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## Article Title

### **The Efficacy and Determinants of Composition Schemes in Bankruptcy Resolution: A Case Study of Decision Number 10/Pdt.Sus-PKPU/2018/PN.Niaga.Mks**

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## ABSTRACT

*This research aims to analyze the efficacy of bankruptcy resolution achieved through composition schemes within the Makassar Commercial Court, along with the determinants affecting such efficacy. Employing a qualitative descriptive approach, this study integrates normative and empirical legal research methodologies. The research was conducted at the Makassar Class IA District Court. Data collection techniques involved interviews, documentation review, and literature review. Collected data were analyzed using qualitative data analysis techniques. Findings reveal that bankruptcy cases within the Makassar Commercial Court are predominantly resolved via composition schemes. This method is perceived as highly effective, and its process is consistent with Law Number 37 of 2004. The role of the curator, under the supervision of the supervisory judge, facilitates the reaching of agreements between debtors and creditors to resolve their debts relatively quickly, at a lower cost, and through a process perceived as less complex. However, several determinants act as constraints, negatively impacting resolution via composition, including varying educational levels among stakeholders, limited understanding of Law Number 37 of 2004, the heavy caseload often managed by individual curators, and the prevalence of a 'gengsi' (prestige-saving) culture. Therefore, public legal education and awareness initiatives are necessary, particularly targeting the business community, to enhance legal awareness and comprehension concerning the process and potential efficacy of bankruptcy resolution through composition within the Makassar Commercial Court, pursuant to Law Number 37 of 2004. Furthermore, in light of potentially increasing bankruptcy filings, the Makassar Commercial Court should consider increasing the number of appointed curators to facilitate more efficient and timely case resolution.*

**Keywords:** Bankruptcy Resolution; Composition; Curator.

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## INTRODUCTION

Issues of indebtedness commonly arise within society as numerous individuals seek to establish or expand businesses relying on limited capital (Diantoro, 2014). This situation often leads people to incur debt from other parties (Baidhowi, 2015), frequently without adequately considering the Break Even Point (BEP) as an indicator to assess their repayment capacity per the mutual agreement (Supriadi et al., 2018).

To address this situation and mitigate potential conflicts arising from indebtedness, the Government established a specific legal framework for debt resolution, namely Law Number 37 of 2004 (Husen, 2009; Hidayat, 2015). Nevertheless, the reality often diverges; when debts mature and creditors demand repayment, many debtors find themselves unable to fulfill their obligations according to the mutual agreement (Syarif, 2017). Consequently, a significant number of defaulting debtors provide various excuses, prompting some creditors to ultimately resort to unlawful debt recovery methods, which, in extreme instances, have tragically led to the loss of the debtor's life (Choliq, 2015).

Fundamentally, debt constitutes an obligation under civil law, and every obligation intrinsically corresponds to a right held by another party (Wijartama & Ibrahim, 2016). Should this obligation remain unfulfilled, the entitled party (the creditor) possesses the right to enforce their claim through civil proceedings; moreover,

if a creditor elects to pursue this legal recourse, the procedural requirements for filing a petition are generally not prohibitive (Sani, 1993).

The conditions for filing a bankruptcy petition against a debtor with the objective of securing debt repayment are stipulated in Article 2 section (1) of Law Number 37 of 2004, which regulates that:

*"A Debtor who has two or more Creditors and fails to pay in full at least one debt which has fallen due and is collectible, shall be declared bankrupt by a Court decision, either upon the Debtor's own petition or upon the petition of one or more of its Creditors."*

Furthermore, Article 144 of Law Number 37 of 2004 stipulates that *"A Bankrupt Debtor shall be entitled to offer a composition to all Creditors."* This offer of composition (*accord*) represents an effort that can be initiated by the debtor to conclude ongoing proceedings or even prevent potential litigation.

An examination of bankruptcy and suspension of debt payment obligation (PKPU) cases filed with the Makassar Commercial Court reveals that a significant proportion opt for resolution through composition schemes (Ishak, 2016). A notable example is the case involving PT Sentani Persada Sentosa (debtor proceedings initiated November 5, 2018). In this instance, the creditors – PT Core Hospitality International, PT Tiara Dekorindo Sakti, PT Pembangunan Daerah Papua, and PT Bank Muamalat, Tbk. – along with the debtor, mutually agreed upon a composition scheme. This agreement was subsequently homologated (ratified) by the Makassar Commercial Court through Decision Number 10/Pdt.Sus-PKPU/2018/PN.Niaga.Mks, dated January 23, 2019.

The homologation (court ratification) of a composition scheme signifies the termination of the bankruptcy by operation of law. Generally, this nullifies legal actions seeking the annulment and recovery of assets transferred by the debtor before the bankruptcy declaration (Hariyadi, 2020). However, if the composition scheme itself contains specific provisions regarding the disposition or release of certain bankruptcy estate assets, the right to pursue such annulment and recovery actions might persist; in such cases, these claims may be continued or initiated by the estate administrator (curator) as stipulated.

Based on the background outlined above, the objective of this research is to analyze the efficacy of bankruptcy resolution achieved through composition schemes within the purview of the Makassar Commercial Court, as well as to identify the determinants that influence this efficacy.

## **METHOD**

This research utilizes a mixed-method approach, integrating both normative and empirical legal research methodologies. Normative legal research involves the examination of legal principles, legal systematics, legal history, and comparative law (Qamar & Rezah, 2020). In contrast, empirical legal research investigates law within its societal context (Sampara & Husen, 2016), focusing specifically on matters pertaining to Bankruptcy and Suspension of Debt Payment Obligations. The empirical aspect of this study was carried out in Makassar City, precisely at the Makassar Class IA District Court, chosen due to the prevalence of bankruptcy cases resolved via composition schemes within this court's jurisdiction.

This study employs the following types and sources of data (Irwansyah, 2020):

1. Primary Data: Data collected directly from pertinent experts and authorized personnel affiliated with institutions responsible for bankruptcy administration.
2. Secondary Data: Data procured through a review of existing legal literature and documentation, comprising legislation, academic references, scholarly legal journals, legal encyclopedias, and official texts or publications. The primary legal materials forming a core component of the secondary data analysis consist of:
  - a. Law Number 37 of 2004;
  - b. Decision Number 10/Pdt.Sus-PKPU/2018/PN.Niaga.Mks.

The following data collection techniques were employed to gather the requisite information for this research:

1. Interviews: Direct interviews were conducted with selected informants possessing relevant knowledge regarding the specific issues examined in this study.
2. Documentation: This involved obtaining official records through formal requests submitted to the pertinent institutions, primarily focusing on acquiring Decision Number 10/Pdt.Sus-PKPU/2018/PN.Niaga.Mks.
3. Literature and Document Review: This encompassed systematically inventorying, reading, and analyzing primary legal materials (as specified above) and relevant secondary sources.

The collected data were subsequently processed and analyzed using a qualitative descriptive methodology. The core analytical method involved systematically identifying key information and correlating findings derived from the primary data (interviews) with the content and implications of the primary legal materials (legislation and case decision).

## **RESULTS AND DISCUSSION**

### **A. The Efficacy of Bankruptcy Resolution Through Composition Schemes**

Debt resolution through composition schemes is reportedly quite favoured in the practice of the Makassar Commercial Court, often viewed as a more effective pathway compared to other debt dispute resolution alternatives, such as the full liquidation of the debtor's assets. This perception of efficacy, as can be inferred from the views of parties involved in similar processes—indicated by observers like Hamsa<sup>1</sup>, Nurhidayah<sup>2</sup>, and Taufiq Motim<sup>3</sup>—tends to emphasize that debtors and creditors opt for amicable settlements because the process is considered more efficient in terms of time and less procedurally complex. Moreover, this consensus-based approach is valued for its potential to yield a final resolution that aligns with the collective desires of the litigating parties, thereby fostering greater acceptance of the jointly achieved solution.

This perspective on the efficacy of composition can be examined more deeply through the analysis of a specific case handled by the Makassar Commercial Court, one example being the matter culminating in Decision Number 10/Pdt.Sus-PKPU/2018/PN.Niaga.Mks. This case concretely illustrates the initial dynamics that can lead towards an amicable settlement, featuring PT Sentani Persada Sentosa as the debtor (Respondent) confronted with a petition for Suspension of Debt Payment Obligations (PKPU). This petition was collectively filed by four significant creditor entities, namely PT Core Hospitality International, PT Tiara Dekorindo Sakti, PT Pembangunan Daerah Papua, and PT Bank Muamalat, Tbk., all seeking resolution for their substantial claims against the debtor.

The basis for the PKPU petition filed by the creditors in this case directly relates to the factual condition of the debtor, which was deemed to have met the legal criteria stipulated within the Indonesian bankruptcy law framework. An examination of the case background reveals that PT Sentani Persada Sentosa had outstanding due obligations to the four petitioning creditors, with the total amount being exceptionally large, reaching hundreds of billions of Rupiah, and the debtor was in a state where it had ceased servicing these debts. This circumstance—the existence of a debtor with at least two creditors and the inability to fully pay at least one debt that has fallen due and is collectible—explicitly fulfills the fundamental requirements for filing a bankruptcy or PKPU petition under Article 2 section (1)

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<sup>1</sup>Interview with Hamsa, Deputy Registrar for Commercial Cases, Makassar Class IA District Court, July 1, 2019.

<sup>2</sup>Interview with Nurhidayah, Specialized Staff, Commercial Division, Makassar Class IA District Court, July 1, 2019.

<sup>3</sup>Interview with Taufiq Motim, Specialized Staff, Commercial Division, Makassar Class IA District Court, July 1, 2019.

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of Law Number 37 of 2004. This provision grants the legal standing for creditors to pursue recourse through the Commercial Court to protect their rights arising from the debtor's default (*wanprestasi*).

Responding to the petition grounded in the fulfillment of these legal prerequisites, the Makassar Commercial Court, through its decision, granted the creditors' application and imposed a Temporary PKPU status upon PT Sentani Persada Sentosa for a duration of 45 days. This declaration was not merely a statement of legal status but also a crucial procedural step placing the debtor under court supervision and formally initiating a structured process for debt restructuring or composition negotiations. Another vital consequence of this ruling was the appointment of legal officers to oversee the process: Mr. Suratno, S.H., as the Supervisory Judge, and the appointment of a team of administrators (akin to trustees or curators in bankruptcy) comprising Muhammad Deni, S.H., M.H., Enriko Simanjuntak, S.H., and Jimmy, S.H. Their role was to manage the debtor's assets and facilitate constructive dialogue between the debtor and all its creditors towards achieving a mutually acceptable composition plan.

The court's action in granting the PKPU and establishing this legal apparatus marked the commencement of a formal endeavor aimed at finding a constructive debt resolution, a process that in many instances is indeed designed to culminate in the homologation (court approval) of a composition scheme. Although the PKPU process itself involves distinct stages and formalities, the potential for achieving an amicable agreement at the process's conclusion is often perceived as the manifestation of bankruptcy resolution efficacy—being more efficient and accommodative of parties' interests compared to the alternative of forced liquidation, which is frequently detrimental. The stipulation of PKPU process costs and the guarantee for administrators' fees charged to the Respondent, with a payment scheme post-homologation, also indicates a framework designed to facilitate reaching a composition, even though this financial aspect remains a significant consideration for the debtor in evaluating the overall process.

The analysis of Decision Number 10/Pdt.Sus-PKPU/2018/PN.Niaga.Mks thus presents an empirical case study illustrating the application of bankruptcy legal mechanisms—specifically PKPU as a gateway towards composition—within the Makassar Commercial Court. The extent to which this resolution pathway via composition schemes proves effective in practice, as reflected both in stakeholder perceptions and the outcomes of formal legal processes like the one in this case, alongside the identification of the determinant factors influencing success or failure in achieving a just and sustainable bankruptcy resolution, forms the core of the deeper analysis within this research. This involves correlating empirical findings with the governing normative legal framework.



## **B. Determinant Factors and Constraints in the Efficacy of Bankruptcy Resolution Through Composition Schemes**

Although bankruptcy resolution via composition schemes offers potential efficacy, its success in achieving a just and sustainable outcome is significantly influenced by various factors and not infrequently encounters considerable obstacles. Analysis of these dynamics reveals that the determinants shaping the effectiveness of the composition process are multifaceted, stemming not only from the parties directly involved (debtor and creditors) but also from the preparedness of the legal system, the capacity of the engaged practitioners, and the surrounding socio-cultural context. A thorough understanding of these factors is crucial for objectively assessing the extent to which composition can function as an effective bankruptcy resolution mechanism in practice.

One significant constraint identified relates to the creditors' level of understanding regarding the composition mechanism itself, often influenced by their educational backgrounds. As indicated by Hamsa, Nurhidayah, and Taufiq Motim, varying educational levels among creditors can lead to an insufficient grasp of the fundamental principles of debt restructuring and the collective nature of bankruptcy or Suspension of Debt Payment Obligations (PKPU) proceedings. Consequently, during negotiations for a composition plan, it is not uncommon for demands to arise from certain creditors seeking preferential treatment or prioritized repayment. Such demands fundamentally contradict the *pari passu* principle (equal treatment of unsecured creditors) and can impede the attainment of the consensus required for the court's homologation (approval) of the composition plan.

Another factor that systemically affects the landscape of bankruptcy resolution is the general public's level of legal awareness concerning the governing legal framework, particularly Law Number 37 of 2004. Observations, as implied by Hamsa et al., suggest that understanding of this legislation remains relatively limited, even among business actors; some may be entirely unaware of the existence or substance of regulations pertaining to bankruptcy and PKPU. This low legal awareness carries serious implications: it not only hinders the potential utilization of composition mechanisms as a proactive solution by debtors experiencing financial distress but also potentially leads to many insolvency cases remaining unaddressed through appropriate legal channels. This, in turn, reduces the scope and potential impact of legal instruments designed for structured debt resolution.

Procedural efficiency in the process towards composition is also influenced by the capacity and workload of key practitioners, specifically the curators or

administrators appointed by the court to manage the restructuring or bankruptcy process. Findings, as articulated by Hamsa et al., indicate that some curators/administrators are often faced with handling numerous cases simultaneously. This condition of high workload inherently risks causing potential delays in the execution of crucial tasks—such as complex claim verification, accurate progress reporting, or effective facilitation of creditor meetings. Such delays can consequently slow down the overall timeline of the process and potentially affect perceptions regarding the timeliness and efficacy of achieving resolution via the composition route.

Interestingly, the socio-cultural dimension also emerges as an important determinant, particularly concerning the parties' motivations for choosing the composition pathway. A frequently cited reason, as hinted by Hamsa et al., involves considerations of '*gengsi*' (prestige or the strong desire to maintain reputation/save face) among debtors. Composition is often perceived as a more 'private' or less publicly exposed resolution option compared to full bankruptcy proceedings culminating in asset liquidation. This perception encourages debtors to opt for composition to minimize negative stigma and potential damage to their business image, hoping it will be easier to start new ventures or retain the trust of business partners in the future. This '*gengsi*' factor, therefore, acts as a powerful driver in the *selection* of the composition path, although it does not automatically guarantee the *substantive* efficacy of the restructuring plan eventually agreed upon and implemented.

Overall, a variety of factors—ranging from the individual understanding levels and expectations of the parties influenced by educational background, the collective legal awareness of society regarding available legal instruments, the institutional capacity and workload of legal practitioners, to socio-cultural considerations like '*gengsi*'—interact in a complex and dynamic manner. It is this interplay that ultimately determines the actual efficacy of bankruptcy resolution achieved through the implementation of composition schemes in any given case. The success of composition thus depends not only on the adequacy and clarity of the normative legal framework but also on how stakeholders navigate these practical constraints and leverage existing driving factors. Identifying and deeply understanding these determinants becomes essential not only for academic analysis but also for formulating policy-level or practical improvement strategies aimed at enhancing the function of composition as a reliable and effective instrument for bankruptcy resolution.



## **CONCLUSIONS AND SUGGESTIONS**

This research concludes that bankruptcy resolution via composition schemes represents a frequently pursued pathway possessing inherent potential for efficacy within the jurisdiction of the Makassar Commercial Court. The preference for this route, as reflected in practice and illustrated through legal proceedings like the case study of Decision Number 10/Pdt.Sus-PKPU/2018/PN.Niaga.Mks, is underpinned by the legal framework provided in Law Number 37 of 2004, which facilitates negotiations under the supervision of a supervisory judge and with the assistance of an administrator/curator. Theoretically, this mechanism allows for the achievement of debt resolutions that are potentially quicker, less costly, and more aligned with the mutual agreement of the parties compared to often complex and detrimental asset liquidation processes. However, a deeper analysis reveals that the full realization of composition's potential efficacy in practice encounters significant challenges stemming from various determinant constraints; the effectiveness perceived by stakeholders is often suboptimal due to the dynamic interplay of these factors on the ground.

More specifically, these determinant constraints tangibly moderate the potential efficacy of composition schemes. Limited understanding among certain creditors regarding restructuring principles (related to educational factors) can impede constructive and equitable negotiations. Meanwhile, the low legal awareness among the general public concerning the substance and procedures within Law Number 37 of 2004 not only restricts the accessibility of the composition mechanism itself but also curtails its potential strategic utilization. Furthermore, institutional capacity limitations, such as the high workload potentially faced by curators/administrators, risk delaying process timelines and diminishing the temporal efficiency that should be one of composition's perceived advantages. Even driving factors from the socio-cultural realm, such as considerations of '*gengsi*' (prestige), while significant in motivating the choice of the composition pathway, do not necessarily correlate positively with the substantive quality of the agreed-upon restructuring plan, highlighting a disparity between perceived efficacy and sustainable practical outcomes.

Arising from the synthesis of findings regarding the gap between the potential and realized efficacy of composition schemes, influenced by determinants of knowledge and legal awareness, proactive and sustained efforts to enhance legal literacy within the community are strongly recommended. Structured and accessible legal counseling or socialization programs focusing on the substance, procedures, and strategic benefits of Law Number 37 of 2004, particularly concerning PKPU and composition mechanisms, should be intensively promoted. The primary targets for these programs should be the general public and, specifically, business actors within the jurisdiction of the Makassar Commercial Court, aiming to increase legal awareness and enable

parties to understand and utilize the composition mechanism more optimally and effectively as a constructive debt resolution instrument.

Furthermore, to bolster the procedural efficiency that constitutes a crucial pillar of the perceived effectiveness of composition, serious attention must be directed towards strengthening the institutional capacity of the legal practitioners involved in handling bankruptcy and PKPU cases. Considering indications of potentially high curator/administrator workloads aligned with economic dynamics and case volumes, the Makassar Commercial Court, ideally in coordination with relevant authorities such as the Ministry of Law and Human Rights, should evaluate and consider strategic measures to ensure the availability of an adequate number of competent curators/administrators. Strengthening these professional resources, in terms of both quantity and sustained quality, is expected to contribute significantly to expediting case handling, enhancing the quality of composition negotiation facilitation, and ultimately realizing better, more efficient, and credible bankruptcy resolutions through composition.

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