose of composition in PKPU is to create certainty in the payment of creditors' receivables, it is appropriate for debtors to include a clear and appropriate grace period in the agreement of composition with their creditors. In the case of the petition for annulment of KSP Intidana's homologation, because one of the clauses in the composition agreement contains elements of negligence, it can basically be concluded that the composition agreement does not provide sufficient certainty of payment for KSP Intidana's creditors regarding the payment of their debts (Kusumaatmadja,2002).

Basically, the existence of errors in the making of the composition agreement theoretically has not fulfilled the provisions of the valid requirements of the agreement based on Article 1320 of the Indonesian Civil Code which implies that one of the subjective valid requirements in the formation of an agreement is an agreement to bind themselves. This consensus requirement must occur between the parties in an agreement without any element of coercion (dwang), mistake (dwaling), and fraud (bedrog). Because the agreement contains an element of error committed by the debtor in making the agreement, it is appropriate that the agreement can be cancelled by one of the parties who feels that this condition is not fulfilled.

Analysis of the Commercial Court Decision that Declared the Application of KSP Intidana's Creditors Not Accepted Without Considering Evidence of a Breach of the Composition Agreement

Composition in PKPU aims to provide time certainty regarding the payment of creditors' debts from debtors. On the other hand, composition in PKPU gives debtors the opportunity to restructure their debts that are due and collectible to creditors. Therefore, the reconciliation in PKPU must contain substances that are favourable to both parties and should not make one party feel that the implementation of the reconciliation is considered one-sided (Mulhadi,2019).

In practice, the implementation of composition in PKPU does not always run smoothly. If you look at the many PKPU cases that have occurred, some of them have experienced obstacles and obstacles in the implementation of the obligations contained in the composition agreement that has been binding for both parties in the PKPU case. In general, these obstacles occur because the debtor in PKPU acts negligently to his creditors in implementing the intended composition agreement. One of the cases that received enough attention related to this issue occurred in the case of PT Njonja Meneer in Decision No. 01/Pdt.Sus-PKPU/2015/PN.Niaga.Smg which was decided on 1 June 2015. In that case, the creditors of PT Njonja Meneer felt aggrieved by the debtor's actions because the debts paid by the debtor did not match the procedures with what they had agreed together in the composition agreement (Hartini,2007).

Based on the above case, an illustration can be taken that not always a legal entity that becomes a debtor in a PKPU case can implement and comply with what has been agreed upon with its debtor in a composition agreement in a PKPU case. In fact, the decision of creditors to accept the composition plan submitted by the debtor in a PKPU case is clearly very beneficial for the debtor in making payments on his debts, especially in terms of time and even in some cases it is not uncommon for

creditors to provide relief for their debtors not to pay or pay a smaller amount of interest or penalties arising from late payment of their debts. This kind of thing will directly make the nominal amount of debt repayment that must be issued by the debtor smaller.

To anticipate the problems that arise as mentioned above, a rule of law is needed that can guarantee certainty, order, enforcement, and legal protection for the parties in implementing composition in PKPU (Subekti,2008). With the existence of legal rules that support and guarantee the implementation of a case to achieve elements of certainty, order, enforcement, and legal protection for the parties, it is hoped that it will be able to support the growth and development of a fair and productive economy, a democratic socio-political culture, and can secure and support national development so that it can realise and provide economic and social welfare for the people equally in a balanced, harmonious, safe and orderly multidimensional environment (Sudarsono, 1998).

As an embodiment of legal instruments that are expected to support society to ensure the implementation of a case to achieve elements of certainty, order, enforcement, and legal protection for the parties, especially in bankruptcy cases, The KPKPU Law provides the authority for creditors in a PKPU case to submit a homologation annulment of the composition agreement if the creditor feels or realises that there has been an action that is detrimental to the fulfilment of his rights in a PKPU case, especially if there are indications that there has been a negligence / default in fulfilling the clauses that have been agreed upon by him and his debtor in a PKPU case.

In the event that there has been a settlement between the debtor and its creditors in a PKPU case, but at a later date

there are indications that there has been a negligence / default in the fulfilment of the clauses that have been mutually agreed upon, by the debtor, the creditor in this case can propose the annulment of the composition by first submitting a request for annulment of the homologation of the relevant composition agreement to the Commercial Court. The Commercial Court, which in this case is a differentiation of the general court, is authorised by law to examine and decide issues related to bankruptcy and PKPU cases. The procedural law applicable in the Commercial Court in deciding disputes related to bankruptcy and PKPU cases is civil procedural law.

In handling PKPU cases using civil procedural law at the Commercial Court, judges have an important role in finding the formal truth (*formeel waarheid*) so that the case can be resolved fairly and with certainty for both parties. To be able to provide a decision in the verdict, the judge must be sure of the truth of the arguments presented by both parties in the trial. To obtain this belief, a proof is needed in the trial with a litigant to be able to provide evidence for the arguments expressed so that the judge can give a decision fairly and without an element of doubt (*beyond reasonable doubt*).

When deciding a case related to PKPU, it is not justified for the judge to decide the case without proof first. The evidentiary process in a PKPU case at the Commercial Court, which is based on facts through evidence submitted by the parties, is the key for the judge to make a decision on whether the application submitted is accepted, rejected, or unacceptable. Although the KPKPU Law does not specifically provide what can be used as evidence in a PKPU case, considering that the law in the Commercial Court uses civil procedural law, it can be concluded that the applicable evidence in a PKPU case is the

evidence mentioned in the civil procedural law instruments applicable in Indonesia in the absence of other provisions that override it.

In PKPU cases related to the annulment of homologation of composition agreements, the KPKPU Law also requires proof to be carried out first as well as providing authority for judges to charge the parties to carry out proof as stipulated in Article 163 HIR which states:

"Whoever says he has a right, or mentions an act to confirm his right, or to refute the right of another, must prove the existence of the right or the existence of the event."

Article 163 HIR implies that the party who feels he has a right to something or states the reasons for his ownership of a right in court, then to strengthen his arguments and / or to refute the arguments submitted by his opponent / other people, he must prove what he has argued.

If one of the parties to the litigation is charged with the burden of proof, then that party has an allocation of the obligation to prove the arguments it provides. The provisions regarding proof in PKPU cases relating to the annulment of homologation of composition agreements are contained in Article 170 of the KPKPU Law, which reads as follows:

- 1) Creditors may demand the annulment of a ratified composition agreement if the Debtor fails to fulfil the contents of the composition agreement.
- 2) The Debtor shall be obliged to prove that the composition has been fulfilled.
- 3) The Court shall have the authority to grant concession to the Debtor to fulfil its obligations at the latest 30 (thirty) days after the decision to grant such concession is pronounced."

In accordance with Article 170 paragraph (1) of the KPKPU Law, the Commercial Court has the authority to cancel a homologated composition agreement if there has been a violation of the

implementation of the composition agreement. Referring to this provision, the procedure for implementing the annulment of composition is the same as the procedure taken to file a bankruptcy lawsuit in Article 171 of the KPKPU Law. In the next paragraph, namely in Article 170 paragraph (2), it is stated that in the event of an indication of this violation, the creditor must prove that it is true that the debtor in this case has violated the composition agreement, while the debtor must be able to refute the arguments put forward by the creditor by proving that he has proven that the composition agreement that he had previously made together with his creditors has been implemented in good faith as stated and agreed upon in the composition agreement. In the case of homologation annulment here, the debtor in the trial is also given the opportunity to prove that he is not in a state of negligence so that the judge can decide fairly according to the applicable procedural law for both the debtor and the creditor.

Evidence that is applicable in the case of annulment of homologation of a composition agreement, among others:

- a. Written or letter evidence;
- b. Witness evidence;
- c. Presumptive evidence;
- d. Confessional evidence; and
- e. Sworn evidence.

In the case of the request for annulment of homologation by the members and creditors of KSP Intidana, composition was initially created due to the common interests and efforts to unite a common vision between KSP Intidana and its members as creditors until the formation of a Agreement of Composition dated 7 December 2015 which was then homologated by the Semarang Commercial Court. With the validation of the composition agreement, based on Article 288 of the KPKPU Law, the PKPU is declared over. The legal consequences of the ratification of the

composition agreement are the rights and obligations that must be fulfilled by each party that has previously agreed on the contents of the composition agreement.

Based on the Agreement of Composition dated 7 December 2015 which was subsequently requested to be cancelled by the Commercial Court from the creditors of KSP Intidana, KSP Intidana proposed a plan to pay debts to its creditors by classifying them into 5 (five) payment terms for repayment of different nominal amounts in each term. However, it turned out that until the last term expired, there were obligations of KSP Intidana in the Agreement of Composition a quo that had not been fulfilled by KSP Intidana (Hadikusuma,2001).

As a legal entity whose legality is regulated in the Cooperatives Law, KSP Intidana is considered to be able to act in law and has rights, obligations, and legal relations with other persons or other entities that can act to represent their own interests both outside and inside the court, KSP Intidana can participate in legal traffic with the intermediary of its management, KSP Intidana is also a legal subject to be sued and can also sue before a judge. Therefore, as a legal subject that can be sued in court, KSP Intidana must conduct evidence to prove that the arguments related to the negligence / default of the composition agreement committed by it against its creditors in its PKPU case are not true. The purpose of this proof is so that the judge at the Commercial Court does not approve the annulment of the homologation of the composition agreement as well as declaring KSP Intidana to be in a state of bankruptcy and insolvency because the composition agreement was cancelled by the court.

In this case, the actions taken by creditors and debtors in the evidentiary process at trial were appropriate. Creditors submitted evidence indicating that KSP Intidana did not fulfil the composition agreement with its creditors

(Soekanto,2003). However, on the other hand, the evidence presented by KSP Intidana was not strong enough to refute the arguments presented by its creditors. However, the judge at the Commercial Court decided that the petition filed by the creditors could not be accepted (*niet onvankelijke verklaard*) through Decision No. 14/Pdt.Sus-Bankruptcy/2020/PN.Smg. jo. Decision No. 10/Pdt.Sus-PKPU/2015/PN.Smg dated 27 July 2020.

If we look at the provisions in Article 170 paragraph (1) of the KPKPU Law which states that in the implementation of homologation annulment, debtors who feel that they have fulfilled the composition agreement properly, but at a later date their creditors feel that the debtor has defaulted on the composition agreement, must submit evidence before the judge at the trial as a form of proof of the rebuttal of the arguments submitted by their creditors so that the judge does not cancel the homologation agreement and the debtor is not automatically in a state of bankruptcy. If interpreted a contrario, if in this case the debtor cannot prove his rebuttal or the evidence submitted is not sufficient to give the judge confidence to reject the decision, then the judge must cancel the homologation of the composition agreement by first giving an opportunity for 30 (thirty) days to the debtor to fulfil his composition agreement with his creditors and the debtor in the same decision must be declared bankrupt and bear all legal consequences (Irianto,2015).

In the case of annulment of homologation between members of KSP Intidana and KSP Intidana in Decision No. 14/Pdt.Sus-Bankruptcy/2020/PN.Smg. jo. Decision No. 10/Pdt.Sus-PKPU/2015/PN.Smg dated 27 July 2020, it can be concluded that the judge's action that did not accept the homologation annulment request submitted by KSP Intidana's creditors was inappropriate and did not meet one of the principles of the decision

where the judge's decision must contain the basis and reasons based on clear and sufficient considerations (Pulungan, 2019). The basis for the inappropriate consideration here is that the decision does not comply with certain articles in the legislation where the provisions in Article 170 paragraph (2) of the KPKPU Law, which if interpreted a contrario, imply that the judge must accept the homologation annulment request if the debtor cannot prove its rebuttal.

The judge in this case should have considered the strength of the evidence submitted by the creditors of KSP Intidana in deciding the case of annulment of this homologation. By not accepting the decision, the Agreement of Composition dated 7 December 2015 is still legally valid and binding for the creditors of KSP Intidana.

CONCLUSION

Based on the results of the research and discussion in this thesis, the following conclusions can be drawn:

1. In the KSP Intidana PKPU case, the judge should grant the request for homologation annulment of the KSP Intidana PKPU Composition Agreement because there is clear negligence in the formation and implementation of the Composition Agreement based on the provisions in Article 170 of the KPKPU Law which provides an opportunity for creditors in PKPU who feel their rights in a composition agreement are not fulfilled due to negligent actions taken by the debtor to cancel the homologation.
2. The judge's action that did not accept the homologation annulment request submitted by KSP Intidana's creditors was inappropriate and did not fulfil one of the principles of the decision that the judge's decision must contain a clear basis. The basis of consideration that is not appropriate is that the decision does not fulfil Article 170 paragraph (2) of the

KPKPU Law because the judge states that the request cannot be accepted, while in this case the evidence made by the debtor is not strong enough to prove its rebuttal.

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