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Application of the Principle of Balance and Justice to Debtors Who Do Not Act in Good Faith Based on Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Payment

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Abstract:
The development of the economy in Indonesia has an impact on the development and problems of commercial law. Along with the development of the times, the suspension of payment mechanism is often misused by debtors who want to postpone their debt payment obligations to their creditors in bad faith, such as: using fake debt agreements, involving fictitious creditors, filing several legal efforts, and various other methods with the aim of buying time. The author is interested in examining how the principle of balance and the principle of justice are applied to applications for suspension of payment made in bad faith in the judge's decision and what efforts can be made by creditors regarding requests for suspension of payment made in bad faith? This research uses a normative-empirical method, research specifications use analytical descriptive, data collection through informal interviews and documentation studies, and qualitative normative data analysis. The results of the research conclude that the principle of balance and the principle of justice are no longer reflected in the judge's decision regarding suspension of payment cases carried out in bad faith because they have created injustice and legal uncertainty, such as: repeated processing of legal action on the same case, delays in settling bankruptcy assets, delays in the execution process, and so on. Efforts that can be made include submitting an application to terminate the suspension of payment based on Article 255 paragraph (1) of Law 37 of 2004 and taking criminal legal steps.

Keywords: Suspension of Payment, Bankruptcy, Business Law, Fictitious Creditor

1. Introduction

The rapid development of the economy and trade in Indonesia has had an impact on legal developments and has given rise to many new legal problems. Most of the business capital owned by entrepreneurs is loans originating from various sources, such as banks, capital investment, bond issuance, and so on, which has given rise to many problems in resolving debts in society. One of the legal means needed to overcome this problem is Law Number 37 of 2004 concerning Bankruptcy and Suspension of Payment (Law 37 of 2004), which is based on several factors as follows: (1). To avoid a struggle over the debtor's assets if at the same time there are several creditors who are collecting their receivables; (2). To avoid any creditors holding collateral rights claiming their rights by selling the debtor's goods without considering the interests of the debtor or the interests of other creditors; and (3). To avoid any fraud committed by one of the creditors or the debtor himself. The definition of a creditor according to Article 1 paragraph (2) of Law 37 of 2004 is a person who has receivables due to an agreement or law which can be collected in court. The definition of a debtor according to Article 1 paragraph (3) of Law Number 37 of 2004 is a person who has a debt due to an agreement or law, the payment of which can be demanded in court. The definition of debt according to Article 1 paragraph (6) of Law 37 of 2004 is an obligation that is stated or can be stated in a sum of money, either in Indonesian currency or foreign currency, either directly or which will arise in the future or contingently, which arises due to an agreement or law and which must be fulfilled by the debtor and if not fulfilled, gives the creditor the

right to obtain fulfillment from the debtor's assets. The definition of debt according to Wikipedia is something that is borrowed, either in the form of money or the object itself.[1]

Suspension of payment is an opportunity for debtors to restructure their debts to creditors.[2] The intent and purpose of suspension of payment written in Law 37 of 2004 are:

a. Article 222 paragraph (2), which states: debtors who are unable or estimate that they will not be able to continue paying their debts which have matured and are collectible, may request a postponement of their debt payment obligations, with the intention of submitting a peace plan which includes an offer to pay part or all of the debt to creditors;
b. Article 222 paragraph (3), which states: creditors who estimate that the debtor will not be able to continue paying their debts which have matured and are collectible, may request that the debtor be granted a postponement of the obligation to pay the debt, to enable the debtor to submit a peace plan which includes an offer to pay part or all of the debt to their creditors.

Suspension of payment (*surseance van betaling*) which is requested to the Commercial Court is generally aimed at submitting a peace plan which includes payment of all or part of the debt to all creditors so that bankruptcy does not occur and the debtor does not lose his interdependence in managing his assets.[3] In other words, suspension of payment is a moratorium or opportunity for debtors to be able to resolve their debt problems by taking steps towards peace and deliberation, with the hope of not being immediately declared bankrupt, but giving debtors the opportunity to improve their economy so that they can pay off their debts so as not to harm their creditors.[4]

In essence, the suspension of payment case is a case that has a fast dimension (speedy trial), so that there needs to be fast legal certainty because it is related to the stability of a country's economy. In the general explanation of Law 37 of 2004, it is stated that for the interests of the business world in resolving debt problems fairly, quickly, openly, and effectively, a legal instrument is needed to support it. The faster the resolution of debt problems, the more profitable it will be for both debtors and creditors. Maxim Trashden argues that the time period is an important and essential element in resolving debt problems. For creditors, the faster the debt problem is resolved, the faster the repayment of the receivables will be carried out. This is an advantage for creditors because they can avoid losing the present value of money. Meanwhile, for debtors, the quicker they resolve their debt problems, the sooner the debtor's obligation to pay interest and other obligations as stated in the debt agreement will cease.[5]

In line with the development of the times, debt restructuring through the suspension of payment mechanism is considered more profitable for debtors because it provides commercial incentives, for example during the suspension of payment process and before a homologation decision is reached, interest and fines are not required to be paid by the debtor and cannot be collected by the creditor. In the end, this mechanism is often misused by debtors who want to postpone their debt payment obligations to creditors in bad faith, such as: using fake debt agreements, involving fictitious creditors, filing several legal actions with the aim of buying time, and various other methods. This phenomenon is in accordance with the adage "*het recht hink achter de feiten aan*" which means that the law is always struggling to keep up with the times.[6]

The author takes the example of the suspension of payment case number 305/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst at the Commercial Court at the Central Jakarta District Court. The case was filed by a creditor named Park Byungbong (applicant for suspension of payment) with a bill value that was due and collectible of Rp. 17,432,336,850 and Kim Jae Chun with a bill value of Rp. 17,432,336,850 against PT Big Golden Bell (debtor), a garment company in Bandung. The suspension of payment application was decided on November 16, 2023 and in the end, the debtor was declared bankrupt since March 13, 2024 because 100% of the separatist creditors rejected the composition plan submitted by the debtor. Based on the bankruptcy decision, the debtor filed a cassation appeal on March 19, 2024, which was registered under number 751 K/Pdt.Sus-Pailit/2024.

The opportunity for cassation against the PKPU suspension of payment decision is open, based on the Constitutional Court decision number 23/PUU-XIX/2021 dated December 15, 2021. A cassation application can be filed against a suspension of payment decision on the condition that the suspension of payment application is filed by the creditor and the peace plan offered by the debtor is rejected by the creditor. If these two conditions are not met, then the cassation legal remedy against the suspension of payment decision cannot be carried out.[7] On July 11, 2024, the Supreme Court granted the cassation application and declared the debtor not bankrupt and ordered the Commercial Court to continue the

suspension of payment process. The cassation decision raised various new problems, namely the difference in the nominal amount of bills and the number of creditors between the list of fixed receivables for suspension of payment and the list of fixed receivables for bankruptcy. On this issue, the supervising judge emphasized that the list of fixed receivables that apply is the list of fixed receivables suspension of payment. Based on the author's search results, the cassation decision that canceled the bankruptcy and ordered the Commercial Court through the deciding judge and the supervising judge to continue the suspension of payment process was the first time it happened in Indonesia, so there has never been a precedent similar to this case.

Based on the results of the cassation decision, the Commercial Court continued the suspension of payment process with a remaining time of 151 days, until finally the second composition plan voting was held on December 9, 2024 and the debtor was declared bankrupt for the second time because 100% of separatist creditors and 100% of concurrent creditors abstained. Based on the bankruptcy decision on December 9, 2024, the debtor again filed a cassation application for the second time on December 17, 2024 which was registered under number 509 K/Pdt.Sus-Pailit/2025. The process flow for this suspension of payment case can be described as follows:

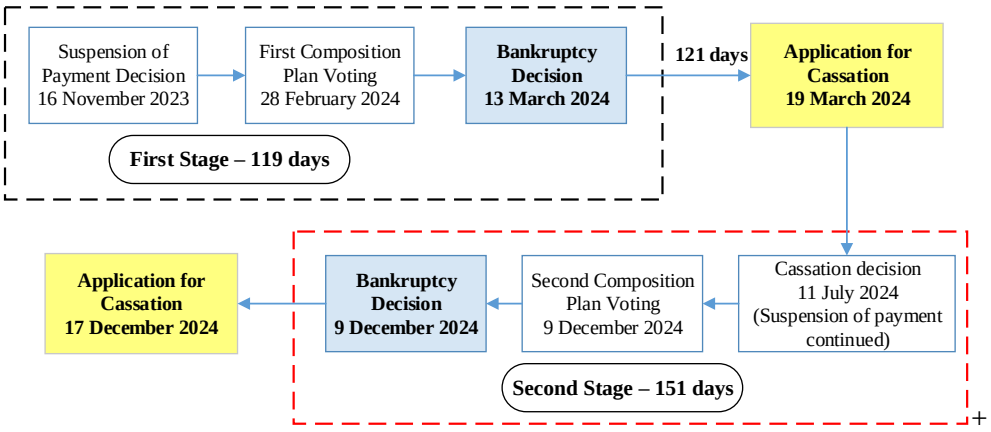

Figure 1. Process Flow of Case Number 305/ Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst

Interestingly, on October 16, 2024 (11 months after the suspension of payment decision), it was revealed that the suspension of payment case was carried out in bad faith, because it was initiated by Park Choul Young (director of PT Big Golden Bell/debtor) using a fake debt agreement and involving Park Byungbong and Kim Jae Chun as fictitious creditors. The definition and term fictitious creditor is not found in Law 37 of 2004. Based on expert opinion, fictitious creditors are creditors who do not have valid documents, but the documents are engineered in such a way that they appear to be valid documents, thus creating voting rights for the creditor. The engineering is intended to obtain official votes in order to win the voting at the creditor meeting.[8] In addition to being raised by creditors, fictitious creditors can also be raised by debtors so that part of the bankrupt assets can be returned to the debtor. In the PKPU application, Park Byungbong and Kim Jae Chun attached evidence of private deeds in the form of 8 debt agreement files and 8 receipts that have been validated (matched) in court, and have been acknowledged as true by the debtor.

Park Byungbong and Kim Jae Chun said that he never lent his money to the debtor. He was contacted by the debtor to sign the debt agreement document, but in reality, they never lent any money.[9] Kim Jae Chun is an employee of the debtor who serves as a production manager and was asked by the debtor to sign a debt agreement and a power of attorney to an advocate. On the same occasion, Park Choul Young said that he was looking for a way to postpone debt payments to Senjaya (separatist creditors) and for the debtor to be in a "state of silence" (stay or standstill), so he chose a solution by submitting a request for suspension of payment. The involvement of these 2 fictitious creditors was to fulfill the requirements for a PKPU application based on the provisions of Article 222 paragraph (1) of Law 37 of 2004 which requires more than 1 creditor. The debtor deliberately made the total debt value more than 34 billion rupiah, so that he could control 2/3 of the total receivables. In an informal interview conducted by the author, the debtor had also calculated that the costs of the suspension of payment case would be smaller than the interest and fines

that had to be paid to the creditor. However, the plan that had been prepared by the debtor did not go according to expectations and in the end the debtor was declared bankrupt.

Regarding the confessions of the 2 fictitious creditors, the panel of judges emphasized that the parties in this case should continue to be guided by the suspension of payment decision number 305/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst which has been examined and decided by the Commercial Court on November 16, 2023. Through letter number 091/BGB-PKPU/X/2024 dated October 2, 2024, the management team also confirmed that it would continue to carry out the PKPU process against the debtor PT Big Golden Bell as per decision number 305/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst in conjunction with cassation decision number 751 K/Pdt.Sus-Pailit/2024 and the panel of judges deliberation meeting on August 22, 2024.

The second case example is the application for suspension of payment number 8/Pdt.Sus-PKPU/2017/PN SBY which was voluntarily submitted by the debtor on March 22, 2017 as a counter attack against the application for declaration of bankruptcy number 7/Pdt.Sus-Pailit/2017/PN SBY. In the end, the debtor was declared bankrupt by the Commercial Court at the Surabaya District Court since May 9, 2017 because it was in the PKPU process due to the rejection of the peace plan by the creditors. In the application for suspension of payment, there was a creditor who was suspected of acting as a fictitious creditor, namely Leny. Regarding the bankruptcy decision, Leny filed a cassation application registered under number 1079 K/Pdt.Sus-Pailit/2017. The cassation application cannot be accepted, on the grounds that against the permanent PKPU decision whose peace plan was not approved and the debtor was declared bankrupt, there was no opportunity for legal action. Therefore, the Supreme Court is of the opinion that the cassation application submitted cannot be justified and is in conflict with the provisions of Article 293 paragraph (1) of Law 37 of 2004, regarding bankruptcy decisions resulting from the rejection of a peace plan by creditors, there is no legal remedy; and the bankruptcy decision in the *a quo* case is the result of the rejection of the peace proposal submitted by the debtor. Because Leny felt that she had never made a power of attorney to Fahrul Siregar, S.H., M.H. and Dimas Abimanyu Sasono in the bankruptcy statement application number 7/Pdt.Sus-Pailit/2017/PN SBY, Leny then reported them on charges of the crime of forging a forged letter. In the end, Dimas Abimanyu Sasono was found legally and convincingly guilty of committing the crime of participating in the use of fake documents and was sentenced to 7 months in prison, as stated in the criminal decision number 1324/Pid.B/2021/PN Sby. Responding to the polemic, Daniel Hutabarat as the lawyer for the receiver team of PT Gusher Tarakan (in bankruptcy) stated “not a fictitious creditor. So, there is a creditor (Leny) who filed a request for suspension of payment, not bankruptcy. In the suspension of payment there was no peace, and then the decision was bankruptcy”.[10]

This suspension of payment case has also been submitted for review of court decision 3 times, as registered in case number 203 PK/Pdt.Sus-Pailit/2018 which took 147 days; number 85 PK/Pdt.Sus-Pailit/2019 which took 128 days; and number 38 PK/Pdt.Sus-Pailit/2023 which took 172 days. Until now, PT Gusher Tarakan is still in bankruptcy status based on decision number 8/Pdt.Sus-PKPU/2017/PN SBY, the debtor still controls, manages its assets, and has not handed them over to the receiver team. Although PT Gusher Tarakan (debtor) has been declared bankrupt since 2017, Benhard Manurung as the attorney for Grand Tarakan Mall emphasized that PT Gusher Tarakan never filed a suspension of payment application at the Surabaya Commercial Court on May 9, 2017.[11] Benhard added that the alleged engineering in the PT Gusher Tarakan suspension of payment case was deliberately designed in such a way and involved intellectual actors in it. “There are fictitious creditors and fictitious debtors so it’s complex, everything is engineered. Plus there is the use of fake power of attorney to litigate at the Surabaya Commercial Court”.

Law 37 of 2004 itself is based on several principles, including the principle of balance and the principle of justice. In the explanation of Law 37 of 2004, it is stated that the principle of balance aims to prevent the misuse of bankruptcy institutions and institutions by dishonest debtors. Meanwhile, the principle of justice aims to fulfill the sense of justice for the interested parties and to prevent arbitrary actions by debtors who seek payment of their respective bills from debtors, without regard for other creditors. From the background description and several case examples above, the author is interested in examining how the principles of balance and justice are applied to requests for suspension of payment made in bad faith in the judge’s decision and what efforts can be made by creditors regarding requests for suspension of payment made in bad faith?

2. Research Method

2.1 Approach Method

This study uses a normative-empirical (applied) approach, namely research that examines the implementation of positive legal provisions (legislation) and written documents in action (factual) in every specific legal event that occurs in society. The purpose of this study is to ensure whether the results of the application of the law in legal events *in concreto* are in accordance with the provisions of the legislation or not. In other words, this study aims to determine whether the legislation has been implemented correctly so that the parties involved can achieve their goals or not.[12]

2.2 Research Specifications

This study uses analytical descriptive specifications. The descriptive method is a method that functions to describe or provide an overview of the object being studied through data or samples that have been collected as they are without conducting analysis and making conclusions that apply to the public.[13] In other words, analytical descriptive research takes up problems or focuses on problems found when the research is carried out, which are then processed and analyzed to draw conclusions.

2.3 Stages of Research

Stages of research used in this study are:

a. Field research is a type of research that studies phenomena in their natural environment. Therefore, the primary data is data that comes from the field so that the data obtained is in accordance with reality.[14] Literature studies are related to theoretical studies and other references related to values, culture and norms that develop in the social situation being studied. In addition, literature studies are very important in conducting research; this is because research cannot be separated from scientific literature.
b. Literature study aims to obtain secondary data or data obtained by studying library materials, in the form of laws and regulations and other literature related to the problems discussed. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials, namely: primary legal materials, secondary legal materials, and tertiary legal materials.

2.4 Data Collection Technique

The data collection techniques used in this study are interviews and documentation studies. Interviews are intended to conduct direct questions and answers between researchers and respondents or sources or informants to obtain information. The interview method is used to obtain information about things that cannot be obtained through observation.[15] Documentation is a method used to obtain data and information in the form of books, archives, documents, written figures and images in the form of reports and descriptions that can support research. The documentation study in this research is by collecting data and information regarding the cases that are the material for study in this research.

2.5 Data Analysis

The data analysis used in this study is qualitative normative. Normative legal research is legal research that focuses on written regulations or legislation (law in books) or research based on rules or norms that apply in society.[16] In this study, documents will be reviewed, namely using various secondary data such as laws and regulations, court decisions, legal theories, and can be in the form of opinions of scholars. This type of normative research uses qualitative analysis, namely by explaining existing data with words or statements rather than number.

2.6 Research Location

The research location is the Commercial Court at the Central Jakarta District Court, Jalan Bungur Besar Raya No. 24-28 Central Jakarta and at the Secretariat Office of the the Receiver Team of PT Big Golden Bell (in bankruptcy) at Wisma Nugra Santana, 10th Floor, Jalan Jendral Sudirman Kav. 7-8 Central Jakarta.

3. Result and Discussion

3.1 Definition of Suspension of Payment and Suspension of Payment Case Process

Suspension of payment is an instrument provided by law, where creditors and debtors are given the opportunity to agree on a debt payment mechanism through a restructuring scheme based on a composition

plan submitted by the debtor for approval by the creditor and will later be ratified through a Commercial Court decision.[17] Suspension of payment is a step or effort taken by a debtor to avoid bankruptcy or an effort to avoid liquidation of assets when the debtor is or will be in a state of being unable to pay (insolvent).[18] The provisions regarding suspension of payment are regulated in Chapter III of Law 37 of 2004, from Article 222 to Article 294.

After the application for suspension of payment is granted by the panel of judges, then at that time the administrator must be appointed. The legal consequences of suspension of payment are stated in Article 242 paragraph (1) of Law 37 of 2004, namely that during the suspension of payment process, the debtor cannot be forced to pay the debt as referred to in Article 245 and all execution actions that have been started to obtain debt repayment must be suspended. Thus, during the suspension of payment process, the debtor cannot be forced to pay his debts. Basically, the Commercial Court provides an opportunity for the debtor to prepare and submit a composition plan so that the obligation to pay the debt is suspended. This condition will last both during temporary suspension of payment status and permanent suspension of payment status.[19]

Suspension of payment cases can end under several conditions, namely:

a. Suspension of payment ends with the acceptance and approval of the composition plan and after that the debtor must carry out his obligations.[20] The party authorized to submit a composition plan in the suspension of payment process is the debtor. Creditors do not have the right to submit a composition plan in the suspension of payment process, because logically it is the debtor who proposes the debt payment scheme in the process. The conditions for a composition plan to be accepted are stated in Article 281 paragraph (1) of Law 37 of 2004, namely that a composition plan can be accepted based on: (a). approval of more than 1/2 of the number of concurrent creditors whose rights are recognized or temporarily recognized who are present at the creditors meeting as referred to in Article 268 including creditors as referred to in Article 280, who together represent at least 2/3 of all claims recognized or temporarily recognized from concurrent creditors or their proxies who are present at the meeting; and (b). approval of more than 1/2 of the number of creditors whose receivables are guaranteed by pledges, fiduciary guarantees, mortgages, or other collateral rights on property who are present and represent at least 2/3 of all claims from such creditors or their proxies who are present at the meeting. If the provisions of Article 281 paragraph (1) of Law 37 of 2004 are not fulfilled, the debtor is declared bankrupt and the suspension of payment is declared to have ended;
b. Based on the provisions of Article 255 paragraph (1) of Law 37 of 2004 which states that PKPU can be terminated, at the request of the supervising judge, one or more creditors, or on the initiative of the Court in the event of: (a). The debtor, during the suspension of payment, acts in bad faith in managing his assets; (b). The debtor has harmed or has attempted to harm his creditors; (c). The debtor violates the provisions of Article 240 paragraph (1); (d). The debtor neglects to carry out the actions required of him by the Court at the time or after the suspension of payment is granted, or neglects to carry out the actions required by the administrator for the benefit of the debtor's assets; (e). During the suspension of payment, the condition of the debtor's assets no longer allows the suspension of payment to be continued; or (f). The debtor's condition cannot be expected to fulfill his obligations to creditors on time. Article 255 paragraph (6) states that if the suspension of payment is terminated based on the provisions of this article, the debtor must be declared bankrupt in the same decision.

In general, the final results of the suspension of payment case are divided into 2 possibilities. First, by homologation or ratification of the composition plan that has been approved by creditors.[21] Second, the suspension of payment case ended in bankruptcy because the composition plan was rejected, either rejected by the creditors, rejected by the Court based on Article 285 paragraph (2) of Law 37 of 2004, or the termination of the suspension of payment based on Article 255 paragraph (1) of Law 37 of 2004. If the debtor is declared bankrupt, then the provisions of Article 24 paragraph (1) of Law 37 of 2004 apply, which states that the debtor legally loses his right to control and manage his assets which are included in the bankrupt estate, from the date the bankruptcy declaration decision is pronounced. Other consequences of bankruptcy are regulated in Article 134 paragraph (1) of Law 37 of 2004, which states that interest on debts arising after the bankruptcy declaration decision is pronounced cannot be matched with receivables, except and only to the extent guaranteed by a pledge, fiduciary guarantee, security right, mortgage, or collateral right on other property.

In the first case example, the application for suspension of payment has been processed in court and has been granted by the Commercial Court at the Central Jakarta District Court on November 16, 2023. All evidence submitted by Park Byungbong and Kim Jae Chun has been validated in the court process, so that the private deed has the same evidentiary force as an authentic deed.[22] In its considerations, the panel of judges emphasized that it had been proven in simple terms that there was a debt between the applicant for suspension of payment (creditor) and the respondent for suspension of payment (debtor) which had matured and could be collected as stipulated in Article 8 paragraph (4) of Law 37 of 2004. The process for applying for suspension of payment was in accordance with the provisions of Article 222 paragraph (3) of Law 37 of 2004.

This case ended in bankruptcy on March 13, 2024 because the composition plan submitted by the debtor was rejected by the separatist creditors and went bankrupt for the second time on December 9, 2024 because 100% of the separatist creditors rejected the composition plan and 100% of concurrent creditors abstained. The bankruptcy decision handed down by the Commercial Court at the Central Jakarta District Court to the debtor was in accordance with applicable provisions, because the peace requirements in Article 281 paragraph (1) of Law 37 of 2004 were not met, so the debtor had to be declared bankrupt.

In the second case example, the suspension of payment case was voluntarily filed by the debtor as a counterattack to the bankruptcy petition. The case ended in bankruptcy because the creditors rejected the composition plan submitted by the debtor. The mechanism for the suspension of payment application is in accordance with the provisions of Article 229 paragraph (4) of Law 37 of 2004 which states that a PKPU application submitted after a bankruptcy petition has been filed against the debtor, in order to be decided first as referred to in paragraph (3), must be submitted at the first hearing of the bankruptcy petition examination. This case ended in bankruptcy because the composition plan submitted by the debtor was rejected by the creditors, so that the conditions for peace as in Article 281 paragraph (1) of Law 37 of 2004 were not met.

3.2 Legal Remedies for Suspension of Payment Cases

No legal action can be taken against a decision regarding suspension of payment in accordance with the provisions of Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37 of 2004, which states that no legal action can be taken against a court decision based on the provisions in Chapter III, unless otherwise specified in this law. The absence of legal remedies against the suspension of payment decision is also regulated in the Circular of the Supreme Court (SEMA) Number 4 of 2014, SEMA Number 3 of 2015, and confirmed by Constitutional Court Decision Number 17/PUU-XVIII/2020. SEMA 3 of 2015 states that there is no legal remedy whatsoever against: temporary suspension of payment decisions; permanent suspension of payment decisions; permanent suspension of payment decisions not approved by creditors, then the debtor is declared bankrupt; decisions rejecting peace in suspension of payment; and decisions on requests for rehabilitation of debtors (heirs) after the bankruptcy ends.

The reason why the suspension of payment decision is not allowed to have legal efforts is because the suspension of payment process has given sufficient time to the debtor and creditors to hold a deliberation in order to reach a peace for the settlement of their debts mediated by the judicial body. If the suspension of payment decision is disputed again by one of the parties through legal efforts, then this will cause the deliberation process that has been taken through the courts to actually create legal uncertainty, because the debt problems between creditors and debtors have not been resolved and it is uncertain when they will end. This confirms that the suspension of payment case cannot be filed a second time because it will create legal uncertainty regarding the peace efforts that have been achieved previously. Such conditions are contrary to the nature of the suspension of payment case itself and the principles of justice, namely fast, simple, and low cost. In essence, in accordance with the principle of balance between debtors and creditors adopted in Law 37 of 2004, if the application for suspension of payment is rejected, the court must decide that the debtor is bankrupt. In balance with this, if the application for suspension of payment is granted, then creditors who do not agree to it can no longer file legal remedies. In addition, the absence of legal remedies in suspension of payment cases is to differentiate between bankruptcy forums and suspension of payment forums. In fact, the suspension of payment forum is a forum for creditors and debtors to carry out debt restructuring to obtain legal certainty for both parties and encourage the debtor's business continuity (going concern).

The absence of specific cassation rules for suspension of payment decisions also causes uncertainty in the form of a legal vacuum.[23] In the *rechtsvinding* (legal discovery) stream, the law must be based on

the principle of social justice that continues to develop. While the facts state that lawmakers cannot keep up with the speed of society or the process of social development, so that the drafting of laws is always behind. The acceleration of the development of people's lives that cannot be balanced by the making of laws opens up many empty spaces in the legal field.[24] In line with the development of the times, through decision number 23/PUU-XIX/2021 dated December 15, 2021, the Constitutional Court stated that Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37 of 2004 are contrary to the 1945 Constitution and do not have binding legal force, as long as they are not interpreted as: "permitting cassation legal remedies against PKPU decisions submitted by creditors and rejecting peace offers from debtors". The Constitutional Court is of the opinion that the essence of the PKPU application is a case that has a fast dimension, requires fast legal certainty in the business sector, and is related to the stability of a country's economy. In line with the General Explanation of Law 37 of 2004 which among other things explains, "For the interests of the business world in resolving debt problems fairly, quickly, openly, and effectively, a legal instrument is needed to support it". Therefore, regarding the legal effort, it is sufficient to only be given one opportunity, on the grounds that there is a possibility of error in the application of the law by the judge at the first level. The Constitutional Court concluded that the appropriate type of legal effort is cassation, without opening up the opportunity for filing a legal effort for review of court decision. Meanwhile, regarding the request for suspension of payment submitted by the creditor and the offer of peace from the debtor being accepted by the creditor, it is no longer relevant to take legal action. Submission of review of court decision in the suspension of payment case is not permitted, on the grounds of realizing legal certainty in the continuity of the business world, and to prevent the swelling number of cases at the Supreme Court.

However, the Constitutional Court's decision number 23/PUU-XIX/2021 actually distances the resolution of suspension of payment cases from the objectives and spirit of the formation of Law 37 of 2004 itself, which ultimately violates the mandate to resolve debt problems through suspension of payment, namely quickly and effectively.. The opening of the cassation efforts against the suspension of payment decision filed by the creditor can hinder the PKPU process itself, where the PKPU process is a maximum of 270 days. In addition, it causes a delay in legal certainty, because the cassation process takes a relatively long time until a cassation decision is obtained. The negative impact of the Constitutional Court's decision also raises legal consequences for the parties involved, especially for the administrators and receivers. If the Supreme Court grants the debtor's legal efforts and the debtor's composition plan is accepted, then the administrators whose duties have been completed and replaced by the receiver will return to duty until the composition plan is ratified by the Commercial Court.[25]

Internally, the Supreme Court has implemented guidelines for court judges in the form of SEMA Number 1 of 2022. In the results of the formulation of the civil chamber law number 2a number 3 it is stipulated that "A request for suspension of payment submitted by a creditor whose composition plan is rejected by the creditor, can be submitted for cassation and if the cassation is granted then the ruling cancels the decision of the Commercial Court at the District Court ... and declares the debtor not in a state of bankruptcy".

The provisions for cassation appeals are also contained in Article 43 paragraph (2) of Law Number 14 of 1985 concerning the Supreme Court (Law 14 of 1985) which stipulates that a cassation appeal may only be submitted once. In addition, Article 45A paragraph (3) of Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court (Law 5 of 2004) stipulates that a cassation application for a case as referred to in paragraph (2) or a cassation application that does not fulfill the formal requirements, is declared inadmissible by a ruling by the head of the first instance court and the case files are not sent to the Supreme Court. In relation to the regulation of review of court decisions, Article 66 paragraph (1) of Law 14 of 1985 confirms that an application for review of court decisions can only be submitted once and Article 24 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as Law 48 of 2009) confirms that a review of court decisions cannot be carried out.

In the first case example, the debtor filed a cassation appeal against the bankruptcy decision dated March 13, 2024, registered under number 751 K/Pdt.Sus-Pailit/2024. Finally, on July 11, 2024, the Supreme Court granted the cassation appeal and declared the debtor not bankrupt and ordered the Commercial Court to continue the PKPU process. The cassation appeal was in accordance with applicable procedures and provisions (MK Decision Number 23/PUU-XIX/2021 and SEMA Number 1 of 2022). Following up on the cassation decision, the Commercial Court continued the suspension of payment process with a remaining period of 151 days. Finally the debtor was declared bankrupt for the

second time on December 9, 2024. The debtor filed a second cassation application against the bankruptcy decision dated December 9, 2024, which was registered under number 509 K/Pdt.Sus-Pailit/2025.

With the existence of a second cassation appeal and being processed by the judicial institution, this is contrary to Article 43 paragraph (2) of Law 14 of 1985, because the second cassation appeal is a cassation appeal that does not meet formal requirements. The Head of the Central Jakarta District Court should issue a ruling stating that the cassation appeal cannot be accepted and the case files are not sent to the Supreme Court, in accordance with the provisions of Article 45A paragraph (3) of Law 5 of 2004. However, the second appeal was still sent and processed by the Supreme Court, as shown in the image below:

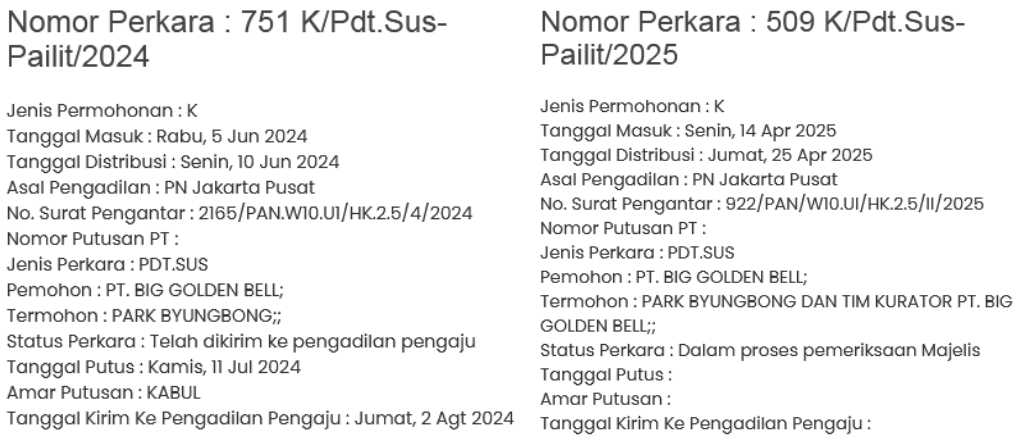

Figure 2. List of Cassation Against Case Number 305/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst

In the second case example, there was 1 cassation appeal processed by the Commercial Court at the Surabaya District Court and decided by the Supreme Court. This cassation appeal number 1079 K/Pdt.Sus-Pailit/2017 was a cassation appeal that did not meet formal requirements, because at that time (2017) the provisions in Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37 of 2004, SEMA Number 4 of 2014, and SEMA Number 3 of 2015 were still in effect, which basically stated that no legal remedies were open to any suspension of payment decisions. The processing of this cassation appeal constitutes a violation of Article 45A paragraph (3) of Law 5 of 2004 and creates injustice by the judicial institution.

In addition to the cassation application, in this suspension of payment case there were 3 requests for review of court decision, all of which were processed by the Commercial Court at the Surabaya District Court and decided by the Supreme Court. This is contrary to the provisions of Law 37 of 2004 and the Constitutional Court decision number 23/PUU-XIX/2021). In addition, this review of court decision process clearly violates the provisions of Article 66 paragraph (1) of Law 14 of 1985 and Article 24 paragraph (2) of Law 48 of 2009, which ultimately resulted in the suspension of payment case process being prolonged and causing injustice.

Until now, both in Law 37 of 2004 and in other laws and regulations, there are no sanctions or regulations that can prevent repeated legal efforts, especially against suspension of payment decisions. So, creditors who experience this problem cannot do anything, except to patiently and willingly wait until there is a decision from the Supreme Court.

3.3 PKPU Principle of Balance and Principle of Justice in Requests for Suspension of Payment

The legal principle is the basic principles contained in legal regulations, these basic principles are something that contains ethical values.[26] Every legal regulation is based or rests on legal principles, namely values that are believed to be important for the organization of society to achieve a just order. These legal principles are born from the content of human reason and conscience which causes humans to be able to distinguish between good and bad, just and unjust, and humane and inhumane.[27] Satjipto Rahardjo stated that the legal principle is not the legal regulation itself. However, no law can be understood without recognizing the underlying legal principles. This is because the legal principle provides ethical meaning to legal regulations and the legal system as a whole. Sudikno Mertokusumo also stated that the legal principle is not a concrete

law, but rather a general and abstract basic idea, or is the background of concrete regulations contained in a legal system. This principle is reflected in laws and regulations and judges decisions as part of positive law, and can be identified by looking for general properties or characteristics contained in the regulations.[28]

The provisions in Law 37 of 2004 have regulated the realization of the principle of balance in suspension of payment and bankruptcy, including provisions that can prevent the misuse of bankruptcy institutions and institutions by dishonest debtors or creditors who do not have good intentions. The principle of justice in bankruptcy contains the understanding that provisions regarding bankruptcy can fulfill the sense of justice for the interested parties. Indonesian bankruptcy law based on the principle of justice is in line with the concept of justice taught by Aristotle and John Rawls. In his view, Aristotle stated that justice is a virtue related to human relations. Fair can be interpreted according to law and what is comparable and appropriate (balanced and appropriate). A creditor is said to have acted unfairly if he demands or takes more than the portion that is rightfully his.[29] The concept or idea of justice put forward by John Rawls through the concept of justice of fairness (justice as equality), can be realized by distributing freedom and fair and equal opportunities to all parties involved in the debtor's bankruptcy case. From the descriptions above, it shows that the principle of balance for both debtors and creditors is a real manifestation of the principle of justice, where the principle of balance requires justice, in the sense that everyone has the same position before the law (equality before the law) so that they have the right to obtain the same rights. This is reinforced by the legal fact that Law 37 of 2004 adopts the principle of balance by mentioning the principle of "fair" in the general explanation. The meaning of "fair" as explained in the General Explanation of Law 37 of 2004 is that both the interests of creditors and debtors must be considered in a balanced manner.

The essence of justice lies in the assessment of an action or treatment by examining it through certain norms that are subjectively considered higher than other norms. Ideally, the law contains values of justice, in reality not all legal provisions reflect justice, because there are legal norms that do not always contain elements of justice.[30] According to Satjipto Rahardjo, justice reflects a person's view of human nature and how a person treats humans.[31] According to Gustav Radbruch, because law is an element in culture, then like other elements of culture, law represents one of the values in concrete human life, namely the value of justice. Based on this statement, it can be concluded that law only means law if it reflects justice or at least is an effort towards it.[32]

In the first case example, the fact was revealed on October 16, 2024 that the debtor in the suspension of payment case number 305/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst intentionally involved 2 fictitious creditors as applicants for suspension of payment and used a fake debt agreement as evidence in the suspension of payment application. The debt agreement was made with a back date so that it seemed as if there was a debt relationship between the fictitious creditor and the debtor that had matured and could be collected.

Proving the involvement of fictitious creditors in a suspension of payment case is not an easy matter, especially since Law 37 of 2004 does not contain any provisions regarding fictitious creditors. On the one hand, there is an admission from 2 Park Byungbong, Kim Jae Chun, and the debtor who have made and used fake debt agreements, and involved fictitious creditors in the suspension of payment case. On the other hand, the panel of judges and the management team emphasized that the parties in this case should continue to be guided by the suspension of payment decision that has been examined and decided by the Commercial Court on November 16, 2023. Thus, the panel of judges and the management team continue to refer to the second opinion, namely based on the suspension of payment decision number 305/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst and ignoring the confessions of the 2 fictitious creditors.

In this suspension of payment case, the debtor filed 2 cassation appeals, registered under number 751 K/Pdt.Sus-PKPU/2024 and number 509 K/Pdt.Sus-PKPU/2025. As a result of the granting of the cassation application number 751 K/Pdt.Sus-PKPU/2024, the task of the administrators team, which had previously been completed and changed to the receivers team, returned to the administrators team again. In addition, the administrator team must announce the cassation decision through the Republic of Indonesia State News and through 2 daily newspapers, and conduct a second composition plan voting on December 9, 2024, until finally the debtor is declared bankrupt for the second time by the Commercial Court at the Central Jakarta District Court since December 9, 2024.

Article 228 paragraph (6) of Law 37 of 2004 states that if a permanent suspension of payment as referred to in paragraph (4) is approved; the suspension and its extension may not exceed 270 days after the decision on a temporary suspension of payment is pronounced. However, this suspension of payment case took a total of 391 days from the time the debtor was declared in a temporary suspension of payment on November 16,

2023 until he was declared bankrupt for the second time on December 9, 2024. The suspension case process can be described in the following timeline:

Suspension of Payment (First time)	Bankrupt (First time) and Cassation Process	Suspension of Payment (Second time)	Bankrupt (Second time)
16/11/2023 – 13/03/2024 (119 days)	13/03/2024 – 11/07/2024 (121 days)	12/07/2024 – 9/12/2024 (151 days)	Since 9/12/2024
Total time: 391 days			

Figure 3. Timeline of the Suspension of Payment Case Number 305/ Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst

When a debtor is declared bankrupt by the Commercial Court, Article 16 paragraph (1) of Law 37 of 2004 gives the receivers the authority to settle the bankrupt's assets, even though the bankruptcy decision is being filed for legal action. Basically, bankruptcy is a means to accelerate the liquidation process of the debtor's assets to be used to pay debts to his creditors, because whether in bankrupt or non-bankrupt status, debt obligations must still be paid. Even though the receivers team confirmed that they have the authority to manage and/or settle the debtor's bankrupt assets based on Article 16 paragraph (1) and paragraph (2) of Law 37 of 2004 through letter number 025/PAILIT-BGB/XII/2024, the supervising judge has not yet given permission to the receivers to settle the bankrupt assets before there is a cassation decision from the Supreme Court. The supervisory judge has also not issued an insolvency determination on the grounds that the parties must apply the principle of prudence because the suspension of payment case is currently being appealed for. The opinion expressed by the supervisory judge is clearly contrary to Article 16 of Law 37 of 2004, thus causing the process of settling the bankrupt estate to be delayed and the repayment of debts to creditors to be delayed, which in the end can cause losses to creditors and create conditions of injustice.

In the second case example, there was 1 cassation application and 3 requests for review of court decisions, all of which did not meet the formal requirements. This method can actually be used by the parties to the case to delay the settlement of the case and to delay the execution, resulting in a protracted effort to obtain justice which ultimately results in a denial of justice itself. This is proven from the time it was declared bankrupt in 2017 until now the debtor still manages and controls the assets included in the bankruptcy. The actions taken by the debtor are contrary to the provisions of Article 24 paragraph (1) of Law 37 of 2004.

The protracted suspension of payment process which has taken a total of 391 days, the involvement of 2 fictitious creditors, the use of fake debt agreements, 2 cassation appeals processed by the judicial institution, and the delay in the process of settling the bankrupt estate are forms of the absence of justice, especially for creditors who have real claims. This condition also illustrates the lack of balance between debtors and creditors, where debtors can delay the case by repeatedly filing legal actions, while creditors cannot make any efforts, except to be patient and willing to wait for the cassation decision from the Supreme Court. In addition, creditors are forced to suffer losses because the debtor's debt payments are increasingly delayed due to the protracted judicial process. Conditions like this are a form of abuse of bankruptcy institutions and institutions, violations of the principle of legal certainty, and are not in accordance with the nature of suspension of payment cases which should have a fast dimension (speedy trial). The legal practices that occurred in the 2 examples of cases above are a bad precedent that can damage the legal order in Indonesia, especially in the field of suspension of payment and bankruptcy.

It is apparent that the principle of balance and the principle of justice in Law 37 of 2004 is no longer able to play a role in the practices of suspension of payment cases that occur today. If this is allowed to happen and there is no effort to prevent it, it will have an impact on the damage to the integrity and dignity of the bankruptcy institution, namely the Commercial Court and the Supreme Court because they have been manipulated by debtors or creditors who do not have good intentions. Until now, the existence of Law 37 of 2004 and the bankruptcy institution has not been able to protect creditors who have good intentions from the actions of debtors who do not have good intentions and actions of debtors that are detrimental to creditors; this is the weakness in Law 37 of 2004. On the contrary, Law 37 of 2004 and bankruptcy institutions are often used by debtors or creditors who do not have good intentions to carry out a series of actions that can benefit themselves, but are contrary to legal norms and the subjective rights of others. If this continues to happen, it will have an impact on the decline in the trust of entrepreneurs or investors which will directly affect the condition of the Indonesian economy.

3.4 Bad Faith in Suspension of Payment Cases

Law 37 of 2004 does not contain criteria and definitions of good faith or bad faith. Bad faith or bad faith can be explained as an act that contains bad intentions and purposes, or an act that is carried out with bad intentions. For example, someone who buys stolen goods, even though he knows that the goods are stolen, this is called a buyer with bad intentions. Of course this is the opposite of a buyer with good intentions, who buys goods without knowing that the goods are stolen.[33] Good faith is a doctrine or principle of contract law that originates from *bona fides* which originates from Roman law. Therefore, the concept of good faith is more suited to a civil law system than a commercial law system. Religion is the source of *fides*, which means trust in honor and honesty with others. In the Roman treaty, *bona fides* required good faith.

According to M.L. Kejam, bad faith is an action that involves fraud, deceit, or actions that cause harm to others, and that do not only consider their own interests but also others. In general, according to Amalia Rooseno, the definition of bad faith includes acts of "fraud", a series of acts that "mislead" others, as well as acts that ignore legal obligations to gain benefits. This can also be interpreted as an unjustified act consciously to achieve a dishonest purpose.[34] In the common law legal system, the definition of good faith is honesty in behavior or honesty in commercial transactions, including honesty in facts and respect for fair commercial standards and honest commercial transactions. Meanwhile, in the civil law system, good faith is defined as an act or behavior that is expected from an honorable or honest person that is requested in every form of transaction. Good faith does not only refer to the good faith of the parties, but must also refer to the values and norms that live and develop in society.[35]

The meaning of good faith in property rights has a subjective meaning, different from the meaning of good faith in contract law, where good faith is objective, namely the propriety that applies in social traffic.[36] Good faith in the objective sense means that an agreement made must be carried out by observing the norms of propriety and morality, in other words the agreement must be carried out in such a way that it does not harm either party. Good faith in the subjective sense is interpreted as good faith that lies in a person's inner attitude. In property law, this good faith can be interpreted as honesty.[37]

The principle of good faith is not regulated in bankruptcy law in Indonesia, resulting in frequent abuse of bankruptcy institutions in Indonesia by debtors or creditors who are not good. The results of Robert's research show that the principle of good faith is important to protect the integrity of the Commercial Court. The results of the comparison with the decisions of the Commercial Court in the United States show that there are various standards based on the honesty and motives of the debtor or creditor in filing a bankruptcy petition and to prevent and eradicate the misuse of bankruptcy institutions, it is necessary to implement the principle of good faith in the form of a number of regulations in Indonesian bankruptcy law.[38] In short, a debtor or creditor who acts in bad faith is a debtor or creditor who has intentionally committed an unlawful act or violated a legal obligation as stated in Law 37 of 2004 to benefit the debtor or creditor personally and acts that are contrary to the law, which cause losses, violate the law, acts that are contrary to the rights of others, acts that are carried out outside of authority, and violate moral norms and general principles of law.[39]

In this case, the author interprets good faith in a subjective sense, namely good faith that lies in a person's inner attitude or can be interpreted as honesty. Dishonest acts (bad faith) in suspension of payment cases, namely by having fictitious creditors in the application for suspension of payment. Criminal provisions for fictitious creditors are regulated in Article 400 paragraph (1) of the Criminal Code, which states that anyone who reduces by fraud the rights of the creditor in the case of release of debt, bankruptcy or settlement, or at a time when it is known that one of these will occur and is then actually followed by release of debt, bankruptcy or settlement, withdraws something from debt or receives payment for either uncollectible or collectible debts, in the latter case with the knowledge that bankruptcy or settlement of the debtor has been requested, or as a result of negotiations with the debtor; and Article 400 paragraph (2) of the Criminal Code states that anyone who reduces by fraud the rights of the creditor at the time of verification of receivables in the case of release of debt, bankruptcy or settlement, claims that there are receivables that do not exist, or increases the amount of existing receivables is subject to a maximum prison sentence of 5 years and 6 months.

Another bad faith is the use of fake letters as evidence in a request for suspension of payment. In relation to fictitious creditors in suspension of payment cases, they generally also use documents that are engineered to be valid or create and use fake letters. The act of creating a fake letter is the act of creating a letter that

previously did not exist or did not exist, some or all of the contents of which are fake. Criminal provisions regarding forged letters are contained in Article 263 of the Criminal Code which stipulates that: (1) Anyone who makes a forged letter or falsifies a letter which can give rise to a right, obligation or release from debt, or which is intended as evidence of something with the intention of using or ordering someone else to use the letter as if its contents were true and not forged, is threatened if said use can give rise to a loss, due to the forgery of the letter, with a maximum prison sentence of 6 years, (2) Anyone who intentionally uses a fake or falsified letter as if it were genuine, if the use of the letter can cause loss, shall be subject to the same penalty. If the fake letter is used in the application for suspension of payment and the application is granted by the Commercial Court to become a decision, then the court decision stated in written form is an authentic deed, which can be used as evidence by the parties to the case, both in the implementation of legal efforts (appeal, cassation, and review of court decision), or in its implementation. In relation to authentic deeds, Article 266 of the Criminal Code regulates as follows: (1) Whoever orders to place false information in an authentic deed about an event whose truth must be stated in the deed, with the intention of using or ordering someone else to use the deed as if the information corresponds to the actual situation, then if in using it it can cause harm, he will be punished with imprisonment for a maximum of 7 years. (2) With a similar punishment, anyone who intentionally uses the deed as if its contents corresponds to the actual situation if the use of the document can cause harm.

Based on the 2 examples of cases above, there are still cases of suspension of payment carried out by debtors who do not act in good faith, which are also detrimental to creditors who have real bills (creditors who act in good faith). The use of fake debt agreements and the involvement of fictitious creditors in this suspension of payment application cannot be prevented or avoided by Law 37 of 2004. The only effort that can be made by creditors against debtors who do not act in good faith is to submit an application to terminate the suspension of payment based on the provisions of Article 255 paragraph (1) of Law 37 of 2004, but must be accompanied by valid evidence. If the application is granted, the debtor must be declared bankrupt. Another effort that can be made by creditors is to take criminal steps for alleged violations of Article 263, Article 266, and/or Article 400 of the Criminal Code.

4. Conclusions and Suggestions

4.1 Conclusions

From the discussion above, the author can draw the following conclusions:

1. First, the application of the principle of balance and the principle of justice to the application for suspension of payment made in bad faith is no longer reflected in the judge's decision. This is proven by the existence of suspension of payment cases carried out using false evidence, involving fictitious creditors, repeated legal efforts being processed, and the debtor still controlling the bankrupt assets which has a detrimental impact on creditors who have good faith (creditors who have real claims) because the process of settling bankrupt assets and paying off debts is increasingly delayed, creating injustice and no legal certainty;
2. Second, the efforts that can be made by creditors regarding suspension of payment cases that are carried out in bad faith, namely by simply submitting an application to terminate the suspension of payment based on Article 255 paragraph (1) of Law 37 of 2004. Creditors can also report parties suspected of committing criminal acts of fictitious creditors or using false evidence to the police. However, creditors cannot do anything about suspension of payment decisions that have been repeatedly filed for legal action because there are no regulations preventing this, but must be patient and willing to wait for the decision on legal action which takes several months.

4.2 Suggestions

Based on the research and discussion above, the author has several suggestions as follows:

1. First, to make improvements (revisions) to the laws and regulations related to suspension of payment and bankruptcy so that they are not misused by parties who do not have good intentions, such as: the use of false evidence, the involvement of fictitious creditors, repeated legal efforts, and the actions of debtors who continue to control bankrupt assets. Also, adopting the principle of good faith and other principles that can be realized in real terms, can be reflected in the judge's decision, and can create justice and legal certainty for creditors who have good intentions;

2. Second, create laws and regulations and apply sanctions to parties who do not act in good faith in the application for suspension of payment, such as the application of forced physical punishment (imprisonment) and protect creditors who act in good faith from both civil and criminal law. As well as create and apply clear and firm regulations on the legal remedy mechanism against the suspension of payment decision so that no more debtors play with this legal remedy opportunity with the aim of buying time.

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