

## ABSTRACT

Suspension of payment is an alternative institution which is used as debt settlement between debtor and its creditors aside from bankruptcy. The issue rises when suspension of payment in Act No. 4 of 1998 about Enactment of Government Regulation Substituting Act No. 1 of 1998 about Ammendment of Act of Bankruptcy into Act which was only meant to be submitted by debtor, was changed by Act No. 37 of 2004 about Bankruptcy and Suspension of Payment (furthermore will be mentioned as UUKPKPU) into submission by debtor or creditor. What is the philosophy of Creditor's competence in submitting suspension of payment? What is the legal remedy towards suspension of payment submitted by creditor?

Based on explanation of UUKPKPU, creditor's competence in submitting suspension of payment was based on 4 (four) principles, which are principle of equilibrium, principle of fairness, principle of business continuity, and principle of integrity. Creditor's competence in submitting suspension of payment deemed as manifestation of principle of equilibrium, principle of fairness, and principle of business continuity. However, issue occurs regarding the formal regulation contradicts with the basic philosophy of suspension of payment, which functions as a counterbalance medium for debtor against bankruptcy submitted by creditor. With administrating that competence towards creditor, debtor have no legal remedy to oppose creditor's legal settlement institution resulting to imbalance that cause unfairness for debtor's position.

Article 235 UUKPKPU stressed that there is no legal remedy that can be carried out towards decision of suspension of payment, including decision of suspension of payment submitted by creditor. There is also no legal remedy towards decision of bankruptcy caused by suspension of payment as regulated by Article 293 (1) UUKPKPU. Unavailability of legal remedy towards decision of suspension of payment cause possibility of abuse of suspension of payment by creditor. This provision obstructs the manifestation of principle of equilibrium and principle of fairness in UUKPKPU instead.

On the following period, the provision in UUKPKPU should be revised specifically regarding submission of suspension of payment by creditor which can be changed into submission of suspension of payment by creditor obliged with submitting his or her reconciliation plan. After that, the provision of UUKPKPU can be added with available legal remedy can be carried out by debtor or creditor towards bankruptcy decision caused by suspension of payment, which is cassation legal remedy.

Keywords : submission of suspension of payment, pkpu, bankruptcy, creditor's competence, legal remedy