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Debtor Liability for Non-Performance of a Homologated Composition Agreement: Analysis Of Central Jakarta Commercial Court Decision No. 31/Pdt.Sus-Pembatalan Perdamaian/2023

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ABSTRACT

This study examines the legal standard for debtor liability when a homologated composition agreement is not performed and clarifies the procedural steps that must precede bankruptcy under Indonesian bankruptcy law. The research uses a normative doctrinal method with statute, case, and conceptual approaches. Primary legal materials include Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), the homologation decision in Case No. 78/Pdt.Sus-PKPU/2019/PN.Niaga.Jkt.Pst, Central Jakarta Commercial Court Decision No. 31/Pdt.Sus-Pembatalan Perdamaian/2023/PN Niaga.Jkt.Pst, and Supreme Court Decision No. 186 K/Pdt.Sus-Pailit/2024. The study finds that debtor non-performance does not automatically produce bankruptcy. Under Articles 170, 171, and 291, a creditor must seek cancellation, the debtor bears the burden of proving performance, and the court may grant a maximum thirty-day period to cure the default before deciding whether cancellation is justified. In the case studied, PT Oilrig Binamas Pratama had paid an initial IDR 1 billion but failed to pay the remaining IDR 6.114 billion due by 27 July 2020. After repeated demands in May 2023, the debtors submitted no evidence of performance, relied on an unsubstantiated asset-sale proposal, and later offered a post-dated cheque. The Commercial Court treated these circumstances as sufficient proof of neglect and cancelled the composition agreement; the Supreme Court subsequently upheld the decision. The article contributes an operational framework for assessing material non-performance and good faith based on maturity, duration and magnitude of default, repeated demands, evidentiary proof, and the credibility of a proposed cure, thereby balancing business rescue with creditor protection.

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1. INTRODUCTION

Legal relationships in commercial activity create reciprocal rights and obligations, including the debtor's obligation to perform payment commitments in accordance with an agreement. When a debtor experiences financial distress, insolvency law must reconcile two objectives that can pull in different directions: preserving a viable business and protecting creditors from prolonged non-performance. Indonesian law addresses this tension through bankruptcy and Suspension of Debt Payment Obligations (Penundaan Kewajiban Pembayaran Utang/PKPU) under Law Number 37 of 2004 [1], supported by the general contractual principle of pacta sunt servanda in Article 1338 of the Civil Code [2].

PKPU is designed as a restructuring mechanism rather than an automatic route to bankruptcy. Article 222 of Law Number 37 of 2004 is the principal statutory basis for a PKPU petition, whereas Article 2 paragraph (1) primarily regulates the conditions for a declaration of bankruptcy. Through PKPU, a debtor may propose a composition plan containing an offer to pay all or part of its debts. If the plan obtains the statutory creditor approval and is ratified by the Commercial Court, it becomes a homologated composition agreement. This distinction is important because the legal consequences of a post-homologation default must be assessed under the specific cancellation regime rather than by simply reapplying the initial bankruptcy requirements [1], [3].

A homologated composition agreement has a dual character. Contractually, it reflects a negotiated restructuring arrangement;

procedurally, homologation gives the arrangement judicial authority and terminates PKPU when the homologation becomes final. Its binding scope, however, is not unlimited. Article 286 of Law Number 37 of 2004 provides that the homologated composition binds creditors subject to the statutory exception for creditors referred to in Article 281 paragraph (2), particularly secured creditors who did not approve the plan and are entitled to the compensation mechanism provided by the statute [1], [7]. Therefore, a statement that homologation simply binds every creditor regardless of position or voting outcome would be overly broad.

Previous scholarship has established important foundations but leaves a narrower post-homologation question requiring further analysis. Harsono and Prananingtyas examined the cancellation of the composition agreement in the PT Njonja Meneer case and emphasized the legal consequences of cancellation [5]. Adithio, Rifai, and Shebubakar focused on the consequences of debtor default in a homologated agreement [6]. More recently, Fajrina analyzed the same Central Jakarta Commercial Court Decision No. 31/Pdt.Sus-Pembatalan Perdamaian/2023, principally from the perspective of the cancellation process and its legal consequences [8]. These studies do not fully operationalize the legal threshold of "neglect" under Article 170, the reversed burden of proof imposed on the debtor, the court's discretionary thirty-day cure period, or the relationship between those rules and a judicial assessment of good-faith performance. They also do not place the first-instance decision together with the subsequent Supreme Court Decision No. 186 K/Pdt.Sus-Pailit/2024, which confirmed the cancellation and clarified that a cancellation petition under Article 170 does not require the substantive two-creditor condition applicable to an ordinary bankruptcy petition [11].

Decision No. 31/Pdt.Sus-Pembatalan Perdamaian/2023 is particularly useful for addressing that gap because the dispute contains a clear payment schedule, a prolonged unpaid balance, repeated formal demands, an express proposal by the debtors to settle outside court through an asset-sale process, the absence of evidentiary proof of performance, and a later offer of a post-dated cheque. Those circumstances allow the study to distinguish a legally significant and persistent default from a short or curable delay. They also provide a concrete basis for evaluating when creditor protection should prevail over the business-rescue objective of PKPU [10].

Accordingly, the novelty of this article lies not merely in using a different court decision, but in formulating an operational legal framework for post-homologation debtor liability. The framework evaluates five factors: whether the obligation has matured; the magnitude and duration of non-performance; the existence and response to formal demands; the debtor's evidentiary proof of payment or financial capacity; and the credibility of any proposed cure within the statutory framework. This approach also treats Article 170 paragraph (3) as a proportionality mechanism: a short, objectively curable delay may justify a limited grace period, while persistent non-performance unsupported by evidence may justify cancellation.

Based on this background, the study addresses three questions: (1) what is the legal status and binding scope of a composition agreement after homologation; (2) how do Articles 170, 171, 281, 286, and 291 of Law Number 37 of 2004 structure debtor liability, the burden of proof, the possibility of a cure period, and the legal consequences of cancellation; and (3) how did the Commercial Court assess non-performance in Decision No. 31/Pdt.Sus-Pembatalan Perdamaian/2023, and what are the broader implications of that reasoning after it was upheld in Supreme Court Decision No. 186 K/Pdt.Sus-Pailit/2024?

2. RESEARCH METHODS

This research is a normative juridical (doctrinal) legal study using statute, case, and conceptual approaches. The statute approach examines Law Number 37 of 2004, particularly Articles 170, 171, 222, 281, 285, 286, and 291, together with Article 1338 of the Civil Code. The case approach centers on Central Jakarta Commercial Court Decision No. 31/Pdt.Sus-Pembatalan Perdamaian/2023/PN Niaga.Jkt.Pst, read together with the homologation in Case No. 78/Pdt.Sus-PKPU/2019/PN.Niaga.Jkt.Pst and Supreme Court Decision No. 186 K/Pdt.Sus-Pailit/2024. The conceptual approach is used to examine debtor liability, material non-performance, good faith, legal certainty, creditor protection, and business rescue [1], [2], [4].

Primary legal materials consist of the legislation and judicial decisions above. Secondary legal materials consist of authoritative bankruptcy-law books and peer-reviewed journal articles on PKPU, homologation, cancellation of composition agreements, and the position of secured creditors [3]-[7], [12], [13]. The 2023 decision was selected because it contains a documented payment schedule and evidentiary dispute concerning post-homologation performance, while the 2024 cassation decision provides final confirmation of the relevant legal construction. Legal materials were collected through document study and analyzed through grammatical and systematic statutory interpretation. The ratio decidendi was identified by separating the material facts, the parties' arguments, the evidence, the legal issues, the court's reasoning, and the dispositive order. The analysis first describes the applicable rules and then evaluates them prescriptively against the objectives of legal certainty, proportionality, business rescue, and creditor protection.

3. RESULTS AND DISCUSSION

3.1. PKPU and the Binding Scope of a Homologated Composition Agreement

The starting point for PKPU is Article 222, not Article 2 paragraph (1), of Law Number 37 of 2004. Article 222 permits the use of PKPU where a debtor is unable or anticipates being unable to continue paying debts that have fallen due and are collectible, so that a composition plan may be proposed. Article 2 paragraph (1), by contrast, sets the basic conditions for an ordinary bankruptcy declaration. Although both regimes may ultimately interact, conflating their filing requirements obscures the distinct restructuring function of PKPU [1], [3].

The PKPU process is temporary and judicially supervised. Following Interim PKPU, the process may continue to Permanent PKPU if the statutory requirements are satisfied. The central purpose is to allow a negotiated composition plan to be assessed and voted upon within the statutory time limits. Under Article 281 paragraph (1), approval requires the prescribed majorities among

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concurrent creditors and secured creditors participating in the vote. This voting architecture shows that PKPU seeks collective restructuring rather than a bilateral extension of payment between one debtor and one creditor [1], [12].

Once the approved composition plan is homologated, Article 286 gives it binding effect. That binding effect should nevertheless be read together with Article 281 paragraph (2). Secured creditors who do not approve the composition occupy a specific statutory position and are entitled to compensation based on the lower of the collateral value or the amount directly secured by the collateral. Scholarship on secured creditors likewise emphasizes that the binding effect of a PKPU composition is subject to this statutory exception [7]. The legal status of homologation is therefore strong but not conceptually unlimited.

For the debtor, homologation changes the character of the proposed restructuring from a plan into an enforceable composition agreement. The debtor is required to perform the schedule and obligations that it voluntarily proposed and that the court ratified. This reinforces pacta sunt servanda, but the consequences of subsequent non-performance remain governed by the specific cancellation provisions in the Bankruptcy and PKPU Law rather than by an assumption of automatic bankruptcy [1], [2], [4].

3.2. Cancellation Procedure, Burden of Proof, and the Thirty-Day Cure Period

Article 170 establishes the substantive framework for cancellation. Paragraph (1) authorizes a creditor to seek cancellation when the debtor neglects to perform the homologated composition. Paragraph (2) expressly places the burden on the debtor to prove that the composition has been performed. Paragraph (3) gives the court discretion to grant the debtor a maximum of thirty days to perform its obligations. Through Article 291 paragraph (1), Articles 170 and 171 apply mutatis mutandis to a composition reached in PKPU [1].

This structure demonstrates that non-performance does not, by itself, cause immediate bankruptcy. The correct sequence is: an obligation under the homologated composition becomes due; the debtor fails to perform; a creditor files a cancellation petition; the Commercial Court hears the parties and evaluates the evidence; the debtor must prove performance and may, where justified, receive a statutory cure period; and only if the court grants cancellation must the debtor also be declared bankrupt under Article 291 paragraph (2). Article 171 regulates the procedural route for the cancellation petition. The statutory sequence protects creditors without removing judicial scrutiny from a remedy as serious as renewed bankruptcy [1], [5].

The burden-of-proof rule in Article 170 paragraph (2) is particularly important. It prevents the debtor from responding to a matured payment obligation only with general statements of financial difficulty or future intention. Once cancellation is sought for alleged non-performance, the debtor must provide objectively verifiable material showing that the composition has been performed, or at least material relevant to the court's consideration of whether a short cure period is justified. Such material may include proof of transfers, account statements, binding financing commitments, executed asset-sale documents, or other concrete evidence of immediately available payment capacity.

Article 170 paragraph (3) should be understood as a proportionality mechanism rather than as an automatic debtor entitlement. A cure period may be appropriate where the default is short, the debtor has substantially performed, the source of payment is documented, and performance can realistically occur within thirty days. Conversely, prolonged non-payment, repeated unanswered demands, the absence of documents proving financial capacity, and a proposed payment date outside the statutory cure period weigh against granting additional time. This reading maintains the business-rescue objective of PKPU without converting homologation into an indefinite postponement mechanism [4], [6].

The Supreme Court's later treatment of this case also clarifies a related procedural issue. In Decision No. 186 K/Pdt.Sus-Pailit/2024, the Supreme Court rejected the debtors' argument that cancellation required two or more creditors. It held that Article 170 does not impose the ordinary two-creditor requirement; a matured and collectible performance obligation under the homologated composition that remains unperformed is sufficient to support a cancellation request, subject to the judicial process prescribed by the statute [11, pp. 6-7]. This distinction further confirms why Article 2 paragraph (1) cannot simply be transplanted into the post-homologation cancellation stage.

3.3. Case Background, Parties, Obligations, and Evidence

The applicant in Decision No. 31/Pdt.Sus-Pembatalan Perdamaian/2023 was PT Bank Syariah Indonesia Tbk, formerly PT Bank Syariah Mandiri. The respondents were PT Oilrig Binamas Pratama and PT Green Gas Energy. The dispute arose from PKPU Case No. 78/Pdt.Sus-PKPU/2019/PN.Niaga.Jkt.Pst, initially brought against the two companies. During the PKPU process, the debtors submitted a composition proposal on 23 January 2020, a vote was held on 24 January 2020, and the composition agreement was signed on 27 January 2020. The Commercial Court ratified the agreement on 3 February 2020 [9], [10, pp. 2-6].

According to the homologated arrangement and the applicant's claim, the relevant obligation included principal debt of USD 497,206.61, stated in the case as equivalent to IDR 7,114,032,175.88, together with margin and penalty obligations of USD 70,082.57 and an appraisal cost of IDR 25,000,000. Clause 2.3.b of the composition agreement divided the principal repayment into an initial IDR 1,000,000,000 payment due by 31 January 2020 and a further IDR 6,114,032,175.88 payment to be completed within six months, no later than 27 July 2020. The debtor made the initial IDR 1 billion payment but did not make the follow-up payment by the agreed deadline [10, pp. 5-6].

The applicant did not rely on a bare allegation of default. The documentary evidence included the earlier PKPU decision, publication of the PKPU decision, proof relating to the creditor's claim, the recognized list of claims, the 27 January 2020 composition agreement, the 3 February 2020 homologation decision, and a sequence of demand letters. The respondent was formally reminded through Letter No. 306/SOM-OBP/V/2023 dated 12 May 2023, Letter No. 307/SOM-OBP/V/2023 dated 20 May 2023, and Letter No. 308/SOM-OBP/V/2023 dated 29 May 2023. These demands were sent nearly three years after the follow-up payment had become due, demonstrating that the dispute concerned prolonged rather than momentary non-performance [10, pp. 5-6, 12-16].

The respondents' position was materially different from a denial accompanied by proof of payment. They proposed an out-of-court settlement on the ground that an asset sale was in process. During the evidentiary stage, however, the respondents submitted no documentary evidence, witnesses, or experts despite having been given sufficient opportunity. After the parties had submitted conclusions, the respondents offered a post-dated cheque maturing on 30 November 2023, which the applicant rejected [10, pp. 17-18]. These facts are critical because Article 170 paragraph (2) places the burden of proving performance on the debtor.

3.4. Ratio Decidendi: Neglect, Admission, and Good-Faith Performance

The Commercial Court's ratio decidendi can be reconstructed in four steps. First, the court identified the homologated composition agreement and the payment obligation that had fallen due. Second, it considered the respondents' proposal to settle outside court because they were in the process of selling assets as an acknowledgment that an outstanding obligation remained. The court treated that acknowledgment as evidentiary confirmation of the applicant's core allegation. Third, the court applied Article 170 paragraph (2) and emphasized that the debtor bears the burden of proving that the composition has been performed. Because the respondents submitted no evidence of performance, that burden was not discharged. Fourth, after finding neglect under Article 170 paragraph (1), the court applied Article 291 and cancelled the composition agreement, which legally required the respondents to be declared bankrupt [10, pp. 18-21].

The decision is more accurately understood as a finding of proven non-performance than as an automatic sanction for any delay. The debtors had performed the initial IDR 1 billion payment, but the remaining IDR 6.114 billion was due no later than 27 July 2020 and remained unpaid when the cancellation proceeding was adjudicated in October 2023. Three formal demands in May 2023 had not produced payment. The respondents did not provide an executed asset-sale agreement, proof of available funds, proof of payment, or any other evidence capable of satisfying Article 170 paragraph (2). Their later post-dated cheque also matured after the court's decision date and after the parties had already submitted conclusions [10].

This evidentiary pattern provides a more objective basis for discussing good faith. Good faith should not be inferred merely from a debtor's statement that it intends to pay, nor should bad faith be presumed from a minor delay. In this case, however, the combination of a multi-year overdue obligation, repeated demands, no proof of payment, no substantiated asset-sale documentation, and a late payment proposal supports the conclusion that the debtors did not demonstrate credible good-faith performance. The legally relevant point is not the debtor's subjective intention alone, but whether its conduct and evidence show a realistic commitment to perform the homologated schedule.

Article 170 paragraph (3) reinforces this distinction. The statute gave the court authority to provide a maximum thirty-day grace period, but the case materials did not show a demonstrated capacity to cure the default within that period. The offered cheque was due on 30 November 2023, while the decision was issued on 25 October 2023, and the asset-sale assertion was unsupported by evidence. On a prescriptive reading, declining additional time was therefore proportionate to the duration and evidentiary quality of the default. A different result could be justified in a case involving a short delay and a documented source of payment capable of realization within thirty days.

The debtors' request for an out-of-court settlement also illustrates why the earlier manuscript's statement that a homologated obligation "cannot be renegotiated" was too absolute. Parties remain free to communicate and explore consensual settlement. What they cannot assume is that an informal proposal, by itself, suspends or replaces the enforceable terms of the homologated composition. Any modification intended to alter legally enforceable payment obligations must have a clear legal and consensual basis. In the present case, the applicant rejected the proposed post-dated cheque, so the court correctly evaluated performance against the existing homologated agreement [10].

Table 1. Analytical Matrix of Statutory Rules and Judicial Findings

Rule	Case evidence	Legal implication
Art. 170(1)	IDR 6.114 billion balance due 27 July 2020 remained unpaid; repeated demands in May 2023.	Material neglect could support a cancellation petition.
Art. 170(2)	Respondents submitted no documentary evidence, witnesses, or experts proving performance.	Debtors failed to discharge the statutory burden of proof.
Art. 170(3)	Asset-sale statement was unsubstantiated; post-dated cheque matured after the decision date.	No demonstrated basis for a cure within the maximum 30-day period.
Arts. 171 & 291(1)	Cancellation was sought through a court petition, hearing, and evidentiary process.	Default did not create automatic bankruptcy; judicial cancellation was required.
Art. 291(2)	Court first cancelled the composition and then declared both debtors bankrupt.	Bankruptcy is the mandatory consequence of a granted cancellation.
Arts. 281(2) & 286	Statute creates an exception for non-approving secured creditors.	Binding effect of homologation must be stated with the statutory exception.

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SC Decision 186/2024	Cassation rejected; Supreme Court held Article 170 does not require two creditors.	Cancellation has a distinct substantive threshold from an ordinary bankruptcy petition.

3.5. Implications for Legal Certainty, Creditor Protection, and Business Rescue

The case suggests that legally significant non-performance under Article 170 should be assessed contextually rather than mechanically. Five indicators are particularly relevant: (1) the obligation is clearly identified and has matured; (2) the unpaid amount is material in relation to the composition; (3) the default has continued for a substantial period; (4) the creditor has documented demands or other efforts to obtain performance; and (5) the debtor cannot produce objective evidence of payment or a credible cure. These indicators do not amend Article 170, but they provide a disciplined way to apply its open-textured concept of "neglect."

This framework also preserves the rescue function of PKPU. Cancellation should not become a device by which every technical delay immediately destroys a viable restructuring. Article 170 paragraph (3) already equips judges with a limited corrective mechanism. Where the debtor has substantially performed and can prove that the remaining default will be cured within thirty days, a grace period can protect going-concern value. Where, as in the present case, non-performance persists for years and the debtor produces no supporting evidence, creditor protection and legal certainty justify cancellation.

The Supreme Court's rejection of cassation on 26 February 2024 strengthens this interpretation. The Court held that the Judex Facti had not misapplied the law, confirmed the continued non-payment of the IDR 6.114 billion balance, noted the repeated demand letters, and expressly rejected the argument that cancellation required two or more creditors [11]. The decision is final and therefore provides additional doctrinal weight to the distinction between an ordinary bankruptcy petition and a post-homologation cancellation petition.

At the institutional level, the case also exposes a monitoring gap after homologation. PKPU administrators and the supervising judge perform essential functions during the PKPU process, but their restructuring role does not simply continue indefinitely after PKPU ends. Consequently, post-homologation compliance largely depends on the composition agreement, creditor monitoring, and subsequent judicial enforcement. This supports a policy discussion on whether composition agreements should contain clearer reporting milestones, proof-of-payment obligations, and default-notification procedures so that emerging non-performance can be identified before arrears become prolonged.

4. CONCLUSIONS

First, a homologated composition agreement is a legally enforceable restructuring instrument whose binding scope is governed by Articles 281 and 286 of Law Number 37 of 2004. It binds the debtor and creditors within the statutory framework, but the position of secured creditors who did not approve the plan must be qualified by the exception and compensation mechanism in Article 281 paragraph (2). The legal basis for entering PKPU is Article 222; Article 2 paragraph (1) should not be described as the principal filing requirement for PKPU.

Second, debtor non-performance after homologation does not automatically create bankruptcy. Articles 170, 171, and 291 require a creditor to seek cancellation through the Commercial Court. The debtor bears the burden of proving performance under Article 170 paragraph (2), and the court may grant a maximum thirty-day cure period under paragraph (3). Bankruptcy becomes mandatory under Article 291 paragraph (2) only after the court grants cancellation. The Supreme Court's Decision No. 186 K/Pdt.Sus-Pailit/2024 further confirms that the cancellation mechanism does not require two creditors as a substantive prerequisite.

Third, Decision No. 31/Pdt.Sus-Pembatalan Perdamaian/2023 demonstrates a material and evidentially established default: an IDR 6.114 billion follow-up payment due on 27 July 2020 remained unpaid for years; the creditor issued repeated demands; the debtors acknowledged an outstanding obligation through their settlement proposal; and they submitted no evidence proving performance. In those circumstances, cancellation was proportionate. The principal contribution of this study is the formulation of an operational framework for evaluating post-homologation neglect through maturity, magnitude and duration of default, formal demands, evidentiary proof, and the credibility of a proposed cure. This framework provides a more balanced application of legal certainty, creditor protection, and business rescue.

4.1. RECOMMENDATIONS

Debtors should formulate composition plans only after a demonstrable feasibility assessment and should maintain documentary proof for every payment milestone. Creditors should ensure that composition agreements contain clear maturity dates, reporting duties, notice-of-default procedures, and measurable cure mechanisms. When a cancellation petition is filed, Commercial Court judges should expressly address the Article 170 paragraph (3) discretion and explain why a cure period is or is not justified by the debtor's evidence, the duration of default, and the realistic availability of funds.

During PKPU, administrators and supervising judges should test the feasibility and clarity of proposed payment schedules before homologation, including the source of repayment and creditor reporting arrangements. Because their PKPU functions do not constitute permanent post-homologation supervision, policymakers should consider a clearer statutory or regulatory framework for post-homologation reporting and evidence of performance. Such a framework could reduce information asymmetry, identify default earlier, and preserve business rescue where cure remains realistic without weakening creditors' right to seek cancellation when material non-performance persists.

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