

Implementation of bankruptcy instruments as a final means of overcoming the impact of the Covid-19 pandemic in Indonesia

Rahayu Hartini^{1*}, Briliawan Gama Rahmatullah¹, Ahmad Dzulfiqar Hibatullah Putra², Mohammad Faisal Jamaluddin Malik³, and Mohammad Hanif Furqan Aufa Putra⁴

¹University of Muhammadiyah Malang, Indonesia

²Brawijaya University Malang, Indonesia

³Esa Unggul University Jakarta, Indonesia

⁴Sepuluh Nopember Institute of Technology Surabaya, Indonesia

*Corresponding author: hartini@umm.ac.id

KEYWORDS

Implementation
Bankruptcy
Pandemi Covid-19
Debt Payment Obligations

ABSTRACT This study aims to provide contributions and ideas in the form of efforts to prevent bankruptcy for debtors / companies affected by the COVID-19 pandemic. This is a normative juridical law research with a conceptual approach and legislation. Primary and secondary legal materials are analyzed in terms of their content. The results of the research and legal discussion show that Bankruptcy is the last legal effort in overcoming the Covid-19 pandemic in the event that the company experiences debt repayment difficulties (defaults). Efforts that can be made are by: Optimizing the application of Business Sustainability Principles; The Covid-19 pandemic is the reason for Force majeure, the importance of restructuring and renegotiation mechanisms by debtors and creditors through Postponement of Debt Payment Obligations, and Bankruptcy is the last legal remedy (ultimum remedium).

© The Author(s) 2022

1. INTRODUCTION

Corona Virus Disease 2019 (COVID-19) has become a global hot issue since its inception in Wuhan, China. Now COVID-19 is no longer endemic to the bamboo curtain country, but has spread to all corners of the world into a pandemic, including Indonesia. In order to reduce the rate of spread of this virus, it is necessary to implement social distancing to overcome this problem. Among the policies issued in some countries is to start implementing a lockdown policy. In Indonesia itself issued a policy called Large-Scale Social Restrictions with the issuance of PP Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19) (Presiden RI., 2020). All of this was done by countries in the world affected by COVID-19 in order to break the chain of the spread of this virus. On the other hand, this policy also has an impact on economic activities in a number of countries which have become hampered and suppress global economic growth.

As a non-natural disaster, this pandemic is apparently not just a disaster that attacks the health sector. Moreover, the COVID-19 pandemic poses a separate threat to the social and economic sectors. The spread of the corona outbreak to various parts of the world is a serious threat to the global economy. In the last few months in the first quarter of 2020 there have been several global economic fluctuations, both from the financial sector to the gold exchange rate which continues to soar high. In addition, there was

also penetration in the Chicago Board Options Exchange (CBOE) version of the market. The impact of Corona on the global economy affects 3 sectors, namely the stock market, debt securities, and the value of gold (Burhanuddin & Abdi, 2020). Especially in Indonesia, this pandemic has wreaked havoc on the economic climate. This is because this pandemic has had a very bad impact on micro, medium and even macro businesses. Among the economic problems currently being faced by Indonesia, starting from the existence of disrupted company liquidations, the erosion of the MSME sector, termination of employment (PHK), to the threat of bankruptcy in a number of companies.

One of the consequences of the weakening economy in Indonesia is the emergence of a number of companies that are no longer able to pay their debts to their creditors when they fall due. One short way taken by creditors to obtain payment (even if only partially) when the debtor stops paying is through the bankruptcy process (bankruptcy) (Sembiring, 2006). However, the large number of cases of bankruptcy of companies in Indonesia will certainly have a bad impact on the one hand. This is of course a concern about the impact of the fall and the decline in the economy in Indonesia. In times of a pandemic like this, it seems that the instrument of bankruptcy is a way and a legal remedy that must be terminated (ultimum remedium). This is all for the sake of saving the sustainability of the economy in Indonesia. Therefore, legal efforts to anticipate this bad possibility.

Based on the description in the background above, the focus of the problems in this study are:

- a. What is the legal protection for companies that are unable to pay due to the COVID-19 pandemic in Indonesia?
- b. Can the COVID-19 pandemic be used as an excuse for debtors as a state of overmacht (force majeure)?
- c. What legal remedies can be taken by the company's debtors in relation to their obligations to the debt problem in order to survive during this covid-19 pandemic?

2. METHOD

This research is legal research using normative juridical research or doctrinal legal research. Where this research refers to written legislation and requires secondary data sources (secondary data). This research method uses qualitative research methods. Qualitative research method is a research method that uses in-depth analysis techniques by providing descriptive explanations for each datum. The approaches used include the statutory approach and the conceptual approach. The approach to legislation is an approach using legislation and regulations (Marzuki, 2005). The conceptual approach is carried out when the researcher does not move from the existing legal rules. This is done because there are no new legal regulations that have been faced. In addition to laws and regulations, legal concepts can also be found in the decisions of commercial courts related to bankruptcy (Marzuki, 2005).

Primary legal materials in the form of Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, especially related to debts that cannot be paid due to the COVID-19 pandemic, as well as literature books, journals and articles related to legal issues in the research are collected and legal dictionary and official website about bankruptcy. The data that has been collected is then analyzed based on its content (content analysis), then explained or described according to the problems raised in this study

The legal materials used are primary legal materials that are binding in the form of statutory regulations, secondary legal materials in the form of literature books, journals, articles, and legal dictionaries as well as the opinions of legal experts needed in this writing, as well as tertiary legal materials in the form of legal dictionaries, Indonesian dictionary, and English dictionary as well as the official website.

3. RESULTS AND DISCUSSION

From 10 to 26 July 2020, the Indonesian Central Statistics Agency conducted a survey of 34,599 business actors affected by the Covid-19 pandemic in Indonesia. According to the Head of the Central Statistics Agency Kecuk (2020) that there are three elements of business actors surveyed, namely Large and Medium Enterprises, Small and Medium Enterprises and Agriculture. 84% of Small and Medium Enterprises and 82% of Large and Medium Enterprises tend to experience a decline in income. Meanwhile, 59.8% of Small and Medium Enterprises and 49.4% of Medium and Large Enterprises are still operating normally. Based on

the sector, there are 3 business fields that are most affected by the Covid-19 pandemic. All three are in the accommodation, food and beverage sector. Another service sector is the transportation and warehousing sector. The rest, the Covid-19 pandemic also threatens the business climate of other sectors. The occurrence of economic climate shocks then became the cause of the increasing number of businesses or companies that were threatened with bankruptcy.

Based on data obtained through the Case Tracing Information System, the number of bankruptcy cases and debt repayment obligations submitted, both individuals and business entities at the Central Jakarta Commercial Court in 2019 were 341 cases, while from January to September 2020 there were 363 cases. Meanwhile, the number of bankruptcy cases and debt repayment obligations at the Semarang Commercial Court in 2019 was 64 cases, while in January-September 2020 there were 63 cases. Then, for the total bankruptcy and Postponement of Debt Payment Obligations at the Surabaya Commercial Court for the 2019 period, there were 106 cases, while in January to September 2020 there were 76 cases. Furthermore, the total cases of bankruptcy and suspension of debt payment obligations at the Makassar Commercial Court for the 2019 period were 11 cases, while in January-September 2020 there were 4 cases. And finally at the Medan Commercial Court, the number of bankruptcy and suspension of debt payment obligations in the January 2019 period was 11 cases, while in January to September 2020 there were 30 cases.

The details regarding the cases that have entered the 5 areas of the Commercial Court in Indonesia in the last 2 years (Jan-Dec 2019 and Jan-August 2020) are as in table 1 below :

In 2020 the Indonesian Association of Curators and Management predicts the number of bankruptcy cases and delays in paying debt obligations will continue to increase during the pandemic. Meanwhile, according to Jimmy Simanjuntak as Chairman of the Indonesian Association of Curators and Management (AKPI), stated that the trend of bankruptcy petitions, especially through the mechanism of Debt Payment Obligation (hereinafter referred to as PKPU) has increased significantly. In fact, due to the COVID-19 pandemic, it could increase by up to 50% than usual. Likewise, according to Shinta Widjaja Kamdani, Deputy Chairperson of the Indonesian Chamber of Commerce (KADIN) that in 2020, in the tourism sector, especially for hospitality, many have almost filed for bankruptcy.

All countries in the world have now conducted in-depth studies in responding to regulations in the field of bankruptcy law in their respective countries. Apart from that, governments around the world also provide effective formulations to prevent the rise of companies that are threatened with bankruptcy.

The following are the results of the discussion of the 3 problem formulations / legal issues from the research, described as follows:

3.1 Legal Protection of Debtors: Application of Business Continuity Principles during the COVID-19 Pandemic

Legal protection is an important requirement for the rule of law (rechtstaat). One form of legal protection is the emergence of the concept of equality before the law. The use of the principle of equality before the law in civil relations, especially in debt and credit agreements is interpreted as an

Table 1. Number of Bankruptcy and Postponement of Debt Payment Obligations (PKPU) Cases for the 2019-2020 Period

Commercial Court Name	Year 2019 (Jan-Des)	OwnYear 2020 (Jan-August)	Description
1. Pengadilan Niaga Jakarta Pusat	341	363	
2. Pengadilan Niaga Surabaya	106	76	
3. Pengadilan Niaga Semarang	64	63	
4. Pengadilan Niaga Medan	11	30	
5. Pengadilan Niaga Makassar	11	4	
Total	533 (12 Months)		44,42 cases/month
	536* (9 months only)	*59.56 cases/ month	

equal legal position for the parties. Therefore, the contractual relationship mechanism must be based on the rules of reciprocity between the parties equally. Facts actually answer the opposite, not infrequently found in the legal mechanism in Indonesia, there are a number of rules that are deemed lacking in providing a balance of rights between parties. No exception in the regulation of bankruptcy law in Indonesia.

Along with the bankruptcy law and delays in paying debts, it turns out that in practice a number of shortcomings were also found. Moreover, in the context of balancing the rights of the parties, according to the author, it is still not able to provide a balance of rights between debtors and creditors. The current Law of Bankruptcy and Delay of Debt Payments is more concerned with the speedy settlement of the parties' debts. The regulation must also pay attention to the relationship between debt and insolvency conditions and the possibility of a bad business climate. This is in order to realize the principles of justice, balance, integration, and business continuity as desired in this Law.

The requirement to declare a debtor bankrupt as regulated in the provisions of Article 2 paragraph 1 of the Bankruptcy Law and the obligation to pay debts does not have a single provision that requires the debtor to be unable to pay (insolvency), this is certainly contrary to universal philosophy. Bankruptcy Law, which provides a way out for debtors and creditors when the debtor is unable to pay his debts. Thus, it is clear that the absence of this bankruptcy test further strengthens the position of creditors, especially in the context of the economic crisis in Indonesia when the COVID-19 pandemic triggered many bankruptcies for companies. With this bad possibility, of course, it will only weaken the economic climate in Indonesia. Therefore, there is a need for legal protection for debtors in the current condition.

One form of legal protection mechanism for debtors in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations is the principle of business continuity (Presiden RI & DPR RI., 2004). The definition of the principle of business continuity as stated in the General Elucidation of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is the possibility of holding a company debtor candidate. In connection with this understanding, there is an opinion that business continuity is provided in the context of a company that has been declared bankrupt. This view is based on the norm in Article 104 paragraph (1) which states,

“Based on the approval of the interim creditor committee, the Curator may continue the business of the Debtor who is declared bankrupt even though there is an appeal against the bankruptcy decision. appeal or reconsider. Likewise, Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligation for Payment of Debt states that “a request for a declaration of bankruptcy must be granted if there are facts or conditions that can simply prove that the bankruptcy requirements as referred to in Article 2 paragraph (1) is fulfilled. The article confirms that the judge's benchmark in granting a petition for bankruptcy is only based on the conditions as referred to in Article 2 paragraph (1). Even the law states with the words “must be granted”, which means the norm is necessity, so that the commercial court can issue a bankruptcy decision without considering the prospect of business continuity, while the condition of the company still has good business prospects and solvency (Irianto, 2015).

An important element in bankruptcy law that must be considered is the degree of bankruptcy and to determine the parameters of bankruptcy, a clear test must be carried out. Therefore, the bankruptcy application must go through a cash flow test first. Bankruptcy arrangements in Russia, for example, before a debtor goes bankrupt there are stages that must be passed, namely: supervision, financial rehabilitation, external administration, liquidation and peaceful arrangements so that the justification for bankruptcy has a strong evidence base (Pratama, 2014).

In the author's opinion, it is necessary to have Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations to provide arrangements that explain the requirements regarding benchmarks that can be used as a reference whether a debtor can be declared bankrupt . or not, which can be called Bankruptcy test (Presiden RI & DPR RI., 2004). The bankruptcy test is a test to measure several aspects of the debtor's company before the bankruptcy is released, namely estimating the total value of assets, checking its liquidity, and examining the debtor company's transactions with other companies that can reduce asset value. and liquidity.

The explanation above actually applies at this time the implementation of business continuity is difficult to run optimally. However, the parties and law enforcers need to consider the urgency of the debtor's business continuity during the COVID-19 pandemic in order to save the current Indonesian economy. Because of course this will have

an impact on the stability of the micro, medium and macro business climate, as well as the increasing number of layoffs in Indonesia. Apart from that, it is also necessary to rescue efforts in the form of regulations and policies by the government.

3.2 Force Majeure as a Legal Gap on Debtors Affected by COVID-19

- a. The theory of impossibility, is a condition that forces one of the parties not to fulfill the achievement;
- b. Theory of Elimination, which means by overmatching the fault of the debtor / one of the parties.

The theory of impossibility of overmacht can be divided into two basic theories that need to be considered for the possibility of implementation of the achievement, namely (i) absolute (permanent) overmacht which makes implementation of the achievement impossible; and (ii) relative overmacht (temporary), which causes the normal performance of the performance to be possible or temporarily suspended until the achievement can be met again (Hernoko, 2010).

From the theoretical explanation above and related to the context of the COVID-19 pandemic, can this pandemic be used as a force majeure? In this regard, the government has issued Presidential Decree Number 12 of 2020 concerning the Non-Disaster Determination of the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster. The decision has provided a stipulation that COVID-19 is a national disaster. The next question is, can this Presidential Decree be the argument for the application of force majeure by the debtor?

In the author's opinion, this Presidential Decree does not necessarily become a force majeure reason to cancel an agreement or contract, let alone eliminate the debtor's debt obligations that are past due. The position of this Presidential Decree is only a gateway for the parties to provide an opportunity to be able to restructure the contract, not in the form of contract cancellation. In this case, what needs to be done is to first pay attention to the situation and conditions as well as the character rather than the agreement made by the parties themselves. Because this only applies to contractual relationships between debtors and creditors, while in debt relationships there can be more than one creditor. However, according to the author's opinion, what can be done as a legal remedy for debtors who are past due and experiencing difficulties in carrying out their obligations, can use a force majeure clause if it is stated in the terms of the agreement and can then be carried out. followed by making an addendum. Thus, the relative overmacht theory can be applied as a postulate and legal loophole in the presence of force majeure due to the COVID-19 pandemic. The next thing that can be done is to renegotiate and restructure the mechanism for the Suspension of Debt Payment Obligations. Of course, this is expected to be in good faith from the parties

3.3 Urgency of Renegotiation and Debt Restructuring through PKPU as an Effort to Realize a Conducive and Sustainable Indonesian Economic Climate

Accurate bankruptcy prediction has become an important issue in the financial sector (Krozner, 2003). In the current economic crisis situation, many companies have difficulty in settling funds obtained from their debts. The rea-

son is, the funds obtained from the proceeds of debt must be returned to creditors when the company itself is experiencing cash and liquidity difficulties. To anticipate this situation (a debt settlement strategy is needed that can really benefit both parties, both the debtor and the creditor company. Debt settlement is a different alternative in dealing with these situations and conditions. Indeed, not all debtors who have problem debts can be given the opportunity to pay off debts through renegotiation, but conditions are needed so that the debt can be renegotiated. According to Sutan Remy Sjahdeini, there are several criteria for debt to be renegotiated: (Sentosa, 2015).

- a. Customers have good intentions from the first time they apply for credit to the bank, during the use of credit, during the repayment period and after non-performing loans.
- b. The debtor's business still has good business prospects to be able to pay off its debts to its creditors if the debtor is given the opportunity to delay payments within a reasonable period of time, either with or without exemption from requirements and or additional new debts are given
- c. Creditors will get a larger debt repayment through debt restructuring than if the company is declared bankrupt, or
- d. The condition of debt based on debt restructuring is more favorable to creditors than before the restructuring.

To overcome debtor difficulties in the COVID-19 pandemic, this option of delaying Debt Payment Obligations can be taken because it has several benefits, including: (Yulwansyah, 2020).

- a. The settlement that has been ratified by the Court is binding on all creditors (both concurrent and preferred), except for the Guaranteed Creditors who do not agree to the settlement plan (which is compensated with the lowest value between the collateral value or the actual value of the loan which is guaranteed directly with collateral rights over material) (see Article 286 of the Law on Bankruptcy and Suspension of Debt Payment Obligations); and
- b. Requests for Suspension of Debt Payment Obligations have the power to prevent Bankruptcy because they can be submitted at any time before the Bankruptcy Statement is decided by the Court (i.e. before the Bankruptcy Statement request is filed, or after the Bankruptcy Statement application is submitted). for the Declaration of Bankruptcy submitted but no court decision) (vide Article 229 paragraph (3) of the Law on Bankruptcy and Suspension of Obligation to Pay Debt).

In line with this, the mechanism for Postponing Debt Payment Obligations is a good first legal step to avoid the bankruptcy of a number of companies affected by the COVID-19 pandemic. Some of the advantages of Postponing Debt Payment Obligations:

- a. Suspension of Debt Payment Obligations is a relaxation for debtors to pay off debts;

- b. The suspension of the obligation to pay debts takes precedence over the bankruptcy process;
- c. The debtor cannot be forced to pay the debt for up to 270 days;
- d. The postponement of the obligation to pay debts will be a golden opportunity to negotiate ways to make payments by submitting a peace proposal which is part of the optimal outcome.

The realization of peace between the parties related to the Delay of Debt Payment Obligation mechanism is also of course very much determined by the good quality of the peace plan preparation process. In addition, the creditors' meeting is very important to determine whether the restructuring process can be carried out amicably by the parties. To realize the sustainability and conduciveness of the Indonesian economy today, good will is needed from all parties. As a result, failure to reach a settlement will make the debtor bankrupt, unless the debtor can pay its debt obligations to creditors.

In this pandemic condition, the government has also provided stimulus due to the COVID-19 pandemic by issuing Financial Services Authority Regulation of the Republic of Indonesia Number 11 / POJK.03 / 2020 concerning National Economic Stimulus as a Counter-Cyclical Policy Impact of Corona Virus Disease 2019 (OJK, 2020a) and "Authority Regulation Financial Services of the Republic of Indonesia Number 14 / POJK.05 / 2020 concerning the Countercyclical Policy on the Impact of the 2019 Corruption Virus Disease for Non-Bank Financial Services Institutions (OJK, 2020b)". This is in line with the provisions of Article 222 paragraph (2) of the Bankruptcy Law and Suspension of Debt Payment Obligations as mentioned above. This policy will certainly provide fresh air for business actors (Debtors) and Non-Bank Financial Guarantee Institutions (Creditors) to be able to carry out major restructuring.

Financial Services Authority Regulation Number 11 / POJK.03 / 2020 applies to both Conventional / Sharia Commercial Banks and BPRS / BPRS (OJK, 2020a). Especially for this pandemic, the determination of asset quality is only based on one component, namely "payment accuracy", which is part of the relaxation of the Financial Services Authority Regulations. Under normal conditions based on Financial Services Authority Regulation Number 40 / POJK.03 / 2019 concerning Asset Quality Assessment of Commercial Banks, credit quality assessment is based on 3 pillars, namely business prospects, debtor performance, and ability to pay (OJK, 2019). Restructuring is given to debtors (including MSMEs) who are affected by COVID-19. In this restructuring, asset quality is determined as "current", this is to protect customer rights to credit/financing objects, as well as protect Non-Performing Loans from banks. Thus, the credit or financing that is determined smoothly protects the debtor from the possibility of collateral execution (Fiducia and Mortgage). Debtors affected by COVID-19 can be given new financing. Meanwhile, the Financial Services Authority Regulation Number 14 / POJK.05 / 2020 applies to finance, capital, ventures, mortgages, and other Non-Bank Financial Services Institutions (OJK, 2020b). The determination of assets is also the same as that applies to banks as mentioned above, which is only based on one component, namely the accuracy of "payments". Restructuring is given to debtors affected by COVID-19. As is the case with banks, for Non-Bank Financial Services

Institutions in the process of restructuring asset quality is also determined to be "smooth", this is to protect customers' rights to the object of financing, as well as maintain Non-Performing Financing from Non-Performing Financing, namely Bank Financial Services Institutions. All of this is expected to save the nation's economy in this pandemic situation.

3.3.1 Bankruptcy Instrument as a last Remedial (Ultimum Remedium)

The provisions in the Bankruptcy Law and the Obligation to Postpone Debt Payments according to the author must be given additional provisions as implementing the business continuity principle. The provisions regarding the requirements contained in the article above will backfire for the bankrupt debtor. Whereas of course we know that it is not uncommon for companies to go bankrupt, even though on the other hand the value of the debt is not significant compared to the total assets owned by the debtor company.

Then, in a pandemic that will shake up the business climate as it is now, courts need to be more careful in lowering bankrupt status. Disproportionate bankruptcy case precedents need to be reviewed. Jurisprudential and positive ratios and assessments of bankruptcy cases for the greater interest of business climate stability need to be considered. In the event that the bankruptcy application has been submitted to the court, the court's prudence can be proven by a strict examination of the comparison between the total wealth and liquidity of the debtor company and the amount of debt in question (Sembiring, 2020).

The COVID-19 pandemic has caused a global economic crisis. This condition causes a number of companies to be unable to carry out their obligations in paying debts to their creditors that are past due (insolvency) to the point of bankruptcy. However, in the author's opinion, if the elements of article 2 paragraph (1) in conjunction with article 8 paragraph (4) of the Bankruptcy and Debt Payment Obligation Law have been fulfilled, and the condition of the debtor company has been fulfilled. Unable to move or die, bankruptcy becomes the final legal remedy (ultimum remedium) that must be taken to protect the interests of its creditors.

4. CONCLUSIONS

The COVID-19 pandemic has had a negative impact on the Indonesian economy, both for micro, medium and even macro businesses. Among the economic problems that are currently being faced by Indonesia, ranging from disrupted liquidation of companies, the erosion of the micro business sector, termination of employment, to the threat of bankruptcy in a number of companies.

One of the feared problems due to the impact of COVID-19 is the rise of a number of companies that are threatened with bankruptcy. This also affects the occurrence of layoffs everywhere. Therefore, legal efforts are needed for the parties to avoid bankruptcy as a result of the COVID-19 pandemic. Legal remedies that can be taken include: (a) Optimal application of Business Continuity; (b) During this pandemic, certain types and forms of agreements can be used as reasons for force majeure. (c) Furthermore, in order to overcome the possibility of bankruptcy of companies in Indonesia, this article also provides alternatives that can be avoided through restructuring, renego-

Table 2. Number of Bankruptcy and Postponement of Debt Payment Obligations (PKPU) Cases for the 2019-2020 Period

Regulation of the Financial Services Authority of the Republic of Indonesia Number 11 / POJK.03 / 2020	Regulation of the Financial Services Authority of the Republic of Indonesia Number 14 / POJK.05/ 2020
<p>The main points of regulation of the Financial Services Authority Regulation, the Stimulus for the Impact of COVID-19 include:</p> <p>A. This Financial Services Authority Regulation applies to Conventional Commercial Banks, Sharia Commercial Banks, Sharia Business Units, Rural Banks, and Sharia Rural Banks.</p> <p>B. Banks can implement policies that support economic growth stimulus for debtors affected by the spread of COVID-19, including Micro, Small and Medium Enterprise debtors, while still observing the principle of prudence.</p> <p>C. Debtors affected by the spread of COVID-19, including Micro, Small and Medium Enterprises debtors, are debtors who have difficulty fulfilling obligations to the Bank because the debtor or debtor business is affected by the spread of COVID-19, either directly or indirectly in the economic sector, including tourism, transportation, , hospitality, trade, processing, agriculture, and mining.</p> <p>D. The stimulus policy in question consists of: (1) Assessment of the quality of credit/financing/providing other funds only based on the accuracy of payment of principal and/or interest for credit/financing/providing other funds with a ceiling of up to Rp10 billion; and (2) Improved credit/financing quality to be smooth after being restructured during the validity period of the Financial Services Authority Regulation. This restructuring provision can be applied by the Bank regardless of the credit/financing ceiling limit or the type of debtor.</p> <p>E. Credit/financing restructuring is carried out as regulated in the Financial Services Authority Regulation regarding asset quality assessment, among others by: (1) Lower Interest rates; (2) extension of time period (3) reduction of principal arrears (4) reduction of interest arrears (5) additional credit/financing facilities; and/or (6) conversion of credit/financing into Temporary Equity Participation.</p> <p>F. Banks may provide new credit/financing/providing of other funds to debtors who have received special treatment in accordance with this Financial Services Authority Regulation with the determination of the quality of credit/financing/other funding provided separately from the previous quality of credit/financing/providing other funds.</p> <p>G. The Bank submits periodic reports on the implementation of this Financial Services Authority Regulation for Supervisory monitoring since the position of the data at the end of April 2020.</p> <p>H. This provision is valid from the date of promulgation until March 31, 2021.</p>	<p>The main points of regulation of the Financial Services Authority Regulation, the Stimulus for the Impact of COVID-19 include:</p> <p>A. This Financial Services Authority Regulation applies to Non-Bank Financial Services Institutions such as insurance institutions; pension fund; financial institutions; and other financial service institutions such as: pawnshops, guarantee institutions, Indonesian export financing institutions, secondary corporate finance companies, social security administering bodies, National Madani Capital Limited Liability Company (Persero).</p> <p>B. Countercyclical policies impacting the spread of COVID-19 for Non-Bank Financial Services Institutions include: (1) deadline for submission of periodic reports; (2) implementation of fit and proper test; (3) determination of asset quality in the form of financing and restructuring of financing; (4) Calculation of the solvency level of insurance companies, sharia insurance companies, reinsurance companies, and sharia reinsurance companies; (5) calculation of funding quality for pension funds that organize defined benefit pension plans;(6) implementation of the provisions on asset management according to the age of the participant group (life cycle fund) for pension funds that organize defined contribution pension plans; and (7) other policies determined by the Financial Services Authority through the Chief Executive of the Insurance Supervisory Board, Pension Funds, Financing Institutions, and Other Financial Services Institutions.</p> <p>C. Determination of asset quality in the form of Financing for Debtors affected by the spread of COVID-19 with a Financing ceiling of a maximum of Rp. 10,000,000.00 (ten billion rupiah) can be based on the accuracy of payment of principal and/or interest or margin/profit sharing/ujrah.</p> <p>D. Non-Bank Financial Services Institutions may restructure financing for debtors affected by the spread of COVID-19.</p> <p>E. Non-Bank Financial Services Institutions may provide new financing to debtors affected by the spread of COVID-19.</p>

tiation, and/or rescheduling of debt payment mechanisms by debtors and creditors. (d) Bankruptcy is an alternative legal remedy (*ultimum remedium*).

5. ACKNOWLEDGEMENTS

The authors are grateful to the Rector of Universitas Muhammadiyah Malang, Dean of the Faculty of Law of Universitas Muhammadiyah Malang for the time given to carry out this research.

References

- Burhanuddin, C. I., & Abdi, M. N. (2020). Ancaman Krisis Ekonomi Global Dari Dampak Penyebaran Virus Corona (COVID-19). *AkMen*, 1(17), 91-98.
- Case Tracing Information System. (2020). *Registration Data for Bankruptcy and Postponement of Debt Payment Obligations in 2019-2020*.
- Hernoko, A. Y. (2010). *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial*. Jakarta. Kencana.
- Irianto, C. (2015). Penerapan Asas Kelangsungan Usaha Dalam Penyelesaian Perkara Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU). *Jurnal Hukum dan Peradilan*, 3(4), 399-418.
- Kecuk, S. (2020). *Survei COVID-19 Badan Pusat Statistik*. <https://covid-19.bps.go.id/home/>
- Kroszner, R. S. (2003). Sovereign Debt Restructuring. *Aea Papers And Proceedings*, 93(2), 75-79.
- Marzuki, P. M. (2005). *Penelitian Hukum*. Jakarta. Kencana.
- OJK. (2019). Peraturan OJK No. 40/POJK.03/2019 Tahun 2019 tentang Penilaian Kualitas Aset Bank Umum [JDIH BPK RI]. <https://peraturan.bpk.go.id/Home/Details/128448/peraturan-ojk-no-40poj032019-tahun-2019>
- OJK. (2020a). Peraturan OJK No. 11/POJK.03/2020 Tahun 2020 tentang Stimulus Perekonomian Nasional Sebagai Kebijakan Countercyclical Dampak Penyebaran Corona Virus Disease 2019. <https://peraturan.bpk.go.id/Home/Details/135560/peraturan-ojk-no-11poj032020-tahun-2020>
- OJK. (2020b). Peraturan OJK No. 14/POJK.05/2020 Tahun 2020 tentang Kebijakan Countercyclical Dampak Penyebaran Coronavirus Disease 2019 bagi Lembaga Jasa Keuangan Nonbank. <https://peraturan.bpk.go.id/Home/Details/141510/peraturan-ojk-no-14poj052020-tahun-2020>
- Pratama, B. (2014). Kepailitan Dalam Putusan Hakim Ditinjau Dari Perspektif Hukum Formil Dan Materil Kajian Putusan Nomor 02/Pailit/2012/Pn.Smg Dan Nomor 522k/Pdt.Sus/2012. *Jurnal Yudisial*, 2(7), 157-172.
- Presiden RI. (2020). Peraturan Pemerintah Nomor 21 Tahun 2020 tentang Pembatasan Sosial Berskala Besar dalam Rangka Percepatan Penanganan Corona Virus Disease 2019 (COVID-19). <https://peraturan.bpk.go.id/Home/Details/135059/pp-no-21-tahun-2020>
- Presiden RI, & DPR RI. (2004). Undang-UndangU No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang. <https://peraturan.bpk.go.id/Home/Details/40784>
- Sembiring, A. (2020). *Habis Covid Terbitlah Pailit*.
- Sembiring, S. (2006). *Hukum Kepailitan dan Peraturan Perundang-Undangan yang Terkait dengan Kepailitan* (1st ed.). Bandung. Nuansa Aulia.
- Sentosa, A. (2015). Renegosiasi dan Restrukturisasi Perusahaan dalam Upaya Penyelesaian Hutang. *Jurnal Hukum*, 7(14), 195-202.
- Yulwansyah. (2020). Kiat-Kiat Debitur untuk Melakukan Restrukturisasi Hutang terhadap Krediturnya pada Masa Pandemi Covid - 19. *Bagian*, 2, 1-3