

Prosedur Hukum Restrukturisasi Utang Di Luar Pengadilan Sebagai Upaya Penyelesaian Sengketa Utang-Piutang: Studi Kasus Putusan Pengadilan Belanda Dan Komparasi Hukum Indonesia = Legal Procedures for Out-of-Court Debt Restructuring as a Debt Dispute Settlement: A Case Study of Dutch Court Decisions and Indonesian Legal Comparisons

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Abstrak

Restrukturisasi utang di luar pengadilan (out-of-court restructuring) merupakan sebuah mekanisme pengubahan ketentuan pembayaran utang yang dilakukan melalui proses negosiasi antara debitor dengan kreditor di luar forum pengadilan. Indonesia hingga saat ini belum memiliki pengaturan khusus mengenai prosedur pelaksanaan restrukturisasi utang di luar pengadilan. Belum adanya pengaturan tersebut berimplikasi pada tidak adanya perlindungan hukum yang diberikan kepada debitor dan kreditor yang memilih penyelesaian sengketa utang-piutang melalui mekanisme out-of-court restructuring, berbeda dengan adanya perlindungan hukum yang diberikan kepada debitor dan kreditor melalui mekanisme PKPU. Oleh karena itu, penelitian ini akan menganalisis: (1) regulasi restrukturisasi utang di luar pengadilan di Indonesia dan Belanda; dan (2) penerapan regulasi restrukturisasi utang di luar pengadilan berdasarkan putusan Pengadilan Belanda. Melalui penelitian yang dilakukan menggunakan metode penelitian doktrinal serta pendekatan analitis dan komparatif, dapat disimpulkan sebagai berikut. Pertama, pelaksanaan out-of-court restructuring di Indonesia masih mengacu pada hukum perikatan dalam KUHPer, sedangkan Belanda telah mengatur mekanisme The Dutch Scheme dalam Wet Homologatie Onderhands Akkoord yang memungkinkan debitor dan kreditor untuk melaksanakan out-of-court restructuring dengan diberikan perlindungan hukum dan perjanjian perdamaian yang disetujui dapat dimohonkan homologasi kepada pengadilan. Kedua, praktik penerapan out-of-court restructuring di Belanda dapat dilihat dalam Putusan Rechtbank Den Haag Nomor C/09/624920 / FT RK 22/103 HO yang mengabulkan permohonan pengesahan perdamaian dan Putusan Rechtbank Limburg Nomor 295994 / FT.RK 21.380 dan 296339 / FT.RK 21.396. yang menolak permohonan pengesahan perdamaian.

.....Out-of-court restructuring is a mechanism for changing the terms of debt payment through a negotiation process between debtors and creditors outside the court forum. Until now, Indonesia does not have a specific regulation regarding the procedures for implementing out-of-court debt restructuring. This lack of regulation has implications for the absence of legal protection provided to debtors and creditors who choose to resolve their debt disputes through the out-of-court restructuring mechanism, contrary to the legal protection provided to debtors and creditors through the PKPU mechanism. Therefore, this research will analyze: (1) the regulation of out-of-court debt restructuring in Indonesia and the Netherlands; and (2) the application of the regulation of out-of-court debt restructuring based on the decision of the Dutch Court. Through research conducted using doctrinal research methods as well as analytical and comparative approaches, it can be concluded as follows. First, the implementation of out-of-court restructuring in Indonesia still refers to the law of contract regulated in KUHPer, while the Netherlands has regulated The Dutch Scheme mechanism in Wet Homologatie Onderhands Akkoord which allows debtors and creditors to

carry out out-of-court restructuring by being provided with legal protection and the approved composition plan can be requested for homologation to the court. Secondly, the implementation of the out-of-court restructuring practice in the Netherlands can be seen in the Decision of the Hague District Court Number C/09/624920/FT RK 22/103 HO which granted the request for homologation and the Decision of the Limburg District Court Number 295994/FT.RK 21.380 and 296339/FT.RK 21.396. which rejected the request for homologation.