

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 Obligations; Curator; Bankruptcy Petition

History:

Received: 11th June 2024

Accepted: 9th February 2025

Published: 9th February 2025

Publisher: Universitas PGRI Madiun

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INTRODUCTION

The dispute began with regard to the implementation of a 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 filed an arbitration request with 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 the ICC Arbitration Decision No. 16772/CYK, it 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 a selling price of USD 9,984,975 and interest of USD 3,865,991.
- c. The Arbitration Panel ordered PT Global Mediacom to pay pre-judgment interest to KT Corporation amounting to USD 13,850,966 with an annual interest rate of 5.75% since July 6, 2009.

- d. The Arbitration Panel ordered PT Global Mediacom to pay post-judgment interest to KT Corporation amounting to 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 the 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 that:

a. Simple proof requirements were not met. Referring to the bankruptcy petition based on the Put and Call Option Agreement on June 9, 2006, it turns out that KT Corporation's name is not listed as a party to the agreement. For PT Global Mediacom, it still needs to be proven in a non-simple manner in a general court on the basis of a bankruptcy petition by KT Corporation. Does KT Corporation have receivables with PT KTF Indonesia and also the basis of the Sale and Transfer Shares Agreement dated September 23, 2006, is it 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 bankruptcy petition revision letter, KT Corporation admitted that it was not part of the Put and Call Option Agreement, but based on the Sale and Transfer Shares Agreement dated September 23, 2006, it has replaced all rights and obligations of KT Freetel, Co., Ltd. Then KT Freetel Co., Ltd and KT Corporation merged into KT Corporation. According to PT Global Mediacom, the Sale and Transfer Shares Agreement is a sale and purchase of shares and not a cession 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 in the General Court is still under examination at the level of Review at the Supreme Court. At the first level, the Decision of Case No. 431/Pdt.G/2010/PN.Jkt.Pst. At the appeal level, the Decision of Case Number 665/PDT/2011/PT/DKI. At the Cassation level, the Decision of Case No. 204/K/PDT/2013 and the Supreme Court PK Decision No. 104 PK/PDT/2019 were decided absolutely that KT Corporation was not a party to the agreement containing an international arbitration clause. The Supreme Court PK Decision No. 104 PK/PDT/2019 was followed up by filing a Non-exequatur 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 Decision of the South Jakarta District Court Number: 97/PDT.G/2017/PN.JKT.SEL which has been *incracht* canceling the Put and Call Option Agreement dated June 9, 2006.

e. PT Global Mediacom does not recognize Qualcomm Incorporated as the second creditor. Because of the change of parties in the Put and Call Option Agreement which changed the party PT KTF to KT Freetel, the legal position of Qualcomm Incorporated is questionable.

Thus a formulation of the problem is drawn, namely "Is the judge's consideration in deciding the case of KT Corporation with PT Global Mediacom correct?"

MATERIALS AND 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, Law (Muhammad, 2004). This research is called normative legal research because it aims to create legal rules, legal principles and legal doctrines in order to answer legal problems. It can also be called doctrinal legal research, because this research is conducted through a critical review of library materials such as laws and regulations, books, journals and other legal materials (Marzuki, 2010).

RESULTS AND DISCUSSION

A. Definition of Bankruptcy

Bankruptcy is a civil law that implements Articles 1131 and 1132 of the Civil Code, the regulation regarding bankruptcy was previously stated in Government Regulation in Lieu of Law No. 1 of 1998 which has become Law No. 4 of 1998. However, the Law was again amended and improved because it was felt to have weaknesses, especially in practice, so that Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UU-KPKPU) was born

Bankruptcy in 1 number 1 of the UU-KPKPU defines bankruptcy as a general seizure of all the assets of a debtor who has gone bankrupt where the management and settlement are in the hands of the Curator under the supervision of the supervising judge

A bankruptcy application is submitted with the conditions as referred to in Article 2 paragraph (1) and Article 8 paragraph (4) of the UU-KPKPU. The requirement is that the debtor must have two or more creditors and not pay in full at least one debt that has matured and can be collected can be filed for bankruptcy at the commercial court either at his own request (debtor) or at the request of one or more of his creditors. In addition, Article 8 Paragraph (4) of the KPKPU Law requires that a bankruptcy statement application be granted if Article 2 paragraph (1) is proven simply. Based on the two arguments of the 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 has matured and can be collected.
3. Both of the above can be proven simply (Rachmadsyah, 2010).

If the above requirements are met and declared bankrupt, the debtor who is declared bankrupt directly loses the right to manage and control his assets (Shubhan, 2008), then all of the assets of the bankrupt debtor will be called bankruptcy assets or bankrupt estate as stated in the KPKPU Law.

There are exceptions to the assets of bankrupt debtors that become bankrupt assets, as 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, and food for 30 days for the debtor and his family in that place.
2. Something obtained by the debtor from his work for salary from a position or service as wages, pension, waiting money or allowances, and as determined by the Supervisory Judge.
3. Money given to the debtor to provide a living according to the law.

Court decision stating that the debtor is bankrupt, then the court will appoint a Supervisory Judge and appoint a Curator to settle the bankrupt estate. Curator. The enactment of general seizure since the bankruptcy decision was pronounced is a condition that is carried out to protect the interests of creditors, the aim is so that the debtor does not commit acts that are detrimental to the bankrupt estate, and a way to maximize the collection of the debtor's bankrupt estate which aims to maximize payments to creditors. In simple terms, it can be said that a curator must sell assets, the proceeds of which will be distributed to creditors. The curator's task is the core of resolving bankruptcy cases, the implementation of good and efficient settlement can accelerate and facilitate the return of creditors' rights and the fulfillment of the rights of bankrupt debtors.

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

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

Mediacom) as the basis for debt that is due and collectible, then the Applicant also argues that there are two creditors, namely himself and Qualcomm Incorporated. so that the Applicant argues that PT Global Mediacom's bankruptcy petition can be proven simply because the first and second requirements have been met in accordance with the provisions of Article 2 Paragraph (1) of the KPKPU Law.

Against the petition with Case Number 33/Pdt.Sus-Pailit/2020/PN Niaga.Jkt.Pst, the panel of judges has issued a decision which in essence rejects the entire petition of KT Corporation. Where in the evidence in this case Qualcomm Incorporated cannot prove the bill in the form of a request for execution of the ICC Arbitration Decision Registration Deed No. 18062/VRO (Arbitration Decision of Qualcomm Incorporated against PT Global Mediacom), Number 21/Pdt/ARB-INT/2013/PN.Jkt/Pst or a summons to PT Global Mediacom. In the trial, KT Corporation could not submit or show a power of attorney from Qualcomm Incorporated to become another creditor. Thus, KT Corporation could not prove that PT Global Mediacom had two or more creditors. This situation became the basis for the panel's consideration to reject the bankruptcy petition. If we look at the provisions of Article 2 Paragraph (1) of the KPKPU Law as one of the requirements for a bankruptcy petition 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 try bankruptcy petitions from the parties related to the agreement contained in the arbitration clause, with the note that as long as the debt that is the basis for the petition for a declaration of bankruptcy meets Article 2 paragraph (1) of the KPKPU Law. The meaning of "debt that has matured and can be collected" is the debtor's obligation to pay debt to the creditor that has matured, whether arising from an agreement, due to the acceleration of the collection period as agreed, arising due to the imposition of sanctions and fines by the authorized agency, and arising due to a court decision, arbitrator or arbitrator panel.

KT Corporation can file a bankruptcy application based on the ICC International Arbitration Award No.16772/CYK Arbitration Decision, but it cannot be filed immediately. An arbitration decision must first be filed for execution 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 decision by one of the parties in the dispute can only be executed after obtaining an exequatur from the Central Jakarta District Court. The arbitration decision must obtain an execution decision as recognition by the Indonesian court so that it can be the basis for debts that have matured and can be collected. However, in the process of proving the bankruptcy application trial, there was no evidence that the ICC International Arbitration Award No.16772/CYK Arbitration Decision had been proven to be enforceable. This raises questions for the panel as to why its execution cannot be implemented. Then came the evidence of PK Decision Number 104 PK/PDT/2019 which stated that the Put and Call Option Agreement 2006 which was the basis for the dispute was still in dispute so that the arbitration decision was declared unenforceable. Thus, the arbitration decision could not meet the requirements for debt that had matured and could be collected. This basis was the panel's consideration in rejecting the bankruptcy petition from KT Corporation (Iswi Hariyani et al, 2018).

The third requirement for a bankruptcy petition is simple proof. Simple proof has developed into proof that the debtor has stopped paying which must be done simply. This means that the court in examining the bankruptcy petition does not need to use the proof system and the evidence tools specified in civil procedural law. 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 argued by the bankruptcy applicant and the bankruptcy respondent, it does not prevent the bankruptcy decision from being decided. Evidence of the existence of PK

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

CONCLUSION

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

ACKNOWLEDGMENTS

Thank God Almighty, Lecturers, and our colleagues on campus who have supported the completion of this journal.

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