



Maintaining Global Economic Sustainability: Bankruptcy as Settlement Legal Remedies Accounts Receivable Due to the Covid-19 Pandemic

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Abstract. The Covid-19 pandemic has caused business actors to suffer losses and are unable to carry out their obligations to creditors. This condition was caused by deteriorating economic conditions, due to uncertainty. Many local and global companies have filed for bankruptcy, amidst the desire to maintain the company's survival. This study aims to examine and analyze the efficiency and effectiveness of the bankruptcy mechanism as an effort to settle debts due to uncertainty after the Covid-19 Pandemic or the deteriorating economy. This legal research is a qualitative legal research with a descriptive design that uses the theory of economic analysis of law in debt settlement due to deteriorating economy. The results of the study show the effectiveness of debt settlement through bankruptcy institutions.

Keywords: Covid-19 · Accounts Receivable · Bankruptcy

1 Introduction

The world economic slowdown has occurred since the end of 2018, the indicators can be seen from the weakening economic growth of the world's giant economies [1]. This indication of an economic slowdown was strengthened by the statement by IMF Managing Director Christine Lagarde Davos at the beginning of 2019, while the cause of the slowdown was triggered by lower projections for the economic growth of the world's giant economies. The cut was caused by several factors, including slowing economic growth in Europe and China, the trade war between the United States and China and uncertainty due to Brexit [2].

In conditions full of uncertainty due to the world economic slowdown at the end of 2019 until now there has been a health disaster in the form of a pandemic that spread from Wuhan China to hit the whole world. The Covid-19 pandemic was initially very difficult to control, due to the limited number of experts in the health sector. Especially to find the right antidote while preventing the transmission from becoming more massive and widespread. While this condition was eventually manageable, through proper patient care and mass vaccination, millions of lives have been lost [3]. In addition, various areas

of life have become stagnant, governments in developed and developing countries have taken policies to limit community activities in the form of direct interaction as an effort to prevent transmission.

The world economy was again hit hard, the business world entered a dark and uncertain era. This is partly due to restrictions on social activities (social distancing) during the Covid-19 pandemic, so that production activities must be reduced and even completely stopped [4]. As a result, the company is unable to finance operating expenses, let alone earn a profit.

The business world that relies on exports is one of the sectors whose condition is getting worse. Weak demand and supply chain disruptions caused the global market to sluggish. This condition has an impact on the ability of business actors to carry out their obligations in maintaining the continuity of ongoing debt payments [1]. So, it is no exaggeration if from a legal aspect the Covid-19 pandemic can be said to be a force majeure.

Major world companies that are suspected of going bankrupt because they are unable to pay debts due to business closures and decreased revenue due to the Covid-19 pandemic include Hertz, the world's largest car rental company, which filed for bankruptcy protection in the United States and Canada because it needed help to survive [5]. In addition, there are also international retail stores that continue to suffer losses and experience a decrease in revenue, because the Covid-19 pandemic forced this company to close many of its stores and the company could not avoid bankruptcy [5]. However, the pandemic is not the only event that has caused a deterioration in the economy.

The deteriorating economy due to any condition cannot be allowed to go unpunished. Every crisis in the economic sector must be dealt with immediately so that multi-crisis does not occur, which can cause a systemic domino effect. Therefore, often the government or state institutions with the authority to intervene by disbursing bailout funds, to maintain company liquidity, in this case banks. One of the institutions in question is the Central Bank or similar institutions whose job is to regulate monetary stability [6]. To provide bailout funds, the government will negotiate with donor countries so that fresh funds can be loaned. In the era of financial globalization, this has indeed become a common procedure, due to the opening of space for cross-border funding. In fact, this has become a relationship of deep dependence between donor and recipient countries [7].

In the Indonesian context, this reality can be seen from the economic crisis that occurred in 1997/1998. To overcome the crisis that occurred, the government asked for assistance from the International Monetary Fund (IMF). As explained above about interdependence between countries in the event of a crisis [8]. The government's efforts to save the banks at that time were ineffective and left the burden of state debt to this day, due to the settlement process not being carried out through a comprehensive review process and strict supervision. Loan funds from the IMF were not on target, most of them were used by bankers to develop their businesses.

Legal doctrine is needed to provide meaning in difficult conditions. At least the law can guarantee certainty for the interests of the parties, including in conditions of deteriorating economy both caused by the economic downturn and the pandemic. At least the law can provide certainty to the state to set priorities, clear standards and

accountability for policies that emerge suddenly to overcome the crisis [9]. Thus, the law can be used as a guideline or guideline to reduce the impact of the crisis or eliminate it altogether.

In times of crisis as during the Covid-19 Pandemic in countries that adhered to a civil law system, making regulations regarding policies and regulations governing emergencies to deal with various problems that arose as a result of the Covid-19 Pandemic was not an easy thing. The role of the legislature has its own challenges, because in principle the formation of laws and regulations is a long political process and requires intense interaction between members of the legislature, government, society and even political parties. At the very least, the tough challenge for the legislature lies in the oversight function of the executive's performance in dealing with the Covid-19 pandemic through the use of various available resources [10].

In an emergency, of course the law cannot be formulated perfectly, but at least the law can anticipate potential negative impacts in the future. Learning from the handling of the return of bailout funds from the central bank during an economic crisis, it is only natural that the law that is formed can be a way out in overcoming the stalemate due to the weakening of the economy due to the pandemic. This includes the national legal capacity of countries that are recipients of aid from donor countries to resolve their internal problems without intervention of any kind from donor countries in an effort to get a return on bailout funds disbursed during a crisis.

The problem is that the law is often ineffective in settling bailout funds during a downturn in the economy. Settlement through bankruptcy institutions on the one hand is very positive, because it can make maximum use of the debtor's assets to carry out its obligations. However, on the other hand, this mechanism will seriously endanger the conducive investment climate and business world.

Previous research on the increase and decrease in bankruptcy applications before, during and after lock down in several European and American countries conducted by Nicolay Stef and Jean Joachim Bissieux against member countries The Organization for Economic Co-operation and Development (OECD), concluded that company insolvency was not so much related to restrictions during the pandemic, there were allegations that this was caused by technological developments [11]. Other research on bankruptcy during a pandemic is a quantitative study conducted by Supitriyani and friends, which examines the prediction of company bankruptcy during a pandemic by comparing the Altman and Springate models [12]. This research is intended to analyze the legal aspects of bankruptcy as a settlement of debts due to a pandemic in the future as an alternative, so that it can complement previous studies. Therefore, this study aims to examine and analyze the efficiency and effectiveness of the bankruptcy mechanism as an effort to settle debts due to uncertainty after the Covid-19 pandemic or the deteriorating economy.

2 Method

This legal research is a qualitative legal research with a descriptive design that uses the theory of economic analysis of law in debt settlement due to deteriorating economy.

3 Results and Discussion

3.1 Theory of Economic Analysis of Law

The essence of the theory of legal economic analysis developed by Richard Posner in the study of law and economics refers to efforts to apply the methods used in economics. The use of economic concepts to analyze and see the impact of applying certain laws. Where its use includes the efficiency of economic implementation and legal mitigation needed by the community so that the community gets the maximum benefit without neglecting the actual function of law [13].

In line with that, the theory of legal economic analysis in the concept of efficiency departs from Kaldor Hicks's question about whether the policies formulated have provided the maximum benefit for the people who are the object of the policy. In another sense it can also be explained whether the policies that have been set provide balanced compensation to the aggrieved parties, this idea is known as the cost and benefit analysis approach in the theory of legal economic analysis [14].

Settlement of trade payables arising from decreased income and losses which have increased each period during the Covid-19 Pandemic. Identifying that the cause of debtors experiencing default is internal, due to a decline in business and external caused by declining national and international economic conditions [15]. This is related to the efficiency of applying the bankruptcy mechanism in settlement of debts and receivables during the Covid-19 Pandemic which was full of uncertainty. Efficiency is intended to provide a way out for companies that experience continuous losses, lose potential income, are burdened with operational costs which might make business actors sell their assets. In connection with these conditions, legal remedies by implementing a bankruptcy mechanism are the right choice so as not to make the debtor even more unable to carry out his obligations to creditors to pay his debts.

The bankruptcy mechanism will be very efficient, because it places all the assets of the debtor who is declared bankrupt as collateral to pay off the debt to the creditors proportionally. In addition, under certain circumstances at a later date, the bankruptcy decision against the debtor will maximally pay all the debtor's debts to creditors because the bankruptcy mechanism opens space for the execution of personal assets of owners, shareholders, bank guarantees and corporations as a form of accountability.

When compared to the provision of fiscal stimulus by the central bank to medium and large scale business actors who experienced difficulties during the Covid-19 pandemic, this step is much more efficient economically. This can be seen from the time needed to resolve the dispute, the costs to be incurred, the parties involved and the impact on the economy as a whole during the economic recovery period due to the Covid- 19 Pandemic. Limited liquidity and the government's ability to deal with the impact of the pandemic are the main considerations for achieving the intended efficiency.

Learn from previous experiences in Indonesia's economic history. As is well known, the 1997/1998 economic crisis which had multiple effects occurred at a time when Indonesia's national economic fundamentals were experiencing many problems. Among them are the laws and regulations in the field of trade which are rigid and convoluted, causing inefficiency and lack of competitiveness. There is no transparency in regulating the entry of foreign funds through the weak banking system [16]. This causes local banks

to have foreign debt. Thus, the sudden weakening of the rupiah caused these banks to be unable to repay their debts, because the amount of debt had skyrocketed.

Since the beginning of the crisis, steps have been taken by the government to avoid the wider impact of the crisis. The goal is to maintain national economic stability, because if the crisis widens, the main victims will be the people. However, this step was not supported by legal instruments that have proven to be tough in dealing with global crises supported by the actions of transnational speculators.

On the other hand, the BLBI settlement continues to fail to recover state losses. This failure can be seen from the small return on state losses for nearly three decades, which is no more than 26.8 percent [17]. Despite the various efforts that have been made, in fact settlements both through legal channels and outside the court have not provided encouragement for BLBI debtors and obligors to carry out their responsibilities. In fact, many of them chose to become fugitives and fled abroad along with their assets sourced from BLBI funds which are still burdening the state budget [18].

The peak of BLBI settlement failure can be seen from the release and release clauses. The clause originally aimed to remove the personal responsibility of shareholders. Based on the MSAA and MRNIA agreements, both BLBI obligors and debtors who are proven to have violated the LLL for banks with Take Over (BTO) status and violated the BMPK and BLBI. Operational Frozen Bank (BBO) or Business Activity Frozen Bank (BBKU) status [19]. In fact, the release and discharge clauses contained in the MSAA and MRNIA later gave rise to legal problems, both regarding legal force and legal consequences. It was later discovered that the misuse of BLBI debt, which was originally intended to be paid to customers, turned out to be using the funds for the personal interests of the owner of the bank receiving the BLBI debt. The problem then continued with the repayment of the BLBI debt due to the incompatibility of the collateralized assets or the owner of the bank receiving the BLBI debt running away [20].

This problem occurred due to the lack of application of the concept of efficiency in the economic field to establish policies and regulations that would serve as guidelines for resolving an exchange rate crisis that developed into a monetary crisis and eventually culminated into an economic crisis. In this case, the impact can still be felt like the economy in Indonesia.

3.2 Implications of Bankruptcy

3.3 Mechanisms for Business Continuity During the Pandemic Period

Refinement of the 1999 Bankruptcy Law to become the current Bankruptcy Law and PKPU in Indonesia. Aimed at overcoming the impact of the economic crisis that occurred in Indonesia which caused unfavorable conditions for the business world to continue its business activities [21]. This means that even though the monetary crisis has long passed, its impact on the business world can still be felt today. In another sense, the impact of the monetary crisis has not yet been resolved.

The support regulated in the Bankruptcy and PKPU Laws that apply in Indonesia is to provide space for the continuity of business entities that have the potential to survive for a longer period of time or in other words the business entity concerned will not go bankrupt in a short time, even though it has burdens. Huge debt [22].

Settlement of accounts payable during the Covid-19 Pandemic shows an effort to balance justice received by creditors and debtors. However, in its development, filing a bankruptcy application is very vulnerable to causing the debtor to lose his business entity because the debtor no longer has the authority to manage the company's assets.

The impact is that future economic recovery will not be easy because business actors do not yet fully feel safe from bankruptcy. Psychologically, this will greatly disrupt the conduciveness of the business world, this is due to the legal system which opens up too much room for debtors to file for bankruptcy so that it makes business actors afraid to restart their business and/or invest again.

Therefore, it is very necessary to pay attention to how to provide guarantees of protection to debtors and creditors in debt and credit schemes and the state if uncertain conditions occur, both economic crises and other conditions that complicate the payment process. Bankruptcy mechanism can be an option but requires an in-depth study, especially related to the efficiency of its implementation and the implications for business entities (going concern).

4 Conclusion

The bankruptcy mechanism is very efficient in settlement of accounts payable but under certain conditions its application must be accompanied by an in-depth analysis through economic concepts, both covering the cost and benefit approach and through the concept of maximum profit for the aggrieved party. in a policy. Along with achieving efficiency through the implementation of bankruptcy mechanisms in debt and receivable settlement during the Covid-19 Pandemic, we must also pay attention to the implications for the sustainability of economic entities, because bankruptcy mechanisms have the potential to end in liquidation. Company, not just liquidating assets to pay debtors' debts.

Acknowledgments. Thank you very much to PKSDU Law Doctoral Program, Faculty of Law, University of Brawijaya, which has funded this research and provided support until this research was published.

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