

Analysis of Decision Number 33/Pdt.Sus-Pailit.2020/PN.Niaga Jkt.Pst Dispute between KT Corporation and PT Global Mediacom

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Abstract

Bankruptcy is a special civil law that implements Articles 1131 and 1132 of the Civil Code. Bankruptcy is a legal remedy for creditors to ask debtors to return debts. As we know, this special legal effort is an effort that can benefit creditors, but with the condition that the debt must be due and payable. The concept of a debt that has matured does not have to be in the form of a debt agreement or acknowledgment of debt. Debts that have matured can come from obligations arising from a decision such as an arbitration award between KT Corporation and PT Global Mediacom. Bankruptcy procedural law is not like ordinary civil procedural law. In bankruptcy, the principle of simple proof is adhered to. It is not like evidence in civil law in general. When the debt can be proven simply, the debtor who is applying for bankruptcy can be declared bankrupt by the Commercial Court. The problem is that a bankruptcy petition cannot always be proven simply. An example is the bankruptcy petition submitted by KT Corporation arguing that there is a legal relationship between itself and PT Global Mediacom through ICC Arbitration Decision No. 16772/CYK. However, the bankruptcy petition was rejected by the panel of judges. This makes the definition of simple evidence and debts that are due in a bankruptcy petition narrower.

Keywords: *bankruptcy; debt payment obligation; curator; bankruptcy petition.*

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Introduction

The dispute began related to the exercise of the put option based on the Put and Call Option Agreement made by KT Corporation domiciled in South Korea, PT Global Mediacom domiciled in Indonesia, and Qualcomm Incorporated on June 9 2006. PT Global Mediacom violated its obligations under the agreement then KT Corporation requested arbitration from the International Chamber of Commerce (ICC) to resolve the dispute between KT Corporation and PT Global Mediacom arising in connection with KT Corporation's right to receive payment for the share price of Mobile-8 by PT Global Mediacom based on the Put and Call Option Agreement . In ICC Arbitration Decision No. 16772/CYK states as follows:

- a. The Arbitration Panel stated that PT Global Mediacom was proven to have violated the 2006 Option Agreement.
- b. The Arbitration Panel ordered PT Global Mediacom to pay KT Corporation USD 13,850,966 consisting of the selling price of USD 9,984,975 along with interest of USD 3,865,991.
- c. The Arbitration Panel ordered PT Global Mediacom to pay pre-judgment interest to KT Corporation worth USD 13,850,966 at an annual interest rate of 5.75% starting July 6 2009.

- d. The Arbitration Panel ordered PT Global Medicom to pay post-decision interest to KT Corporation worth USD 13,850,966 with an annual interest rate of 5.75%.
- e. The Arbitration Panel ordered PT Global Mediacom to pay KT Corporation USD 238,000 for arbitration costs.

Based on this decision, KT Corporation filed a bankruptcy petition.

against PT Global Mediacom at the Central Jakarta Commercial Court on July 28 2020. However, PT Global Mediacom rejected the bankruptcy petition on the grounds:

- a. Simple proof requirements are not met. Referring to the bankruptcy petition based on the Put and Call Option Agreement on June 9 2006, it turns out that the name KT Corporation is not listed as a party to the agreement. For PT Global Mediacom, there is still a need for simple proof in the general court on the basis of the bankruptcy petition by KT Corporation. Does KT Corporation have receivables from PT KTF Indonesia and is the basis of the Sale and Transfer Shares Agreement dated 23 September 2006 whether it is related to the Put and Call Option Agreement?
- b. KT Corporation is not a party to the Put and Call Option Agreement dated June 9 2006. The names listed in the agreement are Qualcomm Incorporated, PT KTF Indonesia, and PT Bimantara Citra Tbk. In the revised bankruptcy application letter, KT Corporation admitted that it was not part of the Put and Call Option Agreement, but was based on the Sale and Transfer Shares Agreement dated September 23 2006 where it had replaced all the rights and obligations of KT Freetel, Co., Ltd. Then KT Freetel Co., Ltd and KT Corporation merged to become KT Corporation. According to PT Global Mediacom, the Sale and Transfer Shares Agreement is a sale and purchase of shares and is not a cessie agreement so it is not related to the Put and Call Option Agreement.
- c. The object of this case is the same object and is being tried at the General Court and is still under review at the Supreme Court. At the first level, Case Decision No. 431/Pdt.G/2010/PN.Jkt.Pst. At the appeal level, Case Decision Number 665/PDT/2011/PT/DKI. At the cassation level, the decision in case no. 204/K/PDT/2013 and Supreme Court PK Decision No. 104 PK/PDT/2019 it was decided absolutely that KT Corporation was not a party to the agreement which contained an international arbitration clause. Based on the Supreme Court PK Decision No. 104 PK/PDT/2019 followed up with filed a Non-execution lawsuit against the International Arbitration Decision at the Central Jakarta District Court with case Number 455PDT.G/ARB/2020/PN.JKT.PST.
- d. There has been a South Jakarta District Court Decision Number: 97/PDT.G/2017/PN.JKT.SEL which has been incracht to cancel the Put and Call Option Agreement dated June 9 2006.
- e. PT Global Mediacom does not recognize Qualcomm Incorporated as a secondary creditor. Due to the change of parties in the Put and Call Option Agreement which changed PT KTF to KT Freetel, the legal position of Qualcomm Incorporated is questionable.

In this way, a problem formulation is drawn, namely "Was the judge's consideration in deciding the case between KT Corporation and PT Global Mediacom correct?"

Research Methods

The legal research used is normative legal research. In this case the researcher will focus on written studies in many aspects of law, legal theory, history, philosophy, structure and composition, scope and material, laws. This research is called normative legal research because it aims to create legal rules, legal principles as well as legal doctrine to answer legal problems. It can also be called doctrinal legal research, because this research is carried out through critical review of library materials such as laws and regulations, books, journals and other legal materials.

Results And Discussion

A. Definition of Bankruptcy

Bankruptcy is a civil law that implements Articles 1131 and 1132 of the Civil Code, regulations regarding bankruptcy were previously contained in Perpu No. 1 of 1998 which has become Law No. 4 of 1998. However, changes and improvements were made to this Law because it was felt to have weaknesses, especially in practice, so that Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (*KPKPU* Law)

Bankruptcy in number 1 of the *KPKPU* Law defines bankruptcy as a general confiscation of all assets of a debtor who has gone bankrupt where the management and settlement is with the Curator under the supervision of a supervising judge³

A bankruptcy application is submitted with the conditions as stated in Article 2 paragraph (1) and Article 8 Paragraph (4) of the *KPKPU* Law. The condition is that the debtor must have two or more creditors and has not paid in full at least one debt that is due and collectible. He can file for bankruptcy at the commercial court either at his own request (the debtor) or at the request of one or more of his creditors. In addition, Article 8 Paragraph (4) of the *KPKPU* Law requires that the request for bankruptcy declaration be granted if Article 2 paragraph (1) is proven simply. ⁴ Based on the two arguments of this article, the requirements for a bankruptcy application are:

1. There are two or more creditors.
2. It is proven that there is a debt that is due and can be collected.
3. The two things above can be proven simply.⁵

If the above conditions are met and the debtor is declared bankrupt, the debtor who is declared bankrupt will immediately lose the right to manage and control his assets,⁶ then the entire assets of the bankrupt debtor will be called bankruptcy assets or bankruptcy boedel as stated in the *KPKPU* Law.

There are exceptions to the assets of bankrupt debtors which become bankruptcy assets, this is stated in Article 22 of the *KPKPU* Law as follows:

1. Objects including animals needed by the debtor in connection with his work, equipment, medical equipment used for health, equipment used by the debtor and his family, as well as food for 30 days for the debtor and his family at that place.
2. Something the debtor obtains from his work as a salary for a position or service as wages, pensions, waiting money or allowances, as determined by the Supervising Judge.
3. Money given to debtors to provide maintenance according to law.

A court decision declaring the debtor bankrupt, then The court will appoint a Supervisory Judge and appoint a Curator to carry out the settlement of the bankruptcy case. Curator.⁷ The implementation of general confiscation from the moment the bankruptcy decision is pronounced is a situation that is carried out to protect the interests of creditors, the aim is to ensure that the debtor does not carry out actions that are detrimental to the bankruptcy assets, as well as a way to maximize the collection of the debtor's bankruptcy assets with the aim of maximizing payments to creditors. In simple terms, it can be said that a curator must sell assets where the proceeds will be distributed to creditors. The task of the curator is at the core of resolving bankruptcy cases. Implementing good and efficient settlements can speed up and facilitate the return of creditors' rights and the fulfillment of the rights of Bankrupt debtors.

B. Analysis of the Bankruptcy Petition between KT Corporation and PT Global Mediacom

In the bankruptcy petition submitted by KT Corporation, the Legal Relationship with the Respondent, in this case PT Global Mediacom, is the existence of ICC Arbitration Decision No. 16772/CYK (KT Corporation Arbitration Decision against PT Global

Mediacom) as the basis for debts that are due and collectible, then the Petitioner also argued that there were two creditors, namely himself and Qualcomm Incorporated. So the Petitioner argues that PT Global Mediacom's bankruptcy petition can be proven simply because the first and second conditions have been fulfilled in accordance with the provisions in Article 2 Paragraph (1) of the *KPKPU* Law.

Regarding the application in Case Number 33/Pdt.Sus-Pailit/2020/PN Niaga.Jkt.Pst, the panel of judges has issued a decision which essentially rejects the entire application by KT Corporation. Where in the evidence in this case Qualcomm Incorporated could not prove the claim in the form of a request for execution of the ICC Arbitration Decision Registration Deed No. 18062/VRO (Qualcomm Incorporated Arbitration Decision against PT Global Mediacom), Number 21/Pdt/ARB-INT/2013/PN.Jkt/Pst or a summons to PT Global Mediacom. During the trial, KT Corporation could not submit or show a power of attorney from Qualcomm Incorporated to become another creditor. Thus, KT Corporation cannot prove that PT Global Mediacom has two or more creditors. This situation is the basis for the panel's consideration in rejecting the bankruptcy petition. If you look at the provisions of Article 2 Paragraph (1) of the *KPKPU* Law, as one of the requirements for a bankruptcy application is two or more creditors, then the panel's consideration is correct.

In this case the commercial court still has the authority to examine and adjudicate bankruptcy applications from parties related to the agreement contained in the arbitration clause, provided that as long as the debt which is the basis for the application for a bankruptcy declaration complies with Article 2 paragraph (1) of the *KPKPU* Law. 8 The purpose of "Debt which has matured and can be collected" is the debtor's obligation to pay debts to creditors which have matured, whether they arise because of an agreement, because of the acceleration of the collection time as agreed, arise because of the imposition of sanctions and fines by the competent authority, and arise because of a decision court, arbitrator or panel of arbitrators.⁹

KT Corporation can apply for bankruptcy on the basis of the ICC International Arbitration Award No.16772/CYK, but this cannot immediately be filed. An arbitration award must be requested for execution first at the Central Jakarta District Court in accordance with the provisions of Article 66 letter (e) of Law Number 30 of 1999 concerning Alternative Dispute Resolution and Arbitration which states that an international arbitration award by one of the parties to the dispute can only be implemented after obtain execution from the Central Jakarta District Court.¹⁰ The arbitration award must receive an execution decision. as recognition by the Indonesian court so that it can become the basis for debts that are due and can be collected.

However, in the evidentiary process in the bankruptcy petition trial, there was no evidence that the ICC International Arbitration Award No.16772/CYK Arbitration Decision had been proven to be enforceable. This raises the question for the panel as to why the execution could not be carried out. Then evidence emerged of PK Decision Number 104 PK/PDT/2019 which stated that the 2006 Put and Call Option Agreement which was the basis for the dispute was still in dispute so that the execution of the arbitration decision could not be implemented. Thus, the arbitration award cannot fulfill the requirements for debts that are due and collectible. This basis was the consideration for the panel in rejecting KT Corporation's bankruptcy application.

The third requirement for a bankruptcy petition is simple proof. Simple proof develops into proof that the debtor has stopped paying, which must be done simply. What this means is that the court in examining the bankruptcy petition does not need to use the evidentiary system along with the evidence specified in the civil procedural law. ¹¹ Such as the provisions of Article 8 paragraph (4) Article 2 paragraph (1) of the *KPKPU* Law. If there is a

difference in the amount of debt claimed by the bankruptcy applicant and the bankruptcy respondent, this does not prevent the bankruptcy decision from being decided.¹²

Evidence of PK Decision Number 104 PK/PDT/2019 is the basis for the three bankruptcy applications to be rejected. The panel of judges considered that the petition could not be proven simply in accordance with Article 8 paragraph (4) of the *KPKPU* Law. For the panel, the decision must be carried out first. The fact is that KT Corporation cannot prove its argument because it cannot show evidence that the ICC International Arbitration Award No.16772/CYK Arbitration Decision has been proven to be able to be executed and the evidence of PK Decision Number 104 PK/PDT/2019 is a fact that this bankruptcy petition cannot be proven. Simply put, because disputes are still ongoing regarding the Put and Call Option Agreement, they must be implemented first because the dispute is outside the scope of the commercial court. The argument regarding two or more creditors is also not proven due to the fact that Qualcomm Incorporated never submitted a bill or summons to PT Global Mediacom and KT Corporation does not have a power of attorney from Qualcomm Incorporated. Thus, the simple element of proof was not met, so the panel of judges rejected the bankruptcy petition correctly.

Conclusion

The judge's considerations in Decision Number 33/Pdt.Sus-Pailit.2020/PN.Niaga Jkt.Pst are correct. The rejection of the bankruptcy petition by the panel of judges was in accordance with the provisions of Article 2 paragraph (1) and Article 8 Paragraph (4) of the *KPKPU* Law because KT Corporation could not prove in fact the existence of two or more creditors. The ongoing dispute also proves that this debt cannot be proven simply. Thus, KT Corporation does not meet the requirements for a bankruptcy application, so its application should be rejected.

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Payment

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