



## Legal Consequences of Amendment And/Or Implementation of Homologation Outside Court Authorization

Wijaya Natalia Panjaitan<sup>1</sup>, Frandy Septior Nababan<sup>2</sup>

<sup>1</sup> Faculty of Law Pattimura University, Ambon, Indonesia

<sup>2</sup> Pranata Law Firm, Jambi, Indonesia

E-mail: wijayanataliap@gmail.com



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### Abstract

The composition of Homologation that has been approved is ratified and decided by the court. But the problem is when composition that have been agreed and have been validated are then changed for certain interests so that the contents are no longer the same that has been validated. The purpose of this study is to find out how the legal consequences of amendments and/or the implementation of homologation outside the court. This study case uses a normative juridical method by using a statutory, case approach, and conceptual approach. Homologation composition through Suspension of Obligation for Payment and Bankruptcy have been regulated, so when there is a change and/or implementation of a composition agreement passed by the court (Homologation) outside the court, it is invalid.

## 1. Introduction

Debt composition is usually done with several paths that can be taken starting from the deliberation path to the path of resolving conflicts arising from the inability to pay (Insolvent) through the Court. There are several composition regulations that currently facilitates each problem resulting from a person or business entity that is unable to pay as stipulated in the agreement of each party, one of which is through the filing of Bankruptcy and application for Suspension of Debt Payment Obligations regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter only referred to as Law Number 37 of 2004).

Based on the provisions of Article 2 Paragraph (1) of the Bankruptcy Law, a bankruptcy petition can be filed against a debtor who has at least two or more creditors and does not pay in full at least one debt that has matured and is collectible, which is then declared bankrupt by a court decision either at his request (debtor) or at the request of one or more of his creditors (Sastrawidjaja, 2010: 88). The purpose of all bankruptcy laws is to provide a collective forum to sort out the rights of various creditors against the debtor's insufficient assets (Supramono, 2013: 181). The composition of bankruptcy and suspension of debt payment obligations can be

through the application pattern which is carried out by submitting a peace plan. Generally, the one who most often submits is the debtor with the hope that the peace plan proposed by the Debtor can be accepted by the Creditor and of course accepted by the Judge to then be implemented. It is the intention that the debtor can continue to run and continue his business to cover the inability to pay within the tempo as previously agreed by the debtor and the creditor.

In the process of Bankruptcy and Suspension of Debt Payment Obligations, there is a legal product known as Homologation. The definition of Homologation in the Great Indonesian Dictionary (Kamus Besar Bahasa Indonesia) explains that homologation is the ratification by the judge of the agreement between the debtor and the creditor to resolve the bankruptcy (KBBI : 2008). Homologation is also defined in the Law Dictionary book in Dutch as Homologatie and English Homologation, Confirmation of a court granting its approval to some action which means "Legal authorization by the Court for something to be executed" (Basiang, 2017: 213) Composition is one of the main links in the bankruptcy process. Peace in the bankruptcy process is called "composition" in English or "*akkoord*" in Dutch (Manik, 2012: 129) Composition in the Bankruptcy process is in principle the same as composition in the general concept. The point is that there is an "agreement" between the conflicting parties that reflects consent. So, the keyword is "agreement", and for composition, in bankruptcy proceedings, the agreement is expected to occur between the debtor and the creditors on the composition plan proposed by the debtor (Manik, 2012: 129).

Then as mentioned by Munir Fuady cited by Shabrina that the agreement regarding the composition should be set forth in a composition agreement. The composition agreement also needs to be ratified by the Commercial Court and is referred to as homologation (Pramudita et al., 2020: 101-117). It can be interpreted that Homologation is a composition agreement made by both parties between creditors and debtors which is authorized by the Court through a Judge. This is also fundamental in the provisions of Article 1313 of the Civil Code, namely the deed by which one or more people bind themselves to one or more other people." The definition of this agreement was also later refined by J.Satrio (1995:242), namely that agreements can include reciprocal agreements and unilateral agreements, a reciprocal agreement is an agreement that gives rise to rights and obligations between the two parties that are interrelated between one another, where the meaning of having a relationship between one another is that if in an obligation arising from the agreement, there is a party as a holder of rights and the other party is positioned as a party who bears obligations (Satrio, 1995: 242). The party who demands is called creditor, while the party who is obliged to fulfill the demands is called the debtor (Subekti, 2003: 123).

In the Homologation process, there are two possible access that can be implemented, which are based on Article 144 of Law Number 37 of 2004, which states that "The Bankrupt Debtor has the right to offer a composition to all Creditors", and in Article 265 of Law Number 37 of 2004, which states that "The Debtor has the right at the time of filing an application for suspension of debt payment obligations or

afterwards to offer a composition to Creditors". This legal principle also provides an opportunity to resolve the inability to pay debts by means of a Composition agreement. These two articles have different phrases and also indicate different legal standing, namely in the phrase "Bankrupt Debtor" in article 144 and the phrase "Debtor" in article 265 of Law Number 37 Year 20004, which means that homologation is carried out during different processes (more details will be discussed in the Result and Discussion).

There are several reasons for judges not to ratify Homologation according to Law Number 37 of 2004, as stated in Article 159 paragraph (2) during the Bankruptcy process, which states that the Court may reject the ratification of the composition if: The Debtor's assets, including objects for which the right to withhold an object is exercised, are much greater than the amount agreed upon in the composition; The implementation of the composition is not sufficiently secured; and/or The composition was reached through fraud, or conspiracy with one or more Creditors, or through the use of other dishonest means and regardless of whether the Debtor or other parties cooperated in achieving this. Rejection of Homologation in the Suspension of Debt Payment Obligation is also regulated in Article 285 paragraph (2), which states : The court is obligated to refuse to validate the peace, if: The Debtor's assets, including objects for which the right to withhold objects is exercised, are far greater than the amount agreed in the composition; The implementation of the peace is not sufficiently secured; The composition was reached by fraud, or conspiracy with one or more Creditors, or by the use of other dishonest means and regardless of whether the Debtor or other parties cooperated to achieve this; and/or Fees for services and expenses incurred by the experts and administrators have not been paid or no security has been given for their payment.

The judge's reason for refusing to validate the agreement mentioned above is an absolute right and has legal consequences. However, the fact is that the implementation of homologation outside court is accepted and in the future there are difficulties or obstacles that are not thought of by the debtors and creditors or by the judge who participated in legalizing the agreement, it is certain that it will cause new problems. In practice, the solution often taken is to make changes and/or addendums to the agreement after the homologation is ratified by the court (judge) without going through the court again, as long as it is agreed by the Creditor with the same proportion as the process of determining the homologation agreement plan or even agreed by the Debtor and all Creditors.

The author quotes opinions stating that changes and / or addendums to agreements that have been homologated can be implemented, one of which is the opinion of Valentino R. Korompis below ([Korompis, n.d.](#)): If the debtor has difficulties in implementing the composition agreement, can the composition agreement be renegotiated? In my opinion, it is possible, for the following reasons: There is no provision in Law 37/2004 that explains the prohibition of negotiating a composition agreement that has been approved by the Commercial Court (Homologation). Because the position of the debtor after the composition agreement is ratified is no longer in bankruptcy or postponement of debt payment obligations,

negotiations on the composition are carried out based on the agreement of the debtor and the creditors. And then, The composition agreement is not an agreement that cannot be renegotiated, because in its implementation, things can happen that are beyond the debtor's expectations that were not thought of at the time of submitting the composition offer proposition. Also Negotiations can be carried out with a note that it is carried out with all creditors of the debtor and not just a few creditors, all creditors must agree with the amendments that will be made to the composition agreement so that the composition agreement can be changed.

In the course of a conflict resolution process, in practice, it is often found that the process is not in accordance with what is determined by the Law and Court decisions in carrying out problem solving. The three reasons above are normative legal issues that can be examined whether the amendment of the homologation that has been implemented based on the provisions of Law. The Legal Dictionary explains that an Amendment is an official revision or addition to the provisions of a constitution, law, or official document (Basiang, 2017: 12). Therefore, whether the implementation of Amendments and/or the implementation of Homologation outside of the Ratification and Court Decision is in accordance with the mandate of Law Number 37 of 2004 can be carried out, and by what legal consequences both for the validity and the transfer and acquisition of the debtor's assets to creditors. It is this legal issue that becomes interesting to study based on the "will" of the Law, and interpret the values presented by a Law without crossing the interpretation of a "legal dogmatics" contained in the command of the Law.

In the article by Tjokorda Agung Candra Aditya in his article entitled "Juridical Review of the Cancellation of Compotition Agreements that have been Homologated because it is contrary to the Provisions of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU)" which in the core of its conclusion is that in Homologation, a clause is not allowed to be regulated that allows the debtor to make changes to the peace agreement with the consent of the majority creditors because this is contrary to Law Number 37 of 2004. And therefore in line with this, the author in this case aims to further emphasize that Homologation must be carried out purely in accordance with what has been decided by the Court, therefore changes (Amendments) and / or implementation of Homologation outside of what has been authorized by the Court through the Judge is an act against the Law as has also been regulated by Law Number 37 of 2004 so as to result in legal consequences for the transfer and acquisition of assets.

## **2. Methods**

The research method used in this research is normative juridical research, which is a type of research conducted by examining, studying and interpreting the applicable legal rules, namely the Civil Code, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, and other regulations, as well as adding some literature and opinions of experts or scholars who are considered competent and assisting in this research.

## **3. Results And Discussion**

### 3.1 Homologation Regulation according to Law Number 37 Year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations

The regulation of bankruptcy and suspension of debt payment obligations according to M.Hadi Subhan, as also cited by Deddy Tri Hartono ([Hartono, 2016: 1-7](#)), is to avoid several things, such as the struggle for the debtor's assets when there are several creditors at the same time who collect their debts from the debtor; creditors who hold property security rights and exercise their rights by selling the debtor's property without paying attention to the interests of the debtor or the creditors; and fraud committed by one of the creditors or the debtor himself.

The specific character of a law that is realized as a legal principle is obtained through an assessment by the legislator, which presents considerations of ethical values that act as guidelines for living together. As the chosen ethical values, the legal principle is the idiil factor of social life. The legislator plays a major role in the search, assessment and formulation of a legal principle ([Irianto, 2015: 339-417](#)). Oftentimes, the law has been interpreted in terms of the interests of the parties involved in the issue, where legal subjects always take advantageous steps and even tricky strategies. Homologation changes as interpreted that there are no rules regulating in the law so that it can be implemented as long as the parties without exception accept the changes are interpretations that in practice can be applied, but in the perspective of legal knowledge it will definitely produce the impact of law, both reflecting legal uncertainties and the legality of the transition and acquisition of properties or assets.

Homologation regulations have actually been clearly regulated in Law Number 37 of 2004, namely homologation processed through the Suspension of Debt Payment Obligations and without going through the Suspension of Debt Payment Obligations or can be said during the Bankruptcy process. In short, making a composition proposal in bankruptcy and suspension of debt payment obligations is carried out based on the interests of debtors and creditors. If the composition plan is proposed by the debtor, it must be properly prepared by the debtor so that his creditors are willing to accept the composition plan ([Casanova et al., 2018: 90-98](#)). Based on the regulated suspension of bankruptcy and debt payment system, the debtor and creditor themselves have the right to negotiate and conclude a compositioin plan. In the negotiations, other parties are not allowed to intervene. In order for the plan to be valid, it needs to be approved (Homologation) by the authorized Commercial Court ([Stanly & Tanawijaya, 2022: 1-23](#)).

Oftentimes, if the debtor feels capable and wants to still be able to pay debts while still hoping that the company can be controlled, the Debtor will usually apply for a Suspension of Debt Payment Obligations because they still feel and believe that the company is still in a state of being able to pay debts (Solvent) even though it is due or past due to pay. The debtor only wants a re-structuring of payments with a pattern proposed by the debtor and approved by the creditor and ratified by the judge and therefore the legal standing is only as a debtor and not yet a bankrupt debtor. This is because the debtor's condition is not yet an indication of bankruptcy (bankruptcy), if the debtor is given time, it is possible that he will be able to pay off

his debts completely (Suyatno, 2017: 72) According to Munir Fuady cited by M. Hadi Subhan that in the composition, the debt re-structuring programs usually include: Moratorium, which is a suspension of overdue payments; Haircut, which is a reduction in loan principal and interest; Interest rate setting; Extension of the repayment period; Conversion of debt to shares; Debt forgiveness. Bail out, which is the takeover of debts, for example the takeover of private debts by the government; Write-off, which is the write-off of debts (Subhan, 2008: 150).

Meanwhile, if the Creditor or Debtor feels that the Debtor will no longer be able to pay debts (Insolventie) where the situation is estimated to be a debtor who has an amount of debt that exceeds the entire amount of his property, then the Creditors or Debtors immediately propose Debtor Bankruptcy without being preceded by the Debt Payment Suspension process, and at that time the Debtor is still given the opportunity to submit a Composition as a Bankrupt Debtor. Therefore, the meaning of the phrase "Bankrupt Debtor" in Article 144 and the phrase "Debtor" in Article 265 is to indicate a different process, so that Bankruptcy and Suspension of Debt Payment Obligations are two different processes. This difference in legal standing is regulated in Article 1 paragraph (3) Debtors are people who have debts due to agreements or laws whose repayment can be collected before the court, while in paragraph (4) bankrupt debtors are debtors who have been declared bankrupt by a court decision.

This court-approved composition agreement (Homologation) can only be submitted once, where if the Debtor has previously submitted a composition in submitting a suspension of debt payment obligations where the results are approved by the creditors in accordance with the proportions stipulated in the law and accepted by the judge, then the Homologation must be implemented and if at the time it cannot be implemented, then the creditor proposes the debtor to be bankrupted, then during the bankruptcy process the Debtor can no longer submit a composition agreement, and the bankruptcy process is directly carried out by the Court through the arrangement of a Curator appointed by the judge. However, if the composition agreement process is without going through the suspension of debt payment obligations by directly submitting bankruptcy by the creditors or debtors, then the debtor can submit a reconciliation agreement and therefore the debtor is called a bankrupt debtor. And this composition agreement can only be done once because Law Number 37 Year 2004 adopts the principle of "Single Composition" (Manik, 2012: 148).

According to Edward Manik, the Composition Function in the Suspension of Debt Payment Obligations and Bankruptcy each have different functions, where in the Suspension of Debt Payment Obligations, the Composition Function is more extensive, which is the most important is the composition of debt payments, including the approval of the restructuring of debtor debts, while the function in bankruptcy is more limited to the order and distribution of bankruptcy assets (Manik, 2012: 144). Compositions in the Suspension of Debt Payment Obligations and Bankruptcy although have different functions but the implementation must still be done once where the use of composition is influenced by the interests of each Debtor

or Creditor. Several descriptive legal rules will be explained below regarding homologation, which are:

**a. Homologation Regulation through Submission of a suspension of debt payment obligations.**

Homologation regulations through the Submission of Suspension of Debt Payment Obligations (hereinafter PKPU) are regulated in Article 222 paragraph (2), which states that "Debtors who cannot or estimate that they will not be able to continue paying their debts that have fallen due and collectible, may request a suspension of debt payment obligations, with the intention of submitting a peace plan which includes an offer of payment of part or all of the debt to Creditors. And article 222 paragraph (3), which states that "Creditors who estimate that the Debtor will not be able to continue paying his debts that are due and collectible, may request that the Debtor be granted a suspension of debt payment obligations, to enable the Debtor to submit a peace plan which includes an offer of payment of part or all of the debt to his Creditors". Suspension of Debt Payment Obligations (PKPU) is a mechanism that can be used by Debtors in renegotiating the payment of their debts to creditors by using the assistance of the court, namely through the Supervisory Judge and his administrators ([Anatami, 2021: 1](#)).

The Composition plan in the Debt Suspension process is a debt restructuring plan. And the debtor has the opportunity to submit a composition plan which will later be able to become part of the debt restructuring, even though there is a rejection by the creditors of the composition plan submitted by the debtor ([Amboro, 2020: 103-111](#)). Meanwhile, according to Kartini Muljadi, the Suspension of Debt Obligation is to provide an opportunity for debtors to restructure their debts, including payment of all or part of the debt to concurrent creditors, so if this cannot be done properly, the debtor can carry out his obligations and finally be able to continue his business ([Sjahdeini, 2018: 455](#)).

The legal principles above for both debtors and creditors can submit a Suspension of Debt Payment Obligations with the aim of a "peace plan offering payment of part or all of the debts by the debtor to his creditors". After the submission with several processes, it is also regulated in Article 286, namely "The ratified composition is binding on all Creditors, except for Creditors who do not approve the composition agreement as referred to in Article 281 paragraph (2)", so it can be seen that the phrase there are exceptions in Article 281 paragraph (2) is actually referring to Article 281 regarding the acceptance of the agreement and paragraph (2) is for creditors who do not approve by compensating the lowest value between the value of the guarantee or the actual value of the loan which is directly secured by collateral rights on property. However, the main point is in the phrase "binding on all creditors", meaning that the court-approved agreement will bind all creditors who agree and those who do not agree are also bound by Article 282 paragraph (2).

It is also emphasized in Article 288, which states that "The suspension of debt payment obligations ends when the decision to ratify the composition obtains permanent legal force and the management is obliged to announce this termination

in the State Gazette of the Republic of Indonesia and at least 2 (two) daily newspapers as referred to in Article 227". So the legal effect is that the composition authorized by the Court (Homologation) is a legal basis that applies to be carried out by the Debtor and Creditors who agree and for those who do not agree, Article 282 paragraph (2) applies, so that both creditors who agree and do not agree are equally bound based on Law Number 37 of 2004 which regulates the composition agreement authorized by the Court.

#### **b. Homologation Regulation through Bankruptcy submission**

As stated earlier, the concept of a composition agreement is that it can only be made once, but if the composition agreement is not made through the Suspension of Debt Payment Obligations, then the agreement can be made during the bankruptcy process where the Debtor's legal standing has been determined as a bankrupt Debtor. This is clearly regulated in article 144, that is, the Bankrupt Debtor has the right to offer a composition to all Creditors. A composition plan in a bankruptcy or suspension of debt payment obligations process is a debt restructuring plan where the debtor has the opportunity to propose a composition plan that will become part of the debt restructuring, although there is a possibility that creditors will reject the composition plan proposed by the debtor ([Amboro, 2020: 103-111](#)).

The author agrees with this concept of composition, as Edward Manik has stated previously, which states that Peace in bankruptcy is only for the purpose of managing and distributing bankruptcy assets, which has a legal basis as the definition of bankruptcy in Article 1 paragraph (1) of Law Number 37 of 2004, namely Bankruptcy is a general confiscation of all assets of the Bankrupt Debtor whose management and management are carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law. This means that when the debtor has been declared bankrupt, there is a "confiscation" of the debtor's assets and only the management and management is done. Zainal Asikin gives his opinion that the legal consequences of a bankruptcy decision are essential that through the bankruptcy decision that has been imposed, the debtor (the bankrupt) loses the right to carry out management and control over his assets and switches to the hands of the curator / Deposited Property Agency ([Asyadie, 2017: 353-354](#)).

If the Debtor has been determined as a Bankrupt Debtor, the agreement offered by the Debtor to the Creditor is supposed to be regarding the Management and Disposal of assets which will then be processed by the Curator where the Curator according to article 1 paragraph (1) and also emphasized paragraph (5) Curator functions as a party who manages and disposes of the assets of the Bankrupt Debtor under the supervision of the Supervisory Judge in accordance with Law 37 of 2004.

At the composition meeting, those entitled to decide on the acceptance or non-acceptance of the composition agreement are those who have the right to vote at the meeting, namely the concurrent creditors present at the meeting ([Subhan, 2008: 141](#)). Article 151 states that: "A composition plan shall be accepted if it is approved at a creditors' meeting by more than 1/2 (one-half) of the total number of concurrent creditors present at the meeting and whose rights are recognized or provisionally



recognized, representing at least 2/3 (two-thirds) of the total recognized or provisionally recognized concurrent claims of the concurrent creditors or their proxies present at the meeting", and Article 152, paragraph (1): "If more than 1/2 (one half) of the total number of creditors present at the creditors' meeting and representing at least 1/2 (one half) of the total amount of the claims of the creditors with voting rights vote in favor of the composition plan, a second vote shall be held within a period of not more than 8 (eight) days after the first vote, without the need for a convocation".

Article 162 states "The ratified composition shall apply to all creditors who do not have the right of priority, without exception, whether they have submitted the bankruptcy petition or not", then there is the phrase "applies to all creditors who do not have the right of priority", which means that this does not apply to separatist creditors and privileged creditors, and the phrase "ratified" in this case is the ratification by the court, which is also regulated in the article Article 167 paragraph (1), namely "After the ratification of the composition has obtained permanent legal force, If the composition does not stipulate other provisions, the Curator is obliged to return to the debtor all objects, money, books and documents included in the bankruptcy assets against a valid receiving order", then there is a phrase in paragraph (2) "If the composition does not stipulate other provisions", then we can interpret that the composition is a legal basis for the Curator to carry out the task of liquidation of the debtor's assets in accordance with the ratification of the agreement (homologation).

As for the composition agreement that is homologated (approved by the court), it will have the following legal consequences: The bankruptcy is considered terminated; The decision to accept the composition agreement is binding on all concurrent creditors; Composition does not apply to separatist creditors and privileged creditors; Composition may not be proposed twice; Composition is the basis of the rights of the guarantor; The rights of creditors continue to apply to the guarantor and co-debtors; The rights of creditors continue to apply to third party objects; Suspension of execution on the collateral ends; Action paulina ends; and The bankrupt can be rehabilitated ([Subhan, 2008: 143](#)).

As a legal consequence of homologation, it must be complied with by creditors as stated in Article 162, and then what about separate and preferential creditors? Article 55 states that "Subject to the provisions of Articles 56, 57 and 58, any creditor holding a pledge, fiduciary guarantee, mortgage or other security interest may exercise its rights as if no bankruptcy had occurred". The phrase "as if no bankruptcy had occurred" is a legal consequence of the disposition of assets due to priority and privilege, which is also bound by Article 60 regarding the implementation of Article 55 paragraph (1).

Therefore, Article 164 of Law Number 37 Year 2004 states that "A decision to validate a composition that has obtained permanent legal force is the basis of rights that can be enforced against the debtor and all persons who bear the implementation of the composition in relation to the claims that have been recognized, to the extent

that they are not denied by the bankrupt debtor in accordance with the provisions of Article 132, as contained in the minutes of the claims adjustment meeting". And Article 166 paragraph (1) In the event that the ratification of the composition has obtained permanent legal force, the bankruptcy shall end.

However, the interpretation of the phrase "the ratification of composition obtains permanent legal force" both in Article 166 paragraph (1) on bankruptcy and Article 288 on suspension of debt payment obligations is the interpretation that the agreement is a mechanism of legal rules through the judicial function of the court and where the rules in any agreement are binding laws for the parties concerned, because we know that obligations arise from agreements and laws, as stated in Article 1313 of the Civil Code and Article 1352 of the Civil Code, and therefore homologation is an obligation that arises from two things at the same time, namely those that arise from agreements and Law No. 37 of 2004, which regulates and binds it.

In one of the cases where the judge rejects a homologation either in the bankruptcy process or the suspension of debt payment obligations as stated in Article 159 paragraph (2) letter b or Article 285 paragraph (2) letter b, then one of the conditions is "the implementation of composition is not sufficiently guaranteed", if this arrangement is interpreted, it is certain that the agreement has been examined to be sufficiently guaranteed to be implemented, especially plus the process of acceptance and rejection by creditors is a process where creditors have the opportunity to study and refute or reject the agreement.

### **3.2 Amendment and/or Implementation of Homologation Outside the Court's Authorization and Decision is Invalid**

As the opinion of Hartono Hadi Soeprapto provides an explanation that an agreement is the most important source of obligation because most obligations arise from agreements (Soeprapto, 1984: 35). The pattern of the composition agreement in the suspension of debt payment obligations and bankruptcy above has similarities and differences in the process, but the similarity is that the composition agreement ratified by the court is the legal basis for implementing the provisions of the mandate of Law Number 37 of 2004, where the agreement ratified by the court (homologation) must be applied in the management or administration of both bankrupt debtors and debtors who restructure debts, and also those who are not bound by the composition are also have to bound because of the mandate of several provisions of the article in Law 37 of 2004, so that both those bound and not bound by the agreement are both equally subject to the implementation of the legal provisions. Empirical facts in previous research conducted by Manahan Sitompul in the 1998-2006 era concluded that compotition in the bankruptcy procession and suspension of debt payment obligations was not optimally achieved (Sitompul, 2009). This lack of optimality has led to the existence of wild solutions by changing or carrying out homologation that is not as decided by the Court (Aprita, 2022: 11-27).

There are no provisions in the law concerning the modification of the content of agreements in homologations that have been approved by the Commercial Court, but several articles explain that it is no longer possible to modify and/or add benefits to

the agreement that has been agreed and ratified by the supervising judge. In practice, the implementation process of Homologation is often not carried out in accordance with what is authorized and decided by the court on the grounds of freedom of contract as long as it is not interpreted that there is a regulation in the Law regarding changes and or additional achievements in Homologation, however this is contrary to the validity decided by the court. The principle of freedom of contract is mentioned by Riduan Syahrani that the purpose of freedom of contract is free to determine and determine the contents and types of agreements as long as they are not in conflict with the law, morality, and public order as stated in articles 1338 and 1337 of the *Burgelijk Wetboek* (Syahrani, 2006: 206). So the freedom of contract should not be against and contrary to the law where the requirement of "halal causa" which is one of the objective conditions as regulated in Article 1320 of the Civil Code.

Article 1338 Paragraph (1) of the Civil Code also states that; "All agreements made legally shall apply as laws for those who make them. An agreement cannot be withdrawn other than by agreement of both parties, or for reasons stated by the law as sufficient for that". If it is connected with the phrase "or for reasons which the law declares sufficient for it" to Homologation, then according to the law the agreement must be ratified and decided by the Court. Homologation is an agreement ratified by a judge and it has been discussed above that in the article the phrase "ratification of peace obtains permanent legal force" both in article 166 paragraph (1) concerning Bankruptcy and article 288 in the Delay of Debt Payment Obligations is known to have the phrase "valid" by the judge, so any changes or addendums / additions to achievements in an agreement outside of what is ratified.

In addition to the above, the solution if homologation cannot be carried out is not by changing or adding to the achievements of the agreement or carrying out actions outside what is regulated, but explicitly Article 170 (1) of Law Number 37 of 2004, creditors can demand the cancellation of a ratified composition if the debtor does not fulfill the contents of the composition. And regarding the suspension of debt payment obligations, Article 170 above also applies in accordance with the provisions of Article 291 paragraph (1) The provisions referred to in Article 170 and Article 171 apply "mutatis mutandis" to the annulment of the composition. Paragraph (2) states that the debtor must also be declared bankrupt in a court decision annulling the composition. Article 292 further provides that "a bankruptcy judgment resulting from the annulment of the composition in Article 291 cannot be offered as a composition", and further explained by the explanation of Article 292 in principle that "a bankruptcy declaration judgment that results in the debtor's bankruptcy estate being immediately in a state of insolvency". Therefore, in the position of composition formed by the process of suspension of debt payment obligations that has been authorized and then revoked by the court, the result is the disposal of the bankruptcy estate without going through the mechanism of proving bankruptcy again (Kornelis & Amboro, 2020: 237-277). This is also in line with what was stated by Emmy Yuhassarie, where the debt is a matter arising from an obligation and if the debtor is unable to fulfill it, the creditor can request that the debtor be declared bankrupt so that his assets are collected (Yuhassarie, 2005: 10).

In terms of a case by case approach, this can be seen from the following two decisions below: a) In Decision Number 08/Pdt.Sus.Pembatalan Perdamaian/2018/PN.Niaga.Jkt.Pst Jo. Number 31/Pdt. Sus-PKPU/2018/PN.Niaga.Jkt.Pst. In this decision, there are examples of things that become solutions when it turns out that the debtor does not carry out and neglects to violate as stipulated in the homologation, as the following below: Considering the provisions of Article 170, Article 171, Article 172, Article 15 of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations and other relevant laws and regulations; adjudicate; 1) Grant the Petition of Petitioner I (KIM IN DUCK, in his capacity as President Director of PT O Sung Garment) Petitioner II (KAMPANYOGO D,J. SIHOMBING, in his capacity as President Director of PT Mirae Cipta Indah), and Petitioner III (CHUNG HUN, in his capacity as President Director of PT Hoja Indonesia) in their entirety; 2) Declare that the Respondent (PT. IL JIN SUN GARMENT) has neglected and violated the Composition Agreement dated July 31, 2018 which has been ratified by the Decision on the Ratification of Composition (Homologation) Number 31/Pdt.SusPKPU/2018/PN.Niaga.Jkt.Pst. dated August 14, 2018; 3) Cancel the Decision on the Ratification of the Homologation Number 31/Pdt.Sus-PKPU/2018/PN.Niaga.Jkt.Pst. dated August 14, 2018; 4) Declare the Respondent (PT. IL JIN SUN GARMENT) Bankrupt with all its consequences; 5) Appointing ABDUL KOHAR, S.H., M.H., Commercial Judge at the Central Jakarta District Court as Supervisory Judge; 6) Appoint: - Mr. Charlie Simanjuntak, S.H., Curator and Manager registered at the Ministry of Law and Human Rights of the Republic of Indonesia with Registration Certificate No. AHU.AH.04.03-19, whose address is at Cikini Raya No.91 F Jakarta 10330; - Ms. Ria Aryani Nasution, S.H, M.H, Curator and Manager registered at the Ministry of Law and Human Rights of the Republic of Indonesia with Registration Certificate No. AHU.AH.04.03-18, whose address is at WAT Law Firm, Arva Building 2nd Floor, Central Jakarta 10330; - Mr. Wahyudin, S.H, Curator and Manager registered at the Ministry of Law and Human Rights of the Republic of Indonesia with Registration Certificate No. AHU.AH.04.03-18. Jalan Cikini Raya No.60 FG MN Central Jakarta 10330; - Mr. Wahyudin, S.H, Curator and Administrator registered with the Ministry of Law and Human Rights of the Republic of Indonesia with Proof of Registration No.AHU.AH.04.03-87, whose address is Wahyu Sonia & Associates Law Firm, Wisma Bayudji, 1st Floor, Suite 108, Jalan Gandaria Tengah III No.44, South Jakarta 12130; As Curator Team in the Respondent's bankruptcy (PT. IL JIN SUN GARMENT); 7) Determining the bankruptcy fees and compensation for the Curator's services will be determined later after the Curator has completed its duties and the bankruptcy process has ended; 8) Sanction the Respondent (PT. IL JIN SUN GARMENT) to pay the costs of the case, which have been determined to date in the amount of Rp 316,000.00 (three hundred and sixteen thousand rupiah); In the case mentioned above, the cancellation of the homologation due to the debtor's violation and negligence in the implementation of the homologation clearly affects the debtor's declaration as an insolvent debtor, which then appoints the trustee to complete the debtor's property. b) Case Decision Number: 04/Pdt. Sus - Pembatalan Perdamaian / 2019 / PN.Niaga.Jkt.Pst. jo

Number: 23 / Pdt. Sus PKPU / 2011 / PN .Niaga.Jkt.Pst jo Number: 718 K / Pdt.Sus - Bankruptcy/2019 (Pembatalan Perdamaian, 2019).

In this case, the parties are PT Bank CIMB Niaga, Tbk as the Petitioner against PT Arpeni Pratama Ocean Line, Tbk as the Respondent, where in the main request for cancellation of peace filed by PT Bank CIMB Niaga, Tbk with the argument that PT Arpeni Pratama Ocean Line, Tbk has neglected and or cannot fulfill its obligations as stipulated in the composition Agreement dated November 1, 2011 which has been ratified (Homologation), so that PT Arpeni Pratama Ocean Line must be declared bankrupt. In addition to this argument, PT Bank CIMB Niaga Tbk also argued that the Peace Agreement dated November 1, 2011, which had been ratified (homologated), also contained a clause that was very detrimental to creditors, especially minority creditors, because it did not guarantee certainty of payment. The clause referred to in the composition Agreement of November 1, 2011 is Article 26, which states: "Any provision of the composition Plan may be modified or waived based on the Company's proposal and the Company's agreement with the Majority Creditors, and any such modification or waiver shall be binding on the Company and all creditors." According to PT Bank CIMB Niaga, Tbk, the existence of such clause which allows the debtor in casu the respondent in cassation to waive its negligence or default at any time by amending the composition Agreement with the consent of the majority creditors is an invalid causa and should not be regulated in the composition Agreement.

Then PT Bank CIMB Niaga, Tbk submitted an cassation to the Supreme Court of the Republic of Indonesia which was decided based on Case Decision Number: 718 K / Pdt.Sus-Pailit / 2019 which has permanent legal force. Where the main considerations of the Panel of Judges of the Supreme Court cassation are as follows: 1) In the case a quo the Judex Factie declared valid the amendment to the composition agreement dated November 1, 2011 which was homologated by the Commercial Court on November 10, 2011 made by the Respondent/Debtor together with the Majority Creditors with a composition agreement made in front of a Notary on February 7, 2019; 2) That the composition Agreement of November 1, 2011, approved by the Court, is a decision that is final and legally binding (BHT), so that it cannot be changed for any reason, especially not outside the Court. The parties have no choice but to implement the Accords that have been approved; 3) The judex factie's reasoning that the addition of a composition agreement in front of a notary based on the court's decision was based on the clause of Article 2.6 of the Agreement of composition dated November 1, 2011 could not be justified, because the clause contradicted the principle of balance adopted in bankruptcy law and the clause made the peace not sufficiently guaranteed to be implemented; 4) That it has become a permanent jurisprudence of the Supreme Court that if there is a conflict between a composition agreement made out of court after the decision is legally binding (BHT), then the applicable decision is the court decision which is legally valid.

The main point in the case above is that even though there is a clause in the agreement stating that it is permissible to change the agreement as long as it is approved by the majority creditors, this is also an invalid action, because according

to the author, the validity of a composition agreement that has been ratified by the court can no longer be changed because the change has no chance of being ratified by the court as in the Regulation of Law Number 37 of 2004 and this is in line with the Supreme Court Cassation Decision in this case in point 4. Namely, that it has become a permanent jurisprudence of the Supreme Court that if there is a conflict between a composition agreement made outside the court after the decision has permanent legal force, then the applicable decision is the Court decision that has permanent legal force. So, through the two case approaches above, the conclusion is that there is no longer a legally justifiable reason to change, add, and or carry out Homologation outside of what has been authorized and decided by a Court with permanent legal force, other than that, the legal consequences are invalid.

### **3.3 Legal Consequences of Amendment of Homologation Outside Ratification and Court Decision on Transition and Acquisition of Debtor's Assets**

It is well known that in homologation in the Suspension of Debt Payment Obligations and Bankruptcy as a decision to validate the submission of a composition plan in its implementation, there are those who are not subject to homologation decisions and therefore one of the reasons for non-compliance with homologation decisions is the urgency possessed by Creditors (Pramudita et al., 2020: 1-17). It can be interpreted that the legal effect of Homologation is that bankruptcy does not occur. Homologation creates a new agreement which means that all disputes regarding old debts are resolved according to the terms and conditions contained in the composition agreement. The debtor is given the right to continue running the business. Homologation is final if the debtor does not carry out his obligations as stated in the peace proposal, he will be immediately declared bankrupt and the creditors already have certainty and are guaranteed according to what was agreed upon in the composition proposal in this case the refund of their bills (Purba et al., 2019: 138-148).

Based on all the above descriptions, the legal consequences of Amendment the homologation that are not approved by the court are not legally valid, and the consequences are that the actions of debtors and creditors who agree to changes outside the provisions of the law and the court are null and void because of something that is not legal, and therefore what is done by both debtors and creditors is an unlawful act, so it could be that the legal consequences for the acquisition of the debtor's property are not legally valid, so this invalidity will also cause the transfer and acquisition of the property to be invalid.

The invalidity of the transfer of property because the arrangement is not carried out in accordance with Homologation and / or legislation, then the transfer is invalid, so the transferred property has an impact on the legality of the acquisition of invalid assets. So that whoever is the subject of law who receives and obtains the transfer also has the consequence of legal defects which in the future can be disputed by interested parties, and this is also not in accordance with the objectives of the law in legal certainty, legal benefits and justice for the parties concerned in accordance with what is expected by Law 37 of 2004. In addition, it must be known that freedom of

contract does not mean freedom by violating the provisions of the law where it has been regulated that the agreement is legalized, so amendments and implementation that are not in accordance with the law are against the law.

#### 4. Conclusion

Homologation regulations both through the Suspension of Debt Payment Obligations and Bankruptcy have been regulated in such a way that the agreement authorized by the court is the legal basis for acting in the administration and management of the debtor's assets. In the event that there is a change and/or implementation of a court-approved composition agreement (Homologation) outside the court, it is invalid and has no legal force, where the principle of freedom of contract may not justify the act of changing and implementing Homologation outside of what is determined by the Court. If the amendment and implementation of homologation outside of what is authorized by the court means that the action is violating and against the law. What has been authorized by the Court is due to the provisions of the Law and has an impact on the transfer and acquisition of property which is the object of Bankruptcy and Suspension of Debt Payment Obligations. Therefore, the status of the acquisition and transfer of assets from the Amendment and Implementation of Homologation outside of Court authorization is invalid.

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