



The Ideas of a Total Bankruptcy Moratory and Suspension of Debt Payment Obligations in the Emergency of the Covid-19 Pandemic

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Abstract

The type of research used in this research is normative legal research. The Bankruptcy Law and PDPO are special laws that cannot be seen from one side/aspect, because many parties are involved in the PDPO -Bankruptcy Law. With the PDPO, many cases have ended peacefully, how many debts have been successfully restructured, how many businesses have finally improved. The moratorium also does not close the efforts of creditors to collect. The PDPO moratorium and bankruptcy do not remove the debtor's obligation to settle his responsibilities. Creditors can take other legal remedies such as civil lawsuits, mortgage execution rights, arbitration, mediation, bilateral restructuring and others outside the PDPO and bankruptcy channels. Likewise, the methods and patterns of restructuring of debtors also develop according to the needs and developments of the times. Business continuity is a priority, considering the increasing economic needs of the community. All forms of business that are part of the economic wheel must continue to spin, so that in the event of financial difficulties, PDPO is an alternative solution that can be taken by debtors and creditors. In addition to considering the PDPO and bankruptcy moratorium, it would also be better if the government immediately completed the Bankruptcy Bill and PDPO as an improvement from the previous Bankruptcy Law and PDPO.

Keywords: PDPO; Legal; Bankruptcy

Introduction

The Indonesian Bankruptcy Law which consists of the concept of bankruptcy and the concept of Postponing Debt Payment Obligations (PDPO) was first introduced in *Staatsblad* 1905 No. 217 jo *Staatsblad* 1906 No. 348. Subsequently, it was updated in Law No. 4 of 1998 and was eventually replaced by Law No. 37 of 2004. In carrying out law enforcement in the field of bankruptcy, there is a procession that must be carried out by every justice seeker, namely the Bankruptcy process and the PDPO process. In carrying out activities as one of the economic actors, the company as a party that interacts with third parties will give birth to rights and obligations, both in the form of debt and trade receivables. However, companies are not always able to maintain a stable business climate, some companies must have been in a state of being unable to pay their debts to creditors. (Aji, Warka, and Kongres 2021) This condition will threaten the sustainability of the company. Debt in payment by the debtor often does not run smoothly and will arrive at a state of stopping paying.

PDPO and bankruptcy are actually part of the solution when there is economic pressure. In addition, the PDPO and bankruptcy processes are also an indicator of the ease of doing business (EoDB) assessment in Indonesia. (Mulajadi 2001) The Covid-19 outbreak at the end of 2019 crippled the global economy. Almost all countries in the world are experiencing an economic crisis, including Indonesia, which experienced a recession last year. This situation greatly affects the sustainability of the business world. Various efforts have been made by the business world to survive in the midst of a pandemic, starting from the efficiency of the company's budget, to terminating employees. The worst threat from an economic contraction is bankruptcy and leads to bankruptcy petitions and the Suspension of Debt Payment Obligations. Related to this, the government came up with an idea for a total PDPO - Bankruptcy moratorium, not a three-year period as previously proposed by IEA (Indonesian Employers Association). (Anon n.d.)

If a debtor is unable to pay his debts, he can apply for a PDPO in accordance with the provisions of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Law No. 37-2004). PDPO applications to the court can be submitted by debtors or creditors as well as institutions determined by law based on article 223 Law No. 37-2004. Similarly, in a bankruptcy petition, the material requirement for a PDPO application is that the debtor has more than one creditor and it is estimated that the debtor is no longer able to pay his debts that are due and collectible. Basically, the purpose of granting PDPO is the existence of peace between debtors and their creditors through the submission of a peace plan in the form of debt restructuring or payment (Sevim 2021) of the whole or part of the debt. Therefore, PDPO is an opportunity for creditors to carry out their obligations on their debts so that they are not sentenced to bankruptcy.

Based on the background explanation above, it is interesting to study whether the solution to enforce the PDPO -Bankruptcy moratorium that will be carried out by the government is appropriate and doesn't harm the debtor as a business actor, which instead makes the company difficult and ends up going bankrupt.

Research Method

The type of research used in this research is normative legal research. (Michael 2019)

Discussion

The plan for reconciliation in the bankruptcy procession and postponement of debt repayment obligations is a restructuring plan. This can be seen in every draft or peace plan presented by the debtor, both in the bankruptcy procession and PDPO, always leads to the theory of debt restructuring. From the restructuring practices above, Gunadi (Gunadi 2001) summarized them into several restructuring methods and methods commonly used in the business world, namely: 1) *Rescheduling* is a method of extending the repayment period of debt or rescheduling of debtors' debts. 2) *Hair Cut* is the provision of a discount or reduction on interest and or debt payments. 3) *Debt to asset* swap is the transfer of assets belonging to the debtor with the aim of being controlled by the creditor. 4) *Debt to equity* swap is done by converting debt into equity, this can be done if the creditor sees the debtor has good value and business prospects. (Adhinugroho 2021)

Restructuring is a realignment or can be interpreted as a review of debt. Based on this understanding, restructuring can be classified as corporate restructuring and debt restructuring. Regarding the feasibility of debtor debt to be restructured, at least it can use the view of Sutan Remy Sjahdeini (Anon 2020), debtor debt is eligible to be restructured if: 1) There are still business prospects that *concern* the debtor so that it can pay off the debt if the debtor company is given a delay in payment the debt within

a certain period of time, either with or without being given relief from conditions and/or given a new debt. One of the forms is the Jakarta Initiative, which specifies a period of no more than eight years; 2) Debtors' debts are deemed appropriate for restructuring if the creditors will get their debts repaid in a larger amount through restructuring than if the debtor's company is declared bankrupt; 3) If the restructuring agreement becomes more profitable for creditors than if the restructuring is not carried out.

Sometimes the agreed restructuring journey is not as smooth as previously imagined, which results in the bankruptcy of the debtor, which is based on Article 170 paragraph (1) jo. Article 175 paragraphs (1) and (2) of Law No. 37 of 2004, if in the bankruptcy procession and Article 291 paragraphs (1) and (2) of Law No. 37 of 2004, if in the PDPO procession. Article 170 paragraph (1) of Law No. 37 of 2004 states in principle that "the creditor can demand the cancellation of a ratified settlement if the debtor fails to fulfill the contents of the peace". As a result, it is regulated in Article 175 paragraphs (1) and (2) of Law no. 37 of 2004 states that "after the bankruptcy is reopened, peace can no longer be offered, and the curator must immediately begin with the settlement of the bankruptcy estate". While article 291 paragraph (1) and 292 of Law No. 37 of 2004 refers to the provisions of Articles 170 and 171 of Law no. 37 of 2004, and in paragraph (2) that "if there is a decision to cancel the settlement in the postponement of the obligation to pay debts, the debtor must also be declared bankrupt". Furthermore, Article 292 of Law No. 37 of 2004 stipulates that "a bankruptcy decision arising from the cancellation of the peace referred to in Article 291 cannot be offered peace", and is further explained by the explanation of Article 292 in principle that "a bankruptcy declaration decision which results in the bankruptcy estate of the debtor being directly in a state of insolvency. "Therefore, in the peace position formed by the PDPO process which has been ratified and then canceled by the court, the result is the settlement of the bankrupt *boedel*, without going through the bankruptcy proof mechanism again.

In connection with the government's plan to carry out a bankruptcy moratorium and PDPO, it has resulted in delays in the rights of citizens to take legal action, and also get their rights in the form of paying bills they have, as well as getting a solution through homologation, if they can apply for a bankruptcy statement or PDPO. So if the bankruptcy moratorium and PDPO will still be applied, four parties will be affected by the closure of the channel.

First, creditors. Bankruptcy and PDPO are options, although they are not the main choice for creditors to *collect debt*. But in some conditions it is undeniable that bankruptcy and PDPO are effective ways of making bills. So that if the channel for collection is closed through bankruptcy and PDPO, the Government must ensure that credit distribution by creditors, in this case especially banks, is not hampered, and does not even provide more severe requirements, considering that the loss of collection channels must be compensated with stronger and more credit guarantees. If this is not maintained by the government, it is not impossible that economic growth will be disrupted.

Second, the debtor. Bankruptcy and PDPO are not always weapons for creditors to collect debts. In many cases it is often done by debtors to resolve the *financial distress* they are experiencing. With the closing of channels for filing for bankruptcy and PDPO, this has consequences for the government to provide capital assistance, and other support so that debtors who have financial difficulties can return to business and pay their debts.

Third, workers. Bankruptcy and PDPO are in most cases filed by workers. This shows that when a company is no longer able to pay for workers' rights, then the only way that workers can get their rights without any deductions due to the nature of the claim is preferred, is through bankruptcy. The government must be ready with special financial assistance to workers who are hampered by their rights due to the implementation of the bankruptcy moratorium and PDPO.

Fourth, State. It has become *best practice* that state bills in the form of central and local taxes, duties and excise that cannot be collected will be paid when the taxpayer, customs and excise are in bankruptcy. Especially for central government taxes, this has been confirmed through the regulation of

Article 21 paragraphs (3) and (4) of the General Provisions of Taxation Law which stipulates taxes as preferred claims and prohibits the distribution of taxpayers' bankruptcy assets before the tax debt is paid off. With the closure of the bankruptcy channel and PDPO, the state must be prepared that the payment of state bills can also be delayed during the moratorium period. (Anggoro n.d.)

Conclusion

The Bankruptcy Law and PDPO are special laws that cannot be seen from one side/aspect, because many parties are involved in the PDPO -Bankruptcy Law. With the PDPO, many cases have ended peacefully, how many debts have been successfully restructured, how many businesses have finally improved. The moratorium also does not close the efforts of creditors to collect. The PDPO moratorium and bankruptcy do not remove the debtor's obligation to settle his responsibilities. Creditors can take other legal remedies such as civil lawsuits, mortgage execution rights, arbitration, mediation, bilateral restructuring and others outside the PDPO and bankruptcy channels. Likewise, the methods and patterns of restructuring of debtors also develop according to the needs and developments of the times. Business continuity is a priority, considering the increasing economic needs of the community. All forms of business that are part of the economic wheel must continue to spin, so that in the event of financial difficulties, PDPO is an alternative solution that can be taken by debtors and creditors. In addition to considering the PDPO and bankruptcy moratorium, it would also be better if the government immediately completed the Bankruptcy Bill and PDPO as an improvement from the previous Bankruptcy Law and PDPO.

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