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Legal Frameworks and Advocacy in Bankruptcy Restructuring: A Comparative Analysis of Financial Service Authorities in Indonesia and the United States

Itok Dwi Kurniawan[1]✉, Pujiyono Suwadi[2], Soehartono Soehartono[3], Acacio Fernades [4]

[1,2,3] Faculty of Law, Universitas Sebelas Maret, Indonesia
[4] Faculty of Law, Universidade Dilli, Timor-Leste

✉ Corresponding email: itokdwikurniawan@staff.uns.ac.id

Abstract

Bankruptcy is one of the options available for debtors to resolve financial difficulties when the debtor is unable or is estimated to be unable to pay the obligations owed to the debtor's creditors which are due and billed. Everyone seeking justice must follow certain procedures, including bankruptcy and suspension of debt repayment obligations. The application for bankruptcy and suspension of debt payment obligations is the first step, followed by a decision to declare bankruptcy and suspension of debt payment obligations, as well as all legal remedies. OJK has issued a Credit Restructuring Policy based on Financial Services Authority Regulation Number 11/POJK.03/2020 concerning Economic Stimulus as a Countercyclical Policy for the Impact of the 2019 Coronavirus. This procedure will require debtor restructuring to avoid bankruptcy, either through debt

restructuring or corporate restructuring. The purpose of this study is to obtain an overview of the implementation of restructuring in the process of bankruptcy and payment delays, as well as a reference for maximizing debtor restructuring plans. This study finds that debt restructuring and deferred payments are mostly debt restructuring and begin with a settlement plan. Rescheduling consists of selling assets, acquiring new equity, and engaging in debt-to-equity swaps. When the debtor arranges a plan restructuring, fixation begins. Some of the main causes are debtors' misunderstandings about how to use the restructuring plan. Furthermore, in other situations, the implementation of the restructuring may fail due to the debtor's inability to manage the business and its obligations.

Keywords

Debt Restructuring, Bankruptcy, Debt Payment Delay

A. Introduction

Indonesia, as a developing nation, recognizes the crucial role of economic development in navigating the complexities of the modern world. Central to this process is the banking sector, which plays an indispensable role in facilitating and sustaining national economic growth. The banking industry is vital to the economic success of any country, serving as the backbone for financial stability, investment, and the overall functioning of the economy. According to Dhevi and Bambang[1] this is inseparable from the strategic position of the bank as an intermediary entity. Rani Sri Agustina said that this responsibility was confirmed in Article 3 of the Banking Law no. 7 of 1992, as amended by the Banking Law no. 10 of 1998 (hereinafter referred to as the

[1] Satradinata, Dhevi Nayasari, and Bambang Eko Muljono. "Analisis Hukum Relaksasi Kredit Saat Pandemi Corona Dengan Kelonggaran Kredit Berdasarkan Peraturan Otoritas Jasa Keuangan Nomor 11/POJK. 03/2020." *Jurnal Sains Sosio Humaniora* 4, no. 2 (2020): 613-620. *See also* Hanafie, Nurharsya Khaer, Andika A. Gani, and Virmansyah Virmansyah. "llegal Financial Technology Loans Amid the Covid-19 Pandemic Problem." *Unnes Law Journal* 8, no. 2 (2022): 313-330; Ganefi, Ganefi, and Siti Hatikasari. "The Impact of Covid-19 Outbreak on Banking Policies in Indonesia." *Jurnal Scientia Indonesia* 8, no. 1 (2022): 1-36.

Banking Law), which states that the main task of banks in Indonesia is to collect and distribute public funds.[2] The occurrence of the monetary crisis in July 1997 in Indonesia Law of the Republic of Indonesia Number 4 concerning Stipulation of Government Regulation in Lieu of Law Number 1 concerning Amendment of Law concerning Bankruptcy into Law (hereinafter referred to as Law Number 4 Year 1998)) was ratified, then revoked by Law no. 37 of 2004.[3]

Overall, both bankruptcy and PKPU cases, data reveal that of the 600 bankruptcy and PKPU cases that went to the Commercial Courts throughout Indonesia, only 92 cases or around 15% were handled amicably, while 297 cases or around 49%. the debtor is declared bankrupt and liquidated.[4]

The bankruptcy process begins with an application saying that it is then examined in a trial that is open to the public in order to achieve the main requirements in Article 2 paragraph (1) of Law no. 37 of 2004, namely "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".[5] After that, proceed with the bankruptcy decision with all its legal efforts. If the debtor in question has been declared bankrupt in the decision of the commercial court at the first level, then the next procession will be through the process

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[2] Agustina, Rani Sri. "The Credit Restructuring As A Form Of Protection Against Customers During The Covid-19 Pandemic." *International Journal of Law Reconstruction* 5, no. 2 (2021): 228-241.

[3] Hariyadi, Hasdi. "Restrukturisasi Utang sebagai Upaya Pencegahan Kepailitan pada Perseroan Terbatas." *SIGn Jurnal Hukum* 1, no. 2 (2020): 119-135. *See also* Simatupang, Jonasmer. "Implementasi Permasalahan Ketentuan Pasal 8 ayat 4 terhadap Debitor Korporasi Publik (Studi Kasus Putusan Nomor 21/Pdt. Sus-Pailit/2020/PN/Niaga. Jkt. Pst)." *The Digest: Journal of Jurisprudence and Legisprudence* 3, no. 1 (2022): 11-24; Suci, Ivida Dewi Amrih, Murjiyanto Raden, and Sudiyana Sudiyana. "The Principle of Utility in Revoking a Bankruptcy Adjudication in Bankruptcy Law." *Journal of Private and Commercial Law* 8, no. 1 (2024).

[4] Sitompul, Manahan MP. "Penyelesaian Sengketa Utang Piutang Perusahaan Dengan Perdamaian di Dalam atau Di Luar Proses Kepailitan (Studi Mengenai Lembaga Penundaan Kewajiban Pembayaran Utang)". *Dissertation.* Medan: Universitas Sumatera Utara, 2009.

[5] Kornelis, Yudi, and Florianus Yudhi Priyo Amboro. "Implementasi Restrukturisasi dalam Prosesi Kepailitan dan Penundaan Kewajiban Pembayaran Utang di Indonesia." *Jurnal Selat* 7, no. 2 (2020): 237-277.

of managing and/or settling the bankruptcy estate, in which the debtor will find restructuring carried out to avoid insolvency, both debt restructuring and corporate restructuring.[6]

The term commonly used in the field of bankruptcy is peace. The PKPU process, as well as the Bankruptcy process above, begins with an application which is then examined in a trial which is open to the public in order to achieve the main requirements in Article 222 of Law no. 37 of 2004 which essentially states that creditors and debtors who cannot or expect not to be able to continue paying their debts that have matured and are collectible, can request a postponement of the obligation to pay debts, with a view to submitting a reconciliation plan which includes an offer of partial payment. or all debts to creditors. After fulfilling these provisions, the court will suspend the obligation to pay debts temporarily for a maximum period of 45 day.[7] This delay will be permanent, if the debtor fulfills certain conditions and is approved by the creditor. It is the same with the bankruptcy procession, that when a delay occurs, whether temporary or permanent, in this case the debtor is obliged to submit a reconciliation plan to his creditors.[8] This is where the restructuring lies, both debt restructuring and debtor company restructuring.

Empirical facts in previous research conducted by in the 1998-2006 era concluded that peace in the bankruptcy procession and PKPU was not optimally achieved[9][9]. In another study, it was revealed that some bankruptcy and PKPU cases ended in peace, although there were others that ended in being declared bankrupt and settling bankrupt assets.[10] Especially if the Bankruptcy and PKPU are requested based on bad faith, for

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6 Dwitari, Firza Ayu, and Mada Apriandi Zuhir, "Rekontruksi Kredit Perbankan Berdasarkan Peraturan Otoritas Jasa Keuangan Dalam Penyelesaian Kewajiban Debitur Terdampak Pandemi Covid-19," *Lex* Lata 11, no. 11. (2021): 398–410.

7 Rusli, T. "Analisis Terhadap Penyehatan Perusahaan Melalui PKPU Yang Berkeadilan." *Jurnal Keadilan Progresif* 7, no. 2 (2016): 91-104.

8 Calomiris, Charles W., and Daniela Klingebiel. *A taxonomy of financial crisis resolution mechanisms: cross-country experience*. Vol. 3379. World Bank Publications, 2004.

9 Aprita, Serlika. "Bankruptcy Moratorium Plan and Suspension of Debt Payment Obligations Reviewed From Legal Protection of Creditors." *Syiar Hukum: Jurnal Ilmu Hukum* 20, no. 1 (2022): 1-18.

10 Aprita.

example a debtor who is dishonest and runs away. There may also be creditors who cheat by requesting PKPU to obtain a bankruptcy title for the debtor, given that there is no legal action for PKPU and it can be carried out quickly. The phenomenon that occurs according Aurelio[11] to micro, small and medium enterprises (MSMEs) accounts for about 90% of all enterprises and more than 50% of all jobs globally. As a result, they play a major role in most countries around the world, especially in emerging markets. Most bankruptcy jurisdictions do not respond appropriately to MSMEs in the economic interests of small businesses. Furthermore, with a few exceptions, the scientific literature on bankruptcy law has historically not concentrated on handling MSMEs in bankruptcy.

Most MSMEs, like many large companies, are managed by shareholders or owners, especially in the United Kingdom and the United States.[12] As a result, due to the interests of management and shareholders or owners in this position, it can increase the possibility of shareholders to be opportunistic towards creditors who may be in a bankruptcy situation.

In some cases, debtor's opportunistic behavior is caused by a moral hazard problem in a bankrupt company: if shareholders have lost everything, and the existence of limited liability protects them from further losses, they will have an incentive to "gamble for revival" or keep it. The company is alive even if it's not worth it to see if the company's situation improves at some point in the future. 20 In addition, they do not anticipate any major expenses as a result of their decision, but they may be able to recoup some of the costs.

Most MSMEs, like many large corporations, are managed by shareholders/owners, particularly in the UK and the US19.[13] As a result, because the interests of management and shareholders/owners are aligned, this position can increase the

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11 Gurrea-Martínez, Aurelio. "Implementing an insolvency framework for micro and small firms." *International Insolvency Review* 30 (2021): S46-S66.

12 Mukherjee, Saptarshi, Krishnamurthy Subramanian, and Prasanna Tantri. "Borrowers' distress and debt relief: Evidence from a natural experiment." *The Journal of Law and Economics* 61, no. 4 (2018): 607-635.

13 Cornelli, Giulio, et al. "The impact of fintech lending on credit access for us small businesses." *Journal of Financial Stability* 73 (2024): 101290.

likelihood that shareholders will act opportunistically against creditors who may be in a bankruptcy situation.

In some cases, debtor's opportunistic behavior is caused by moral hazard problems in a bankrupt company. If shareholders have lost everything, and the existence of limited liability protects them from further losses, they will have an incentive to resurrect or keep it. the company is alive even if it's not worth it to see if the company's situation improves at some point in the future. In addition, they do not anticipate any major expenses as a result of their decision, but they may be able to recoup some of the costs. Allows small companies that are less likely to be approved for credit by regular lenders to get financing at a lower price.

The Croatian government established the Pre-Bankruptcy Settlement Procedure as the legislative framework for carrying out the financial restructuring process in September 2012. The implementation of financial restructuring aims to improve the company's financial stability in the short term. However, operational reforms are also needed to create long-term stability and eliminate the sources of the crisis. Loan arrears have nearly quadrupled in the United States, over the past decade, with default rates on federal lending programs recently reaching their highest level in more than 15 years. years (Federal Reserve Bank of New York (2014); US Department of Education). In exceptional circumstances, the borrower cannot fully benefit from the advantages of declaring bankruptcy.[14]

However, in things can happen that peace can occur and the draft or peace plan that has been prepared by the debtor can satisfy the interests of creditors, including the debt restructuring model and the company restructuring model.[15] In the credit agreement, something must be determined regarding Force Majeure (force majeure) which can be used on the basis of the debtor not fulfilling obligations or circumstances due to crisis situations beyond the control of the debtor. 18 Force majeure,

[14] Bakula, Iva, et al. "Application of business intelligence system in company restructuring process: the case of Croatia." *International Conferences ITS, ICEduTech and STE 2016 International Conference on Educational Technologies 2016–ICEduTech*. 2016.

[15] Respatia, Wimba. "Kebijakan Restrukturisasi Utang Melalui Debt to Equity Swap." *EKUITAS (Jurnal Ekonomi Dan Keuangan)* 14, no.1 (2010): 82-96.

also known as a "coercive situation", is a condition in which the debtor is prevented from performing his obligations due to unforeseen circumstances or events at the time the contract was made. such circumstances cannot be held accountable to the debtor as long as the debtor does not have bad intentions.[16] Articles 1244 and 1245 of the Civil Code regulate the causes of force majeure or forced circumstances. This condition can be caused by natural disasters, mass riots, changes in government policies to economic crises. Based on the background explanation above, it is necessary to formulate a research problem formulation, which is also the scope and limitations of this research. The formulation of the research problem is "Policy on the Implementation of Bankruptcy Restructuring at the Financial Services Authority".

B. Bankruptcy Restructuring at the Financial Services Authority

A failure of the company, either because of the inability to meet its financial achievements on time, or because of financial obligations that exceed the assets owned is one of the characteristics of the company reorganization process. Sustainability has become an important issue facing business and society. Sustainable development, particularly the misuse of shared resources from self-maximizing behavior, is fundamentally a matter of regulation. For 750 years, the law has promoted sustainable activities. 14 LEED15 certification, for example, is governed not only by regulatory or semi-regulatory criteria, but also by various legal issues ranging from environmental regulations to copyright protection for LEED-certified buildings.[17]

Therefore, in every corporate reorganization action, it is better to refer to better company performance in the future after the reorganization. The reorganization action must be able to increase the earning power of the company concerned. Earning power in question is the ability to determine the efficiency of the

[16] Rasuh, Daryl John. "Kajian Hukum Keadaan Memaksa (Force Majeure) Menurut Pasal 1244 Dan Pasal 1245 Kitab Undang-Undang Hukum Perdata." *Lex Privatum* 4.2 (2016): 173–180.

[17] Bird, Robert C. "On the Future of Business Law." *Journal of Legal Studies Education* 35, no. 2 (2018): 301-320.

company by looking at the size of the company in generating profits.[18] In order to increase the earning power, several actions can be considered with their respective legal consequences, one of which is debt restructuring.

There are several forms of action from debt restructuring according to Hadiwidjojo[19] including:

1) Rescheduling, rescheduling debt by increasing the payment period and interest
2) Reconditioning, reconditioning regarding debt agreements
3) Haircut, debt relief can occur on all or part of the debt
4) Reduction or exemption of interest in arrears
5) Lower interest rates
6) New debt
7) Converting debt into capital
8) Sales of unproductive or unnecessary assets
9) Other forms that are not against the law

Regarding the way to restructure debt, the law does not stipulate a specific method for it. Debt restructuring basically aims to relieve debtors' obligations and avoid resolving credit problems through legal institutions. Restructuring is also considered the best step to save the company, because with this restructuring, the company has the opportunity to rise from adversity and be able to maintain the company. The type of debt restructuring suggested by the debtor to his creditors, both in bankruptcy and in the form of PKPU debt restructuring, which is usually rescheduled. Rescheduling is connected to the period of payment in the form of main debt repayment and profit sharing, profit margins, and fees, which are duties of the firm debtor.

Is different from mergers and acquisitions, although both are methods to save the company, but the company will eventually disappear or be merged with other companies.[20] mergers and acquisitions can also be successful if the merging

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[18] Purnomo, Budi S., and Puji Pratiwi. "Pengaruh Earning Power Terhadap Praktek Manajemen Laba (Earning Management)." *Jurnal Media Ekonomi* 14, no. 1 (2009): 1-13.

[19] Hadiwidjojo, Kukuh Komandoko. "Metode Dan Konsep Restrukturisasi Sebagai Pelaksanaan Asas Kelangsungan Usaha dalam Penundaan Kewajiban Pembayaran Utang (PKPU) Terhadap Perusahaan Publik dan Non Publik." *Jurnal Hukum & Pasar Modal* 7, no. 2 (2016): 1-31.

[20] Hadiwidjojo.

companies provide financial and operational synergies.[21] It is necessary to consider these aspects so that the company's performance can improve.[22] Preventive efforts that can be taken by the Financial Services Authority to be able to participate in maintaining business continuity in LJK from the threat of filing for a declaration of bankruptcy is by maximizing dispute resolution efforts by maximizing the role of the Alternative Dispute Resolution Institution (LAPS).[23]

OJK has issued OJK Regulation Number 1/2014 concerning Alternative Dispute Resolution Institutions the Financial Services Sector (POJK LAPS). Submission of bankruptcy applications can be submitted by Debtors consisting of individuals, Limited Liability Companies, Foundations/ Associations, Attorney General's Office/ Bank Indonesia/ Bapepam/Minister of Finance.[24] Regarding mergers and acquisitions, they can be successful if the merging companies produce synergies both financially and operationally. These aspects need to be considered so that company performance can improve.[25]

Several factors affect the urgency there is a change to the Law on Bankruptcy and Suspension of Debt Payment Obligations, among others[26]: First, preventing debtor actions if in the same circumstances and at the same time there are more than one creditor who submits collection. Second, to prevent creditors who are holders of mortgages or other material rights from selling them. In this situation, a solvency analysis is carried out

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21 Calomiris, and Klingebiel. *A taxonomy of financial crisis resolution mechanisms: cross-country experience*.

22 Hakim, Dani Amran. "Perlindungan Hukum Terhadap Kepentingan Para Pihak di Dalam Merger Bank." *Fiat Justisia: Jurnal Ilmu Hukum* 9, no. 3 (2015): 396–408, 2015.

23 Laiman, Lisa, and Saarce Elsye Hatane. "Analisis dampak merger dan akuisisi terhadap kinerja keuangan pada perusahaan non keuangan yang terdaftar di Bursa Efek Indonesia periode tahun 2007–2014." *Business Accounting Review* 5, no. 2 (2017): 517-528.

24 Slamet, Sri Redjeki. "Kepailitan Suatu Solusi dalam Memaksimalkan Penagihan Piutang Kreditur." *Lex Jurnalica* 7, no. 3 (2009): 195-204.

25 Ruslim, Herman. "Merger, Akuisisi, Dan Restrukturisasi," *KOMPETENSI Jurnal Manajemen Bisnis 3*, no. 1 (2008): 35–48.

26 Irianto, Catur. "The Application of the Principle of Business Continuity in Bankruptcy Settlement and Debt Payment Suspention," *Jurnal Hukum dan Peradil*an 4, no. 3 (2015): 399–418.

to determine whether the debtor's assets can fund all of his business activities.

According to the interviewer of the Indonesia Stock Exchange, Go Public Companies that maintain their position on the list of issuers on the Indonesia Stock Exchange are often companies that want to continue their business. Moreover Miranda S. N. stated that the OJK regulation was followed by the issuance of OJK Decree Number Kep-01/D.07/2016 dated January 21, 2016 which authorized the establishment of 6 (six) APS Institutions, namely: Indonesian Banking Dispute Settlement Alternative Institution (LAPSPI); Indonesian Capital Market Arbitration Board (BAPMI).[27] Indonesian Insurance Mediation and Arbitration Agency (BMAI); Indonesian Guarantee Company Arbitration and Mediation Board (BAMPPI); Indonesian Pawnshops and Financing Mediation Agency (BMPPI); Pension Fund Mediation Agency (BMDP).

Civil disputes that develop between the parties in relation to activities in the financial services industry sector are one of the conditions for disputes that can be resolved by LAPS.[28] The LAPS POJK mandates the existence of a dispute resolution system (especially between consumers and LJK), which consists of internal dispute resolution at the LJK, settlement through the judiciary. public (court), as well as through LAPS with a certain procedure. Procedure for dispute resolution through LJK LAPS through 2 (two) stages namely the settlement of complaints made by LJK (internal dispute resolution) and dispute resolution through judicial institutions or institutions outside the judiciary (external dispute resolution).[29] Article 2 POJK LAPS stipulates

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[27] Nasari, Miranda Selvy. "Perlindungan Hukum Bagi Penyedia Jasa Pembiayaan Berbasiskan Elektronik (Peer to peer Landing) Dalam Peraturan OJK NO. 77/OJK/01/2016 Tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi." *Sosioedukasi: Jurnal Ilmiah Ilmu Pendidikan dan Sosial* 11, no. 1 (2022): 53-67.

[28] Rahmawati, Ema, and Aam Suryamah. "Pembaharuan Kontrak Antara Lembaga Jasa Keuangan Dengan Konsumennya Pasca Berlakunya Peraturan Otoritas Jasa Keuangan Nomor 01/POJK. 07/2014." *Jurnal Ilmiah Hukum DE 'JURE: Kajian Ilmiah Hukum* 4, no. 2 (2019): 218-231.

[29] Hidayaturrochman, Hidayaturrochman, and Syufaat Syufaat. "Penyelesaian Sengketa Pengaduan Nasabah Lembaga Jasa Keuangan (LJK) Pada Masa Pandemi Covid 19 Di Kantor OJK Purwokerto." *Jurnal Hukum Ekonomi Syariah* 5, no. 1 (2022): 43-56. *See also* Junaedi, Ulil Albab.

that basically the settlement of complaints must be resolved first by the LJK through the consumer complaints unit in each LJK.

If an agreement to settle the complaint through LAPS is not reached, an out-of-court settlement can be made. If the parties choose to resolve the complaint out of court, the dispute settlement will be resolved through LAPS which is included in the LAPS list set by the OJK.[30]

The effectiveness of implementing LAPS-LJK will occur if OJK does several things, namely: first, OJK needs to optimize its role and function in LJK supervision so that practices of LJK abuse can be prevented from the start. Second, OJK needs to immediately cooperate with the Supreme Court to take proactive actions, including socialization and education regarding bankruptcy law institutions and PKPU LJK to law enforcers and other parties with an interest in LJK on an ongoing basis.[31]

In a crisis situation that affects all aspects of the business, it is important to formulate a debt restructuring policy. The act of conducting credit restructuring has a legal umbrella, which is stipulated in Bank Indonesia Regulation Number 7/2/PBI/2005 concerning Asset Quality Assessment for Commercial Banks. OJK has the initiative to make policies to provide economic stimulus to the banking world. OJK will provide room for movement in 2020 by implementing a credit restructuring program and relaxing the one-pillar credit quality assessment.[32] The policy is

"Analysis of Covid-19 impact for Law and Society." *The Indonesian Journal of International Clinical Legal Education* 2, no. 3 (2020): 219-234.

30 Situmorang, Riri Lastiar. "Penetapan Lembaga Penyelesaian Sengketa di Luar Pengadilan Oleh Otoritas Jasa Keuangan." *Prosiding Serina* 1, no. 1 (2021): 243-252.

31 Hasanah, Imroatul, et al. "Peran Otoritas Jasa Keuangan dalam Melindungi Pemegang Polis Asuransi Akibat Pailitnya Perusahaan Asuransi." *Perkara: Jurnal Ilmu Hukum dan Politik* 1, no. 4 (2023): 278-288; Ridho, Muhammad. "Peran otoritas jasa keuangan dalam melindungi pemegang polis asuransi akibat pailitnya perusahaan asuransi (Studi Putusan Mahkamah Agung Nomor 408 K/Pdt. Sus-Pailit/2015)." *Jurnal Hukum Kaidah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 19, no. 2 (2020): 292-328.

32 Auliandi, Rizky, and Mangatur Hadiputera Simanjuntak. "Defaults in Credit Agreements: How Are They Settled?." *Unnes Law Journal* 6, no. 1 (2020): 143-162; Maharani, Aulia, and Ahmad Khoiril Anwar. "Settlement of Debtors in Default in Credit Agreements with Movable Property Guarantees." *Jurnal Scientia Indonesia* 7, no. 1 (2021): 15-26.

contained in the Indonesian Financial Services Authority Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the 2019 Coronavirus Disease Spread which was set on March 13, 2020.

Credit restructuring is used to save non-performing loans and can be done in three ways, namely rescheduling, realigning, and reconditioning.[33] For example, extending the term, lowering interest rates, and so on. Debt restructuring is one of the steps often chosen by interested people to save their businesses from the threat of bankruptcy and normalize their economic activities. Debt restructuring also aims to minimize potential losses from problematic debtors.[34]

Reaching an acceptable agreement on debt restructuring will be more profitable than letting the process run too long[35], which will reduce the value of the debtor's assets because the debtor has to pay bankruptcy fees and PKPU on a regular basis, the implementation will be carried out by the curator under the supervisory judge[36].

To determine the mechanism for debt restructuring, the debtor can choose through an agreement between the debtor and the creditor based on the agreement and the principle of freedom of contract. This requires a negotiation process between the debtor and the creditor. The selection of the debt restructuring model was also the material of the negotiations in

[33] Sukerta, I. Made Rai, I. Nyoman Putu Budiartha, and Desak Gde Dwi Arini. "Restrukturisasi kredit terhadap debitur akibat wanprestasi karena dampak pandemi Covid-19." *Jurnal Preferensi Hukum* 2, no. 2 (2021): 326-331.

[34] Dianti, Faiza, and Mohamad Fajri Mekka Putra, "Penundaan Pembayaran Kewajiban Pembayaran Utang Akibat Covid-19 Yang Dikatagorikan Sebagai Force Majeur," *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 6, no. 3 (2022): 10024–10030.

[35] Ismail, Atika. "Analisis Alternatif Restruturisasi Utang Atau Penutupan Perusahaan Pada Pandemi Covid-19 Melalui PKPU, Kepailitan Dan Likuidasi." *Jurnal Kepastian Hukum dan Keadilan* 3, no. 1 (2022): 44-57.

[36] Amboro, Florianus Yudhi Priyo. "Restrukturisasi Utang Terhadap Perusahaan Go Public dalam Kepailitan Dan PKPU." *Masalah-Masalah Hukum* 49, no. 1 (2020): 103-111.

order to reach an understanding of the success factors of debt restructuring.[37]

In addition, namely by filing a PKPU lawsuit which has been determined by Law no. 37 of 2004 concerning Bankruptcy and PKPU. If the debtor is in contact with many parties and has many creditors, which makes it difficult for negotiations between the parties to be held, the debtor can also choose litigation.[38]

In Indonesia's positive law, there are several regulations governing debt restructuring, but Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.[39] This regulation was issued considering the rapidly growing economy and trade involved in debt and credit problems and aims to overcome these problems. Prior to the issuance of this Law, actually there was already a Bankruptcy Law (Faillissements-verordening, Staatsblad 1905:217 jo Staatsblad 1906:348), but most of the material was not in accordance with the development of a society that continues to develop and has been amended by Government Regulation in Lieu of Law no. 1 of 1998 concerning Amendments to the Law on Bankruptcy, which was subsequently stipulated to be Law no. 4 of 1998 However, these changes still do not meet the development of society.[40]

Therefore, 43 the issuance of the latest regulations regarding bankruptcy and PKPU, namely Law no. 37 of 2004 concerning Bankruptcy and PKPU Restructuring is an effort to improve the composition of the capital structure which had to be carried out because the company was in a state of bankruptcy.[41]

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37 Bakula, et al. "Application of business intelligence system in company restructuring process: the case of Croatia."

38 Pertiwi, Chintya Indah. "Tinjauan Normatif Mengenai Konsekuensi Yuridis Debitur Pailit terhadap Klausula Arbitrase Ditinjau melalui Undang-undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang [Studi Kasus Pailitnya PT Sri Melamin Rejeki." *Jurnal Hukum Prodi Ilmu Hukum Fakultas Hukum Untan (Jurnal Mahasiswa S1 Fakultas Hukum) Universitas Tanjungpura* 3, no. 3 (2015).

39 Yumaheni, Ni Luh Nyoman Ade, and Anak Agung Ketut Sukranatha. "Analisis Hukum Restrukturisasi Pada Pandemi COVID-19 Berdasarkan Peraturan Otoritas Jasa Keuangan dan Peraturan Bank Indonesia." *Jurnal Kertha Wicara* 11, no. 1 (2021): 199-212.

40 Asra, Asra. "Corporate Rescue: Key Concept dalam Kepailitan Korporasi." *Jurnal Hukum IUS QUIA IUSTUM* 22, no. 4 (2015): 513-537.

41 Trianto, Agus, and Cecep Suhardiman. "Penerapan Penjelasan Pasal 2 Ayat (1) Undang Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan

This composition improvement was carried out in order to improve the company's economic condition to continue to run its business. In general, types of restructuring that are most commonly used in both bankruptcy and PKPU are rescheduling, namely rescheduling the payment date consisting of repayment of principal debt and profit sharing, profit margins, and costs that are the obligations of the debtor.[42] In terms of time, debt restructuring can be carried out in a short or long time. In practice, creditors generally accept rescheduling plans in a short period of time, which is up to 6 years and to avoid things that are not desirable that may occur if made with a period of time that is too long.

Debt restructuring can be done when there are at least 2 (two) bills approaching the debtor, with the condition that the debtor does not have funds at the specified time. If there are at least 2 bills, the debtor can be included in the category of companies that can go bankrupt. If the amicable decision regarding debt restructuring has been granted, for example, say that the debtor gets a debt payment delay for 5 years, then for 5 years the debtor is included in the safe category and there is no bankruptcy.[43]

It is during this period that the curator under the supervisory judge carries out the decision of the settlement regarding the debt restructuring until the company is healthy again. If the company does not restructure its debt, then the threat of bankruptcy will continue to haunt the company. This can also lead to default, because debtors who do not fulfill their commitments on time will be in default.[44] Restructuring is not

Penundaan Kewajiban Pembayaran Utang dalam Perjanjian Kredit Sindikasi." *Jurnal Filsafat Hukum* 1, no. 1 (2015): 1-27.

42 Fitria, Annisa. "Penundaan Kewajiban Pembayaran Utang Sebagai Salah Satu Upaya Debitor Mencegah Kepailitan." *Lex Jurnalica* 15, no. 1 (2018): 18-28.

43 Dewantara, Reka, and Dien Nufitasari. "Politik hukum pengaturan mengenai tindakan pencegahan non performing loan pada bank dalam masa pandemik dengan pendekatan konsep bifurkasi hukum." *Jurnal Bina Mulia Hukum* 6, no. 1 (2021): 66-83.

44 Susanto, Muhammad Hajir, Fattah Nuur Muizz, and Muhammad Habibi Miftakhul Marwa. "Penerapan alternatif penyelesaian sengketa wanprestasi atas premi pemegang polis di PT. Asuransi Jasindo Yogyakarta." *Borobudur Law Review* 3, no. 2 (2021): 84-98.

the same as debt relief, is a strategy to eliminate interest or principal debt from debtor credit or financing agreements.

In fact, Badruzaman[45] there are many defaults in insurance arrangements. Defaults can lead to conflicts that can lead to disputes when one party is harmed by the other. The relief scheme can vary, among others, in the form of a reduction in interest rates, adjustments to payment of principal or interest installments, time extensions or other matters determined by the bank or financing institution. If the debtor feels that the policy of the bank is not in accordance with the proposed restructuring scheme, he can request an explanation from the financial service institution. This is given to get a comparison between the new scheme and the previous scheme.

In mid-April 2020, OJK Regulation No. 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of Coronavirus Disease 2019 was enacted and became the legal umbrella for banks to restructure credit for debtors who directly or indirectly affected by the Covid-19 outbreak.[46] In addition, OJK Regulation Number 14/POJK.05/2020 concerning Countercyclical Policy on the Impact of the Spread of Coronavirus Disease 2019 as a legal umbrella for Non-Bank Financial Services Institutions (LJKNB) to restructure credit. The two regulations that have been issued by the government through the Financial Services Authority (OJK) are considered only as an appeal to financial service institutions to participate in supporting the national economic stimulus. We can see this in Article 2 paragraph 1 of POJK 11/POJK.03/2020 that:

> "Banks can implement policies that support economic growth stimulus for debtors affected by the spread of Corona Virus Disease 2019 (Covid-19) including micro, small and medium business debtors". As well as in paragraph 2 which explains that: "Policies that support the economic growth stimulus as referred to

[45] Asra. "Corporate Rescue: Key Concept dalam Kepailitan Korporasi."

[46] Mohamad Fiqri, Saifulloh. "Peranan Hukum Jaminan Fidusia dalam Melindungi Ojek Online Saat Berlakunya Pembatasan Sosial Berskala Besar dalam Rangka Keringanan Kredit Studi Kasus di DKI Jakarta". *Thesis.* Jakarta: Sekolah Tinggi Ilmu Hukum IBLAM, 2020.

> in paragraph (1) include: a. asset quality determination policy; and b. credit or financing restructuring policy".

Likewise, Article 9 of POJK 14/POJK.05/2020 for Non-Bank Financial Services Institutions (hereinafter referred to as LJKNB), which states that "NBFIs can restructure financing to debtors affected by the spread of Covid-19", so it really depends on the ability and willingness of banks and NBFIs to issue these policies in their respective institutions.[47]

There are two factors that have caused credit restructuring in several banks to have not been realized.[48] Because the OJK Regulation emphasizes that in issuing credit restructuring policies to debtors, they must pay attention to the principles of prudence and risk management. So that banks are required to pay attention to their ability to provide such restructuring, in order to avoid financial problems from occurring in the financial service institutions themselves, especially to cause low cash flow and bankrupt or bankrupt companies.

Second, no guidelines have been made by each bank to determine debtors affected by Covid-19. As regulated in Article 2 paragraph 4 of POJK 11/POJK.03/2020 for banking and Article 11 paragraph 2 of POJK 14/POJK.05/2020 for non-bank financial service institutions. As each financial institution has the power to set its own standards, it is likely that the process, criteria for affected debtors, and credit restructuring programs will differ in practice. In addition to the lack of credit restructuring at various financial institutions, the public also expressed dissatisfaction with the loan restructuring that only extended the payment period and reduced the number of credit installments.[49] Because

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[47] Andrean, Sugeng. "Tanggung Gugat Konsumen Gagal Bayar dalam Perjanjian Pembiayaan Konsumen Akibat Pandemi Corona Virus Disease 2019 (Covid-19)," *Jurist-Diction* 4, no. 3 (2021): 1167.

[48] Sakinah, Nailia Andriani. "Pelaksanaan Konsep Restrukturisasi Kredit Pada Lembaga Bank Dan Non Bank (Studi Pada KCP BCA Syariah Bogor dan PT Pegadaian (Persero) Bogor)." *Jurnal Hukum Bisnis Bonum Commune* 1, no. 4 (2021): 61-74.

[49] Rizka, Rizka, et al. "Pandangan Islam terhadap force majeur dalam relaksasi kredit di masa pandemi COVID-19." *Profetika: Jurnal Studi Islam* 23, no. 1 (2022): 127-140.

the loan interest is fixed, the total amount to be paid will either increase or not decrease.

The banking sector has a central position in the economic development of a country. This is inseparable from the strategic role of banks as intermediary institutions through lending. According to Joey[50] main tasks of banks are regulated in Article 3 of Law Number 10 of 1998, namely the collection and distribution of public money. Other services, such as storage of valuables. By facilitating the community to raise funds in the form of savings. These savings can be channeled to other people in the form of credit or other. In order to carry out its function as a distributor of public funds (financial intermediary), banks have facilities in the form of credit. Credit facilities are bank products that are in great demand by the public to suit their needs.[51] The community in its business development activities requires additional funds.

The credit extended by the bank is intended to provide additional funds, so that it can provide benefits for both parties. All of these efforts are carried out to help accelerate equitable distribution of economic growth so that it can meet the goal of improving the standard of living of the wider community.[52] According to OJK data since March 2020, there has been an increase in the number of non-performing loans. groups of debtors who have been in arrears for at least 1-2 months (Col-2 Credit) rose sharply to 27.3 percent. The number of non-current loans (Col-3) and non-performing loans (Col-5) increased by 19.10 percent.[53] One form of the decline in the economic sector, many community members including bank debtors have lost their livelihoods, making it difficult to get additional income in

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50 Fure, Joey Allen. "Fungsi Bank Sebagai Lembaga Keuangan Di Indonesia Menurut Undang-Undang Nomor 10 Tahun 1998 Tentang Perbankan." *Lex Crimen* 5, no. 4 (2016): 116-122.

51 Kara, Muslimin. "Konstribusi pembiayaan perbankan syariah terhadap pengembangan usaha mikro kecil dan menengah (UMKM) di Kota Makasar." *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 47, no. 1 (2013).

52 Adiyadnya, Made Santana Putra, and I. Wayan Suardika. "Strategi Penanggulangan Kredit Macet di Era Pandemi Covid–19 pada PT. BPR Desa Sanur." *Prosiding Seminar Nasional Pengabdian Masyarakat (SENEMA)*. Vol. 1. No. 1. 2022.

53 Supeno, Wangsit, and Ida Hendarsih. "Kinerja kredit terhadap profitabilitas BPR pada masa pandemi Covid-19." *Akrab Juara: Jurnal Ilmu-Ilmu Sosial* 5, no. 4 (2020): 147-161.

order to fulfill their achievements to the bank. It is undeniable, in lending, banks must be prepared to face credit risk which causes the credit to become problematic. In order to always be trusted by the public, it is necessary to measure the level of health by all banks. Assessment of bank soundness level is used to determine whether the bank is in a very healthy, healthy, fairly healthy, unhealthy, or unhealthy condition.[54]

The results of the soundness assessment can be used as a basis for future policies on bank performance and to evaluate bank performance in applying the concept of prudence, compliance with statutory risk regulations, and risk management. The bank soundness rating system refers to the Financial Services Authority Regulation No.4/POJK.03/2016 using the RGEC (Risk Profile, Good Corporate Governance, Earnings, Capital) method.[55] The financial crisis prompted the need to increase the effectiveness of the implementation of risk management and GCG (Good Corporate Governance) so that banks are able to identify problems early, take appropriate and faster follow-up actions, and implement better GCG and risk management so that banks are more durable in their operations face a crisis.

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C. Bankruptcy in United State of America

The United States as a country adhering to the Anglo-Saxon legal system, its bankruptcy law is regulated in the *Bankruptcy Code*. The bankruptcy law was first issued to the United States Congress in 1800, which was similar to the United Kingdom bankruptcy law at the time. However, by the 18th century,

[54] Wahasusmiah, Rolias and Khoiriyyah Rahma Watie. "Metode RGEC: Penilaian Tingkat Kesehatan Bank Pada Perusahaan Perbankan Syariah," *I-FINANCE: A Research Journal on Islamic Finance* 4, no. 2 (2018): 170–184.

[55] Permana, Bayu Aji AJI. "Analisis tingkat kesehatan bank berdasarkan metode CAMELS dan Metode RGEC." *Jurnal Akuntansi Akunesa* 1, no. 1 (2012): 1-21.

several states in America had laws aimed at protecting debtors from prison for failing to pay debts, known as insolvency laws. The federal bankruptcy law of 1800 underwent several changes, namely in 1841, 1867, 1878, 1898, 1938 (The Chandler Act), 1978, and 1984.

Between 1841 and 1867, there was no bankruptcy law in force in the United States because the previous law had been repealed. Meanwhile, a new law was then promulgated in 1867. In 1874, changes to the bankruptcy law were made in response to the financial crisis that occurred throughout 1873. This change introduced the concept of a composition agreement, which became the basis for the development of the modern concept of reorganization in bankruptcy law and was eventually incorporated into Chapter 11 of the US Bankruptcy Code. In the 1898 amendments, the U.S. Bankruptcy Code began to distinguish between bankruptcy procedures for large and small businesses. However, this classification was removed through an amendment to the bankruptcy law in 1978.[56] The distinction between bankruptcy for large and small businesses was later rearranged in the 2005 amendments through the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA).[57]

In terms of debt and receivables liquidation procedures in bankruptcy, the United States has its own mechanism through the corporate reorganization process regulated in Chapter 11 of the US Bankruptcy Code. According to the book "*Essentials of Business Law: For A New Century*", it is explained that Chapter 11 is designed for companies and individuals with large fortunes, where the company remains in operation while creditors receive a portion of current assets and future income. The essence of Chapter 11 is reorganization, where the debtor has the exclusive right to propose a reorganization plan and decide whether the process will be continued or stopped.[58]

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[56] Donoher, William J. *Corporate bankruptcy: Fundamental principles and processes*. Business Expert Press, 2012.

[57] Syahla, Rana, Dimas Mahardhika Satriawan, and Syahrul Kurniawan. "Urgensi Minimal Utang Sebagai Persyaratan Permohonan Pailit (Perbandingan Pengaturan Minimal Utang dengan Hukum Kepailitan Amerika Serikat)." *Lex Renaissance* 9, no. 1 (2024): 41-61.

[58] Sitompul, Natasya Aisyah. "Konsep Corporate Rescue dalam Kepailitan di Indonesia." *Tanjungpura Law Journal* 5, no. 1 (2021): 38-52.

Chapter 11 *of the US Bankruptcy Code* has become a reference for several other countries in reforming their bankruptcy laws. For example, the *Civil Rehabilitation Law* in Japan adopts the concept of Debtor in Possession from Chapter 11, while *the procedural Safeguard* in France refers to the concept of reorganization in Chapter 11. In addition, some European countries are also updating their corporate insolvency laws by following a similar model. Likewise, the bankruptcy law in Indonesia adopts the basic concept of Chapter 11 of the US Bankruptcy Code regarding corporate reorganization, which is included in the concept of Suspension of Debt Payment Obligations (PKPU).[59] This condition is driven by the reason that the bankruptcy law developed by the United States introduced a fresh start philosophy, which is a forgiveness approach that aims to focus on the reintegration of bankrupt debtors into society. The main goal to be emphasized is to provide protection for debtors who act honestly by freeing them from debts that cannot be repaid.[60]

According to the US Bankruptcy Code, there are two forms of bankruptcy, namely liquidation and rehabilitation. Liquidation is a formal procedure for closing a company that still has unresolved assets and liabilities. This process involves the sale of the company's assets, then the proceeds are distributed to the creditors and shareholders of the company that has been declared bankrupt. The term straight bankruptcy is often used to refer to liquidation cases under bankruptcy law, as most bankruptcy cases filed relate to the liquidation of assets.[61] In the case of rehabilitation, creditors consider the debtor's potential future income to pay off debts, not the assets they owned at the beginning of the bankruptcy. The rehabilitation process in bankruptcy in Indonesia can be carried out after the termination of bankruptcy, where the debtor or his heirs are given the

[59] Pratama, Bambang. "Kepailitan dalam Putusan Hakim Ditinjau dari Perspektif Hukum Formil dan Materil." *Jurnal Yudisial* 7, no. 2 (2014): 157-172.

[60] Fatahillah, Faishal, and Atik Winanti. "Perbandingan konsep Hukum Kepailitan Amerika (Chapter 11) dan Hukum Kepailitan Indonesia." *Jurnal USM Law Review* 6, no. 3 (2023): 1262-1278.

[61] Asril, Asril. "Reorganisasi Perusahaan Debitor Yang Terancam Pailit Sebagai Suatu Alternatif". *Mulawarman Law Review* 5, no. 2 (2020): 138-149.

opportunity to apply for rehabilitation. However, this application can only be granted if all creditors have stated that they are satisfied with the payment received, although not all receivables may be paid in full. Therefore, as long as there are still unresolved debts, the debtor cannot apply for rehabilitation.[62]

The fundamental difference between the ICC Law and the US Bankruptcy Code lies in the approach to legal protection for creditors and debtors. Since its inception, the ICC Law has focused more on protecting creditors, so it has not fully provided balanced protection for debtors. Although the ICC Law has adopted the Suspension of Debt Payment Obligation (PKPU) mechanism inspired by Chapter 11 of the US Bankruptcy Code on reorganization, this is still not enough to protect debtors. One of the problems is the ease of filing bankruptcy for debtors according to the KPKPU Law, which only requires simple conditions as stipulated in Article 2 paragraph (1), without a minimum requirement for the amount of debt. In contrast, the U.S. Bankruptcy Code, which began to develop a balance of protection between creditors and debtors in the 1840s, requires a minimum limit on the amount of debt before a debtor can file for bankruptcy, making the process more difficult and fair for debtors.[63]

In addition, in providing treatment to debtors, both individuals, corporations, and small business corporations, there is a fairly basic difference between the Indonesia Bankruptcy Law and the US Bankruptcy Code. Chapter 11 of the US Bankruptcy Code clearly distinguishes the legal treatment for the three types of debtors, while in Law No. 37 of 2004 in Indonesia, there is no special classification for each type of debtor. This difference shows that the legal system in the United States provides more specific treatment according to the type of debtor in the bankruptcy process.

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[62] Retnaningsih, Sonyendah, and Isis Ikhwansyah. "Legal Status of Individual Bankrupt Debtors After Termination of Bankruptcy and Rehabilitation Under Indonesian Bankruptcy Law." *Indonesia Law Review* 7, no. 1 (2017): 79-94.

[63] Morawska, Sylwia, et al. "Bankruptcy law severity for debtors: comparative analysis among selected countries." *European Research Studies Journal* 23 (2020): 659-686; Tabb, Charles Jordan. "The History of the Bankruptcy Laws in the United States." *American Bankruptcy Institute Law Review* 3 (1995): 5.

According to Indonesia's Bankruptcy Law, bankruptcy generally serves to lead to liquidation, but there is an option for debtors to submit a peace plan that contains debt restructuring. If the peace plan is approved by the creditors, the bankruptcy proceedings can be stopped, and the implementation of the peace will be carried out outside the court's supervision. On the other hand, in the Bankruptcy Law of the United States, the main focus is on the settlement of the bankruptcy estate by distributing the assets to creditors proportionately. Despite differences in approaches, both Indonesia and United States bankruptcy laws both stipulate that bankruptcy can occur in debtor companies that are unable to pay their debts (insolvency) or whose assets are still sufficient to pay their debts (solvent).[64]

In more detail, the US Bankruptcy Code states who has the right to file a peace plan, the content of the plan, the approval of creditors to the proposed plan, and the approval of the court. The debtor is given 120 days to draw up and deliver a peace plan, known as the debtor's exclusive right. For 120 days from the time the case is filed, only the debtor may submit a peace plan, and no other party can submit it, including during the 60-day extension period that is usually granted at the request of the debtor. In addition, a joint plan can only be submitted by groups that have substantially similar claims or interests. These restrictions aim to prevent debtors from committing fraud, such as benefiting one creditor over another or ignoring the votes of certain groups of creditors or shareholders.[65]

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[64] Amboro, F. Yudhi Priyono. " Peraturan Hukum Kepailitan di Indonesia: Studi Komparatif Hukum Amerika Serikat dan Inggris," *Lex Prudetium* 1, no. 2 (2022): 62-81.

[65] Fatahillah, Faishal, and Atik Winanti. "Perbandingan konsep Hukum Kepailitan Amerika (Chapter 11) dan Hukum Kepailitan Indonesia." *Jurnal USM Law Review* 6, no. 3 (2023): 1262-1278. *See also* Suci, Ivida Dewi Amrih, Murjiyanto Raden, and Sudiyana Sudiyana. "The Principle of Utility in Revoking a Bankruptcy Adjudication in Bankruptcy Law." *Journal of Private and Commercial Law* 8, no. 1 (2024); Leonardus, Rado Fridsel, Alexander Yovie Pratama Yudha, and Tata Wijayanta. "Practice of Applying Affidavits in Bankruptcy Law and Postponement of Debt Payment Obligations." *Unnes Law Journal* 9, no. 2 (2023): 467-488; Budiono, Doni, and Maria Clarisa Talia. "Limited Liability Company's Status After Insolvency: Dissolution or Rehabilitation?." *Pandecta Research Law Journal* 18, no. 2 (2023): 280-299.

The main difference between the peace plan in the Bankruptcy Law of Indonesia and the United States lies in the details of the content of the plan. In the United States, peace plans are comprehensively regulated in the Bankruptcy Code, covering aspects such as the grouping of creditors by class, the provision of guarantees from the debtor's assets, mergers or consolidations, exemption from guarantees, extension of maturity, change of company direction, and issuance of guarantees by debtors. In addition, procedures for the implementation of peace are also regulated, including the election of company managers, directors, or administrators. In Indonesia, by contrast, a peace plan is regulated more generally, including only an offer for partial or full payment of debt to creditors, with no specific details regarding debtor restructuring or corporate management.[66]

Bankruptcy law in the United States and Indonesia both recognize the existence of creditors' meetings, but with different functions. In Indonesia, creditors' meetings function to clarify debt bills that have been submitted before the meeting, as well as to calculate the number of votes based on the bills. This meeting also aims to be a forum for peace before the bankruptcy assets are declared insolvent. In Indonesia, creditors' meetings begin after the debtor submits a peace plan to creditors. Meanwhile, in the United States, although creditors' meetings have similar functions, a peace plan can be submitted not only by the debtor, but also by creditors or trustees.[67]

In the United States, proof in debtor bankruptcy cases, especially related to bills filed by creditors, uses the doctrine of probability, where only evidence that can be accounted for is included in the bill criteria. In addition, the doctrine of allowability is also applied, which requires that the bill must be able to be calculated rationally without delaying the bankruptcy administration process. Meanwhile, in bankruptcy law in Indonesia, a bill is considered valid if it can be proven simply. If the evidentiary process turns out to be more complex and does not meet the simple requirements, then the case is no longer

[66] Fatahillah, and Winanti. "Perbandingan konsep Hukum Kepailitan Amerika (Chapter 11) dan Hukum Kepailitan Indonesia."

[67] Fatahillah, and Winanti.

under the jurisdiction of the commercial court, but is transferred to the civil court under the jurisdiction of the District Court.[68]

When the Debtor files for bankruptcy, all assets belonging to the Debtor become bankruptcy assets, this situation called Automatic stay is carried out for the benefit of all creditors who are trying to get payment of their bills from the Debtor's assets by a court determination. The creditor will not get a settlement of the bill from the debtor's assets unless the trustee divides the bankruptcy assets at the time of closing the bankruptcy case. The application of the principle of Automatic stay aims to ensure fairness in the distribution of bankruptcy assets among creditors.[69] While in Indonesia, the bankruptcy application does not get an overview of the qualifications of creditors, whether the debtor to which the bankruptcy respondent has a preferred creditor and/or a separatist creditor, this needs to be known by the bankruptcy applicant, especially for the concurrent creditors of the bankruptcy applicant. Unless the application is filed by the preferred creditor in relation to its position and position as referred to in Article 2 Paragraph (2), paragraph (3), paragraph (4) and paragraph (5) of the Bankruptcy Law, while concurrent creditors or separatist creditors are related to the status and nature of their receivables and this can only be proven at the time of matching receivables or at the creditor meeting after the debtor is declared bankrupt.[70]

The bankruptcy laws of the United States also provide investor protection with the Securities Investor Protection Act ("SIPA"). Protection other than through bankruptcy law is also given specifically so that stock investors and effeks are protected their interests. The bankruptcy law of the United States also regulates the issue of cross-border cases in bankruptcy so that its implementation is easier as stipulated in Chapter 15, which handles cross-border bankruptcy cases (between countries), it is also not known in the Indonesia bankruptcy law system as regulated in the Bankruptcy Law.[71]

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68 Anisah, Siti. *Perlindungan Kepentingan Kreditur dalam Hukum Kepailitan di Indonesia*. Yogyakarta: Total Media, Yogyakarta, 2008.

69 Anisah.

70 Rusli, Tami. *Hukum Kepailitan di Indonesia*. Bandung: UBL Press, 2019. pp. 165-166.

71 Rusli.

American bankruptcy law is known for its high influence of the Court in various bankruptcy proceedings, both in liquidation and reorganization. This is manifested from the recognition of judicial discretion which is a mandate given by the law in bankruptcy procedures.[72] Based on American bankruptcy law, there are at least 3 stages in the Chapter 11 process that require the role of the Court, namely *1. Acceptance or refusal of the disclosure statement; 2. Votes on Plan; 3. Plan Confirmation.* In addition, the influence of the Court in the ratification of this composition plan is strengthened in The Federal Rules of Bankruptcy Procedure (Bankruptcy Rule). Section 3020 (b) of the Bankruptcy Rule gives the Court the authority to give a decision in the form of confirmation (endorsement) of the *composition plan* after the examination process in the Court and in the event that no objection (or appeal) is filed within the specified time limit, the Court may consider that the composition plan was submitted in good faith and did not violate the law without the need for further proof.[73]

Filing for bankruptcy in the United States is currently an important step for debtors to obtain legal aid. Most bankruptcy cases stem from the voluntary actions of debtors who choose to declare bankruptcy as an effort to find a solution to the demands of their creditors. Outside of bankruptcy, the options for debtors to get out of financial difficulties are very limited, especially if they are unable to pay their debts. Debtors who are not individuals often do not have adequate protection of their assets under non-insolvency law. Therefore, for debtors who are caught up in creditor pressure, filing for a bankruptcy declaration can provide significant and immediate relief.[74]

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72 Gennaioli, Nicola, and Stefano Rossi. "Judicial discretion in corporate bankruptcy." *The Review of Financial Studies* 23, no. 11 (2010): 4078-4114.

73 Khairunnisa, Shania, and Arman Nefi. "Sengketa Amandemen Akta Perdamaian PKPU Homologasi dan Perbandingan dengan Hukum Kepailitan Amerika Serikat (Studi Kasus: Kepailitan PT APOL dan PT Berlian Tangker)." *Jurnal Hukum to-ra: Hukum untuk Mengatur dan Melindungi Masyarakat* 9, no. 2 (2023): 157-177.

74 Fahamsyah, Ermanto, et al. "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism be Applied?." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 7, no. 1 (2024): 199-218.

Studying the bankruptcy system in the United States provides several key lessons for reforming Indonesia's bankruptcy law. One of the main aspects that can be adopted is a more balanced protection between the interests of debtors and creditors, as implemented in Chapter 11 of the US Bankruptcy Code. This approach allows debtors acting in good faith to restructure and continue their business operations rather than facing immediate liquidation. Additionally, the automatic stay mechanism, which halts all legal actions against the debtor upon filing for bankruptcy, can serve as a reference for ensuring a fairer asset distribution in Indonesia. Investor protection through the Securities Investor Protection Act (SIPA) and cross-border insolvency regulations in Chapter 15 of the US Bankruptcy Code also highlight the need for a bankruptcy system that can adapt to global economic developments. Therefore, while Indonesia's bankruptcy law has adopted some elements from the US system, further reforms are necessary to enhance legal protection for all parties involved, increase legal certainty, and improve efficiency in resolving bankruptcy disputes.

D. Conclusion

Credit restructuring primarily relies on the outcome of negotiations between the bank and the debtor, where both parties determine a mechanism that suits their economic and business interests. The government's role is limited to providing a legal framework that allows financial institutions to offer restructuring, without being able to mandate such actions. Consequently, without this legal support, debt restructuring can still occur through force majeure provisions embedded in credit agreements, enabling parties to adjust or delay the debtor's obligations. However, the lack of formal restructuring policies from banks can adversely impact debtors with limited income, potentially leading to default and asset seizures by the bank.

The comparison between the bankruptcy systems in Indonesia and the United States highlights significant differences. The US system, particularly through Chapter 11 of the US Bankruptcy Code, balances creditor and debtor protections by allowing debtors to reorganize their debts while continuing business operations. This approach provides debtors with a chance to recover without losing control over their

companies. In contrast, Indonesia's system prioritizes creditor protection, with less flexible procedures and no specific mechanisms like the Debtor in Possession (DIP) available in the US, making Indonesian debtors more susceptible to swift liquidation without optimal recovery efforts.

To improve Indonesia's bankruptcy system, legal reforms are necessary to balance protections between creditors and debtors and introduce more adaptable reorganization procedures. Regulatory changes that better support MSMEs and small businesses are crucial, with policies that respond effectively to evolving economic conditions. By aligning bankruptcy laws with global standards, Indonesia can enhance its economic competitiveness and prevent the unnecessary liquidation of potentially viable companies. Debt restructuring thus emerges as a vital strategy to safeguard businesses from bankruptcy and ensure their long-term financial health.

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High bankruptcy rates, increased credit card debt, and identity theft make it imperative that all of us take an active role in providing financial and economic education during all stages of one's life.

Ruben Hinojosa
American Politician, a former Democratic member of the U.S. House of Representatives

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