

Government Policy in Settlement of Bankruptcy Applications and Postponement of Debt Payment Obligations in the Covid-19 Pandemic Crisis in Indonesia

Ismail Rumadan^{1*} Pri Pambudi Teguh² Chandra Yusuf³

¹Researcher at the Indonesian Supreme Court Law and Judicial Research Center, Indonesia

²Lecturer at the Faculty of Law (National University), Jakarta, Indonesia

³Lecturer at the Master Program in Notary Affairs (YASRI University), Jakarta, Indonesia

*Corresponding E-mail: ismailrdhan@gmail.com

ABSTRACT

The Coronavirus Disease of 2019 (Covid 19) outbreak has had a serious impact on the Indonesian economy, minus economic growth, the lowest inflation rate in 2020 in Indonesian history, the weakening Rupiah exchange rate, the number of unemployed increases. This kind of condition has a major impact on the company's financial condition, and companies with debts that are past due are threatened with default. As a result, many debtor companies are filed for bankruptcy by the Commercial Court, and most of the companies that are filed for bankruptcy and Debt Payment Obligation Postponement (PKPU) are threatened bankruptcy because the conditions for imposing bankruptcy PKPU are very easy. The government does not have the right formula to save companies that are threatened with bankruptcy. Studied more deeply, the inability to repay creditors' debts is not an intentional factor due to force majeure. Therefore, judges who examine and decide on bankruptcy applications and PKPU should consider the financial capability of a debtor company filed for bankruptcy so that companies that are still solvent can continue their business.

Keywords: Bankruptcy, Postponement of Debt Payment Obligations, Covid 19 pandemic.

1. INTRODUCTION

The COVID-19 pandemic has significantly reduced economic activity around the world. Euro area Gross Domestic Product (GDP) is projected to decline by 5.0% in 2020. In the Asia Pacific, countries threatened with recession due to this pandemic include Australia, Hong Kong, Singapore, Japan, South Korea and Thailand. In 2020 economic growth in China is predicted to decline to 4.8%, which was originally 5.7%. Countries that rely on the tourism sector, such as Hong Kong, Singapore, Thailand, and Vietnam, which contribute 10% GDP, will certainly experience an economic impact due to this pandemic.[1] Indonesia's economic growth, which was initially targeted to reach 5.3% in 2020, is predicted only to reach 2% due to the impact of the pandemic.[2]

The real impact of the COVID-19 pandemic on the economic sector in Indonesia, among others: [3] The occurrence of massive layoffs. The data obtained are that 1.5 million workers are laid off and affected by layoffs, of which 90% of workers are laid off and 10% of workers are laid off, The decline in Indonesia's Manufacturing PMI reached 45.3% in March 2020, There was a 3.7% decline in imports in the first quarter.

The above conditions will result in the company going bankrupt if it is in a difficult economic movement due to government policies to stop the spread of the COVID-19 pandemic. This difficulty can affect the company's business. The company cannot generate maximum profit due to a sharp decline in revenue; as a result, the ability to pay the company's debts decreases so that the company runs the risk of default. The rating agency Fitch Ratings stated that the potential for default by Indonesian companies to

occur in the non-bank financial industry (IKNB). "Failures related to governance have resulted in losses of up to US\$ 3.5 billion (equivalent to Rp. Forty-nine trillion at an exchange rate of Rp. 14,000 per US\$). PT Pernerkat Efek Indonesia (Pefindo) stated that the potential risk of default in the country's financial industry has increased. Companies in the financial services sector, especially banking and finance companies, are experiencing liquidity pressure due to credit restructuring.[4]

This condition then triggered many debtor companies to be sued for bankruptcy by creditors in the Commercial Court. Data recorded at the Central Jakarta Commercial Court in 2020, bankruptcy and PKPU applications jumped sharply to reach 318 cases, with details of PKPU lawsuits around 278 cases and the rest are bankruptcy cases. Compared to the previous year in 2019, the total case bankruptcy and PKPU were only around 257 cases. Meanwhile, from 2021 to May 2021, there were 400 submissions for Bankruptcy and PKPU cases.

The increasing application for Bankruptcy and PKPU to the Court is certainly an important issue that needs to be studied so that the debtor companies who are filed for bankruptcy are not easily bankrupt. If only hundreds of debtor companies were brought to Court, it would negatively impact the national economy, harming the company and the workers who worked in the company were threatened with termination of employment.

Therefore, the legal issue that needs to be studied is the government's legal policy in dealing with the surge in bankruptcy applications due to the covid-19 pandemic to avoid the threat of bankruptcy against debtor companies? What is the Court's role so that not all PKPU and Bankruptcy applications lead to the imposition of bankruptcy decisions?

2. METHODS

This study uses a normative legal research method with a statute approach⁸ which is a research that prioritizes legal materials in the form of legislation as the basic material in conducting research. The statute approach is used to examine the laws and regulations related to bankruptcy and the postponement of debt payment obligations in its implementation. This approach is carried out by

reviewing all laws and regulations related to the problems or legal issues regarding bankruptcy that are being faced. This legal approach is carried out to study the consistency/compatibility between the Law and the legal principles related to bankruptcy.[5]

The use of data in this study in the form of secondary data which includes first: primary legal materials in the form of binding legal materials, which consist of basic norms and statutory regulations. Second, secondary legal material which is an explanation of primary legal materials such as research results, scientific works from the legal community and so on. Third, tertiary law, relating to legal materials that provide instructions and explanations for primary and secondary legal materials, such as the internet, Indonesian language dictionaries and so on.

Problems will arise if the Debtor has difficulty repaying the debt or the Debtor stops paying his debt. At the level of practice, usually, someone who owes a debt in this case as a debtor fails to fulfil his obligations or achievements, not because it is caused by a compelling situation (*overmacht*), but sometimes there is an element of intent to avoid the responsibility of fulfilling his achievements. Such a situation will certainly cause losses for the creditor concerned. On the other hand, the Debtor will find it difficult to proceed with the steps to be taken, especially concerning financial matters. To overcome the problem of stopping the Debtor's payment, several ways can be taken to carry out his achievements to the creditor. One way to be taken is through the bankruptcy facility provided by law for Creditors to apply for Bankruptcy and PKPU to the Commercial Court.

Bankruptcy in the terminology of legal science is defined as the condition of a debtor who stops paying or does not pay his debts, this is reflected in the indonesia law of Article 2 paragraph (1) UU Debt Payment Obligation Postponement (PKPU) which stipulates that: "a debtor who has two or more creditors and does not pay off at least one debt that has matured and can be collected, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors".[6]

If an application for bankruptcy meets the requirements contained in Article 2 paragraph (1),

the application for bankruptcy can be submitted to the Commercial Court. After an application for bankruptcy is received and then examined and tried by the panel of judges of the Commercial Court, the examination of the application is declared completed with a verdict and not with a determination.[7] This is because a decision creates a new legal effect, while the decision does not cause a new legal effect but is only declaratory. The Bankruptcy Law and PKPU stipulate that a court decision on a petition for a declaration of bankruptcy must be pronounced no later than sixty days after the date the petition for a declaration of bankruptcy is registered and the court's decision must contain: Certain articles of the relevant laws and regulations and/or unwritten sources of law that are used as the basis for adjudicating; and Legal considerations and differing opinions from the member judges or the chairman of the panel.

3. RESULT AND DISCUSSION

I. THE IMPACT OF THE PANDEMIC ON FINANCIAL CONDITIONS AND DEFAULTS BY DEBTORS VISITING BANKRUPTCY APPLICATIONS AND PKPU

Financial condition is a complement that is used to see the level of company health through financial statements and at the same time can be used to predict company bankruptcy.[8] The position of cash and debt in the company's financial statements will be important information in this COVID-19 pandemic situation. Liquidity can be interpreted as a ratio that shows the relationship between cash and current assets of the company with current liabilities owned by the company.[9] If the company does not have the ability to meet current obligations, an extreme liquidity problem arises and has the potential to cause bankruptcy. Solvency is a ratio that describes the company's ability to meet long-term obligations.[10]

Companies will be forced to go bankrupt if the Indonesian economy is in a difficult condition due to government policies to stop the spread of the COVID-19 pandemic. Even Indonesia's economic growth, which was initially targeted to reach 5.3% in 2020, is predicted to only be able to reach 2% due to the impact of this pandemic.[11] This difficulty can affect the company's business. In addition, the policy of limiting community activities set by the government also disrupts the company's business activities so that the company

is unable to generate maximum profits and is at risk of bankruptcy.

As a result of the above conditions greatly affect the solvency of the company, which resulted in the company defaulting on its debt repayment obligations to creditors.[12] PT Pemeringkat Efek Indonesia (Pefindo) stated that the potential risk of default in the financial industry has increased. Companies in the financial services sector, particularly banking and finance companies, are experiencing liquidity pressures due to the impact of credit restructuring. Meanwhile, according to the President Director of Pefindo, Salyadi Saputra, the risk of default is increasing in almost all sectors. This has been illustrated by several State-Owned Enterprises (BUMN) and private companies, especially in the financial sector whose ratings have been cut by Pefindo until the first semester of 2020. So the risk of increasing default is very worrying about a massive default.

The difficulty in paying debts that have matured and can be collected, as a condition in the Bankruptcy law is fulfilled, so that a number of debtor companies are then submitted for bankruptcy applications and PKPU to the Commercial Court by the Creditors. Several large companies filed for bankruptcy petition to the Central Jakarta Commercial Court in 2020, such as PT Sentul City which was sued for bankruptcy by the Bintaro Family. Then the Hanson International company, has been declared bankrupt by the Panel of Judges of the Central Jakarta District Court Commercial Court case number 29/Pdt.Sus-PKPU/2020/PN NiagaJkt.Pst on August 12, 2020.

Previously, Hanson International requested a PKPU in February 2020 by two parties, namely Lanny Nofianti and Erwin Yoggie Salim with case number 51/Pdt.Sus-PKPU/2020/PN NiagaJkt.Pst. Hanson International's bankruptcy status was also conveyed through a circular letter to all shareholders and creditors issued August 28, 2020 by the company. In the letter, Director of Hanson International Hartono Santoso stated, based on the results of the trial it was stated that Hanson's PKPU had ended, and decided to go bankrupt. This decision has been announced by the curator in two national daily newspapers on August 21, 2020. "Declaring PT Hanson International Tbk as PKPU Respondent/Debtor 'Bankrupt' with all the legal consequences," Hartono said as quoted in a circular, Saturday (29/8/2020). Global Mediacom

Global Mediacom was sued by KT Corporation, a telecommunications company from South Korea, related to a bankruptcy case. The dispute was filed on July 28, 2020 with case number 33/Pdt.Sus-Pailit/2020/PN NiagaJkt.Pst.

Another company that was sued for bankruptcy in the midst of the pandemic was Global Mediacom, a company part of the MNC Group, but the bankruptcy petition was rejected by the Central Jakarta District Court Commercial Court. The Panel of Judges considered that the bankruptcy petition could not prove the arguments of creditors who have two or more creditors. In addition, at least one debt has not been paid due and can be divided, so that the provisions of Article 2 paragraph 1 of Law Number 37 Year 2004 cannot be fulfilled. Then, the Trans Retail Indonesia Company, one part of Trans Corporation, a company owned by Chairul Tanjung, the Company has retail stores with the Carrefour, Transmart, and Groserindo brands submitted a PKPU application by PT Tritunggal Adyabuana to the Central Jakarta District Court Commercial Court on September 30, 2020.

II. GOVERNMENT LEGAL POLICY IN OVERCOMING THE THREAT OF BANKRUPTCY DUE TO THE COVID-19 PANDEMIC

The provisions above then make it easier for creditors to file for bankruptcy, even though it is not necessarily in the current pandemic conditions a debtor who stops paying his debts is not because he is unable, but only because of compelling conditions so that the debtor is prevented from fulfilling his achievements. Under such conditions, of course, the government is expected to take appropriate steps and policies to save companies that are threatened with bankruptcy, because the debtor companies sued for bankruptcy still have the ability to pay off their debts or are still solvent. If bankruptcy occurs, the ones who suffer losses are not only the debtors who are sued for bankruptcy but also the government itself which has the responsibility to maintain and protect every citizen, including business actors, to continue to exist in the midst of the COVID-19 pandemic.

Steps and policies that must be taken by the government in order to overcome the increasing surge in bankruptcy claims, due to the pandemic condition and the ease of bankruptcy and PKPU

requirements regulated in the Bankruptcy Law. These steps are as carried out by several countries in the face of the threat of bankruptcy by companies. In most countries make changes to the bankruptcy regime to protect companies from the threat of bankruptcy. The steps taken are related to the temporary suspension of bankruptcy applications, which do not accept bankruptcy filings during the pandemic in bankruptcy courts, prevent creditors from starting bankruptcy procedures, or raise the debt threshold for bankruptcy notification.

Belgium, Italy and Spain, have enacted laws that temporarily freeze insolvency proceedings or declare bankruptcy is unacceptable. In this case, the creditor is not allowed to appeal to the court for the bankruptcy of the company which cannot fulfill its payment obligations. Then in Singapore and Australia, it has increased the debt threshold for companies to be declared bankrupt. While in the Netherlands, and the UK, the bankruptcy regime is subject to a larger overhaul that could affect the pattern of bankruptcy going forward. In the Netherlands, for example, it would be easier to impose corporate restructuring on creditors, which could reduce the number of insolvency by debtors.[13]

The rescue measures against the threat of bankruptcy against debtor companies in some of the countries mentioned above are not visible in the Indonesian government's policy in tackling the impact of the COVID-19 pandemic. The only regulation issued by the government in order to maintain the stability of the Indonesian economy is through POJK Number 11/POJK/03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of Covid 2019, which regulates debt restructuring for debtors affected by Covid-19 by submitting debt restructuring to banks and finance companies, simply debt or bad credit (NPL) from debtors whose criteria are written in the POJK are used as current loans by the government.[14] From the above policy, it can be understood that the policy is only limited to the debt restructuring policy for debtors affected by COVID-19, which is taken outside the process of submitting a bankruptcy application. Even in this provision, it is emphasized that not all debtors can apply for debt restructuring, as regulated in Article 6, it is stated about the criteria for debtors who can apply for debt

restructuring, namely debtors affected by the spread of Covid-19 including micro, small and medium business debtors, and have a credit value below Rp10 billion as stipulated in Article 7 Paragraph (2) letter a. Based on POJK No. 11/POJK/03/2020. So it can be said that not all debtors can apply for debt restructuring during the pandemic. The POJK provides limits on the criteria for debtors who can apply for restructuring during the pandemic. Therefore, the restructuring policy does not touch the restructuring policy in the process of submitting an application for bankruptcy to the Court.

In contrast to the case in several countries previously mentioned, policies to avoid the risk of bankruptcy by debtors during a pandemic are directly by changing the rules of bankruptcy law and even the government intervenes directly in courts to temporarily stop accepting bankruptcy disputes in court. This kind of policy should also be taken by the Government of Indonesia, especially regarding the Bankruptcy Law and PKPU which are very easy to apply for Bankruptcy and PKPU, so the policy is to overcome and revise the shortcomings of the Bankruptcy Law in the context of rescue actions against debtor companies that are threatened with bankruptcy in the midst of an epidemic, the covid-19 pandemic.

The policy to save debtor companies is important not only as an effort to save debtor companies that are threatened with bankruptcy, but also as an effort to maintain national economic stability. For example, a property company is a national strategic industry that is sued for bankruptcy, of course it has a chain impact on 175 associated industries and 350 small industries and MSMEs that have contributed to the national economy. So that national economic stability needs to be maintained, otherwise it is feared that instability will occur considering that losses involve many parties. Under current conditions, the government should revise the bankruptcy requirements contained in the Bankruptcy Law by slightly tightening the requirements for filing bankruptcy applications, increasing the insolvency limit, the definition of debt, the PKPU deadline or as in Singapore which issued a ban on creditors to file for bankruptcy due to the pandemic, so that not all companies are easy to file for bankruptcy in the midst of this pandemic condition. This is because the current financial difficulties experienced by

many companies are short-term considering that the pandemic will surely pass. Therefore, it is not appropriate if debt disputes or delays in paying debts are paid directly through the bankruptcy and PKPU channels. Insolvency in accounting is bankruptcy or negative net worth on a conventional balance sheet. This requirement must be met because the business entity no longer has the ability to fulfill its maturing obligations. This means that a company whose net worth is still positive but is experiencing short-term financial difficulties, for example due to the current pandemic, is not properly resolved within the framework of bankruptcy or PKPU.

III. IMPLEMENTING THE GOING CONSENT PRINCIPLE TO AVOID BANKRUPTCY AMID THE COVID-19 PANDEMIC

This test is intended to determine the extent of the debtor's ability to fulfill its obligations.[15] insolvency must be interpreted as a state of non-payment in full, defined as having paid once, twice and so on but not entirely, or the debtor has paid the principal but has not paid the interest. Examination of financial statements is closely related to the going concern audit opinion (going business) of a company or business entity. The results of the financial statements will be an important consideration factor for the auditor to issue a going concern audit opinion. Companies that have high profit growth tend to have fair reports, so the potential to get a good opinion from the auditor will be greater.

At the practical level, in the settlement of bankruptcy applications and PKPU in court, it is rare to find judges' considerations in prioritizing aspects of business continuity based on the health condition of the debtor company, because the Bankruptcy Law and PKPU have not clearly regulated the requirements for test solvency as one of the conditions in imposing bankruptcy against the debtor. However, it is necessary to understand that the aspect of business continuity is one of the basic principles in the Bankruptcy Law and PKPU. The principle of business continuity is important to consider in testing whether a debtor is still in good health or not?

When the panel of judges considers the suitability of the debtor for a bankruptcy decision, the panel of judges should consider whether the COVID-19 pandemic is the root cause of the

debtor's financial difficulties. The factors that the court will consider are the debtor's ability to continue to do business and the viability of the industry in which the debtor operates as a whole. The goal is to avoid bankruptcy proceedings for debtors who could survive if not for the impact of the pandemic. When the panel of judges considers whether the debtor has met the requirements to be declared bankrupt, the panel of judges needs to consider whether the debtor is in trouble just because of the Covid 19 pandemic. For debtors who were in good and smooth business conditions before the outbreak of the pandemic but experienced operational difficulties and capital turnover due to the pandemic, needs to be determined comprehensively with a combination of factors such as sustainable operating capability, development prospects for the industry, etc., to avoid bankruptcy proceedings for debtors who can survive solely on the flow of funds and assets and liabilities of the debtor during the pandemic.

4. CONCLUSION

The requirements for filing a bankruptcy application and PKPU as regulated in the Bankruptcy Law and PKPU are very easy, and these requirements are not very appropriate to be applied during the current Covid 19 pandemic, while government policies are related to the revision of the bankruptcy law rules to overcome the surge in filing for bankruptcy and PKPU applications. due to the COVID-19 pandemic, there is no such thing as yet, especially with regard to the determination of a special minimum debt threshold, a moratorium on PKPU applications, and no concrete action from the government to help negotiate and restructure debtors who have filed for bankruptcy due to the COVID-19 pandemic. So that many debtor companies that are due to meet creditors' achievements are threatened with bankruptcy.

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