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Implementation of Bankruptcy Law in Settlement of Umkm Non-Performing Loans

Ida Nadirah
Universitas Muhammadiyah Sumatera Utara
Email: idanadirah@umsu.ac.id (Corresponding Author)

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Abstract

This article examines the implementation of bankruptcy law in resolving bad debts experienced by Micro, Small, and Medium Enterprises (MSMEs) in Indonesia. MSMEs as an important sector of the economy often face financial difficulties that cause the inability to fulfill debt obligations. This study uses a normative legal approach with a qualitative analysis of laws and regulations and related legal literature. The results of the study indicate that although bankruptcy law can be an instrument of rescue through debt restructuring or PKPU, its use by MSMEs is still very minimal. The main factors causing this are limited understanding of the law, high processing costs, and the absence of specific regulations for MSME bankruptcy. This article recommends the need for bankruptcy law reform to be more adaptive to the characteristics of MSMEs with a simple, inexpensive and equitable approach.

Keywords: Bankruptcy Law, SMEs, Bad Debts.

INTRODUCTION

Micro, Small, and Medium Enterprises (MSMEs) are the backbone of the Indonesian economy, absorbing more than 97% of the workforce and contributing greatly to Gross Domestic Product (GDP). However, this sector is also very vulnerable to economic shocks, both global and domestic, such as the financial crisis, the COVID-19 pandemic, and market uncertainty. One of the biggest challenges faced by MSMEs is the difficulty in maintaining the continuity of debt payment obligations which can ultimately lead to bad debts. Bad debts experienced by MSMEs not only affect business actors but also financial institutions such as banks as creditors and the financial system as a whole. In this case, bankruptcy law as regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), is present as a legal instrument that should be able to provide solutions through debt restructuring or fair liquidation (Sjahdeini, 2002). However, in practice, the bankruptcy legal mechanism has not been optimally utilized by MSMEs due to the inconsistency between practice and the principles of justice in bankruptcy law (Sutedi, 2010). In addition, it is also necessary to reform the bankruptcy system that is adaptive to the characteristics of MSMEs (Susanti, 2020). This is caused by various factors, including a lack of understanding of legal procedures, high filing fees, and a negative stigma against bankruptcy status. In addition, the absence of specific regulations on MSME bankruptcy further exacerbates the limited access to this legal instrument (Rachmadi, 2022). Several previous studies have discussed the implementation of bankruptcy law in general, but not many have specifically examined how bankruptcy law can be a strategic means in resolving bad debts experienced by MSMEs. This is where the state of the art of this paper lies, namely in the effort to explore the relevance and effectiveness of bankruptcy law in saving or resolving MSME financial problems more progressively and fairly. This article aims to analyze the implementation of bankruptcy law in resolving MSME bad debts in Indonesia, identify the obstacles faced, and provide constructive legal recommendations as a solution.

METHOD RESEARCH

The research method used in this research is normative legal research with qualitative analysis (Soerjono Soekanto, 2010). A study cannot be called research if it does not have a research method (Koto, 2021). Method is a way to solve a problem that will be discussed. This research was conducted using a statutory approach, a conceptual approach and principles. The statutory approach is carried out by reviewing all laws and regulations related to the legal problem being handled (Bambang Sunggono, 2016). Data sources through secondary data which are then used as legal material to explain legal events or legal products in detail to facilitate legal interpretation (Zainuddin & Ramadhani, 2021).

DISCUSSION

Bad debt is one of the crucial problems faced by the Micro, Small, and Medium Enterprises (MSMEs) sector in Indonesia. Although MSMEs have an important role in driving national economic growth, there are various internal and external factors that cause MSMEs to have difficulty in fulfilling their payment obligations to creditors. There are several causes of bad debt in MSMEs which can ultimately lead to bankruptcy Low Managerial Capacity; This is related to the lack of ability of business actors to manage their businesses professionally, both in terms of finance, operations, and business strategy. Many MSMEs are still managed traditionally with an unprofessional management system. The lack of financial literacy and risk management leads to inappropriate decision-making in business and financial management. MSMEs often do not separate personal and business finances. The absence of neat transaction records causes them to not know the actual financial condition, including cash flow, assets, and debts, both in terms of finance, operations, and business strategy. do not have a short-term or long-term business plan. They run their businesses without a market strategy, sales targets, or risk analysis (Sartika, 2019).

This leads to unpreparedness to face difficult situations. MSMEs often do not take into account the possibility of business failure, price fluctuations, or changes in market tastes. As a result, they do not have a cash reserve or alternative strategy if income drops to the point of failing to pay debt obligations. Low managerial capacity makes it difficult for MSMEs to innovate or adapt to new technologies, market changes, and digitalization. This makes businesses stagnant and less competitive. MSMEs are often unable to recruit or train competent human resources. Business management is only carried out by the owner and family without a good organizational structure or clear division of tasks. Dependence on Seasonal Demand; MSMEs engaged in the consumption sector tend to face fluctuations in demand according to the season or certain big days. When demand decreases, income also decreases drastically, so that the ability to pay credit installments is disrupted (Sartika, 2019). If MSMEs do not have good financial planning, cash flow can be disrupted so that they have difficulty paying credit obligations routinely which results in inconsistent income throughout the year. Lack of Access to Assistance and Information; Many MSME actors do not receive adequate assistance from financial institutions or the government, both in terms of business management training and understanding credit contracts (Hutagalung, 2022).

Working Capital Constraints and Overleverage; The use of dual financing without feasibility analysis often causes business actors to experience overleverage. When the debt burden is greater than the ability to generate cash flow, the risk of bad debt increases (Hutagalung, 2022). Product Market Mismatch; Lack of product innovation and marketing strategies cause businesses to be unable to compete in the market. Products that do not match market tastes result in decreased sales and revenue (Mulyani, 2020). External Disruptions and Force Majeure; Natural disasters, the COVID-19 pandemic, inflation, and global economic instability can cause supply chain disruptions and decrease people's purchasing power. This has a direct impact on the sustainability of MSME businesses (Handayani, 2021). Moral Hazard; Not a few MSME actors use credit not according to its intended use, such as for consumptive or personal needs. This increases the potential for problematic credit (Fauzan, 2022). Moral hazard occurs when business actors do not use loan funds according to their original purpose, do not have good intentions to repay the loan because they feel there are no serious sanctions or consider loans from the government as grants and deliberately avoid payment obligations because they feel the amount is small or think the bank will not take action. Moral hazard is more about the character and ethics of business actors. Lack of understanding of bankruptcy law which can be an instrument of rescue through debt restructuring or PKPU (Nadirah I, 2021).

Normatively, there is no exception in the Bankruptcy Law regarding legal subjects, in article 2 of the Bankruptcy Law concerning bankruptcy requirements it states that every debtor who has two or more creditors and is unable to pay his debts can be declared bankrupt including MSMEs. However, the position of MSMEs is often in a weak position economically and legally due to the imbalance in the bargaining position of MSMEs who do not have bargaining power in the bankruptcy application process or in PKPU, high bankruptcy process costs: Expensive and formalistic bankruptcy legal procedures are not in accordance with the economic conditions of MSMEs. And the lack of legal understanding of most MSME actors regarding bankruptcy rights and legal procedures.

Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPKPU) is one of the means to settle debts that occur in the business world, including for Micro, Small and Medium Enterprises (MSMEs). Article 1 paragraph 1 of the Bankruptcy Law states that Bankruptcy is defined as a general seizure of the debtor's assets (the debtor) whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge. From the definition of bankruptcy, it can be seen that the purpose of bankruptcy law is to protect creditors through a balanced distribution of the debtor's assets for payment of his debts to creditors. This is in accordance with the contents of Article 1132 of the Civil Code.

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) is basically intended to provide legal certainty in the settlement of debts including bad debts that occur for Micro, Small, and Medium Enterprises (MSMEs) but in practice the implementation of bankruptcy law for MSME actors who experience bad debts still encounters various legal, sociological, and structural obstacles. The legal obstacles referred to here are obstacles that originate from positive legal aspects (written rules), normative weaknesses, or inconsistencies between legal provisions and practical realities. In the context of MSMEs and bankruptcy law, there are several legal obstacles including: 1) Absence of Special Regulations for MSMEs in the Bankruptcy Law. Law Number 37 of 2004 does not distinguish between large corporate debtors and MSME debtors. In fact, in terms of structure and capacity, MSMEs have very different characteristics: They do not have an internal legal team; Often do not have a systematic formal debt record; The scale of the debt is relatively small, but the bankruptcy process still requires large costs and procedures. This makes the bankruptcy process not proportional or fair for MSME actors. 2) Formalistic and Complex Bankruptcy Procedures. The bankruptcy application and PKPU procedures are very legalistic and costly, starting from filing at the Commercial Court, proving the existence of debts that are due, to appointing a curator. MSMEs are often unable to hire legal counsel to access legal information about the rights and obligations in the process and understand the technical terms in the legal process (such as "debts that have matured" or "cross default"). 3) Weak Legal Protection for MSME Debtors. The Bankruptcy Law focuses more on protecting creditor rights, while protection for debtors - especially small debtors such as MSMEs - is still minimal. For example: There is no provision on "protection of good faith debtors"; There is no minimum debt limit that allows debtors to be declared bankrupt (in practice, bankruptcy can occur due to small debts); There is no mechanism for early (preventive) business rescue. 4). Lack of Conformity between the Bankruptcy Law and the MSME Law. Law No. 20 of 2008 concerning MSMEs encourages the state to side with small and medium business actors, including in terms of ease of doing business and legal protection. However, in practice, the Bankruptcy Law has not adopted the spirit of this protection. There is no integration between the MSME rescue policy and the bankruptcy legal scheme. There is no active role from the government or OJK in protecting MSME debtors affected by bad debts. 5). No Regulation of Special Restructuring Alternatives for MSMEs. The Bankruptcy Law does not provide flexible arrangements for non-litigation MSME debt restructuring or through cheap and fast informal mechanisms. All must still go through the formal PKPU or bankruptcy process in court. 6) Weak Law Enforcement and Lack of Precedent. The small number of court decisions that provide proportional protection to MSMEs creates legal uncertainty. In addition, many bankruptcy applications against MSMEs are only used as pressure (negotiation) by creditors. Curators and commercial judges tend to apply the law textually rather than contextually.

The economic aspect of the discussion of the problem of bad debts in MSMEs caused by weak financial management, market instability, and low access to business and legal assistance. And from the legal aspect there are several main problems in the form of; a. Lack of Accessibility to the PKPU Process. Actually, PKPU offers a peaceful debt settlement mechanism through restructuring. However, this process is poorly understood and utilized by MSMEs because it is not well socialized, and is often considered an instrument of large corporations (Andika, 2022). b. Stigmatization of Bankruptcy as Business Failure in the legal culture in Indonesia so that bankruptcy is often interpreted as total failure rather than as a means to restart the economy. This hinders MSMEs from utilizing bankruptcy mechanisms strategically. c. Lack of Protection for MSME Debtors. The absence of affirmative policies in the Bankruptcy Law for MSME actors makes them vulnerable to detrimental legal practices, including "ordered" bankruptcy from creditors. The legal consequences for Creditors and Debtors are the absence of a fair and effective bad debt settlement system that creates an imbalance: For creditors, the process of recovering receivables becomes long and inefficient. For MSME debtors, the loss of assets and businesses without getting the opportunity for restructuring or recovery support.

Sociological obstacles in the application of bankruptcy law to MSMEs are obstacles that originate from social, cultural, behavioral, and public understanding of the law, especially MSME actors, the wider community and even law enforcement officers. In the application of bankruptcy law to MSMEs experiencing bad debts, several significant sociological obstacles include:

1. Lack of Legal Literacy among MSMEs (Prasetyo, 2021). Most MSMEs in Indonesia still have a low level of legal understanding. They: Do not know that bankruptcy or PKPU can be a tool to save a business (not just to "close a business"); Tend to avoid legal channels because they are considered complicated, expensive, and full of risk; Do not know their rights as debtors in the legal process. As a result: MSMEs tend to let bad debt problems drag on, or resolve them informally which is actually detrimental.
2. Stigmatization and Negative Views of Bankruptcy (Nugroho, 2021)**.** In the perception of the general public, including MSME actors, bankruptcy is interpreted as a disgrace or moral failure. This gives rise to: Shame and fear of being involved in the legal process; Refusal to openly admit financial difficulties; Mental and social unpreparedness in facing formal restructuring. The culture of Indonesian society that upholds social honor and avoids legal conflicts is an obstacle to the acceptance of bankruptcy mechanisms as a business solution.
3. Distrust of the Legal System (Fitriani, 2021)**.** Some MSMEs do not trust the judicial system, because: The legal process is considered slow and biased towards large investors or strong creditors (banks/financial institutions); The assumption that only “big companies can win” in court; The unclear final outcome of the bankruptcy process (not certain whether the business can be saved or justice can be obtained).
4. Complex Social and Economic Ties. MSMEs in Indonesia are generally run within the family or local community. When facing debt problems: They prefer to resolve them amicably or informally, because maintaining social relationships is more important than legal certainty; Not infrequently, MSMEs are reluctant to involve outside parties because they are worried about causing social conflict, even if the creditor is a friend or neighbor.
5. Mental Unpreparedness for Restructuring or Liquidation (Siregar, 2022). MSMEs are often not ready to face changing business realities. The bankruptcy or PKPU process requires: Ability to accept change; Discipline in reorganizing debts and assets; Cooperation with curators, creditors, and third parties in a professional manner. However, socially and psychologically, many MSMEs are not ready and prefer to "disappear" or close their businesses without legal procedures.

Conclusion

The main legal obstacles in the implementation of bankruptcy law on MSME bad debts are the absence of differentiation in the treatment of bad debts experienced by MSMEs, bankruptcy procedures that are not MSME-friendly, and minimal legal protection for small debtors. Therefore, normative reform is needed through changes or reconstruction of the Bankruptcy Law or the preparation of special implementing regulations that support the sustainability of MSMEs as the backbone of the national economy.

Suggestion

Bankruptcy Law Regulation Reform; in the form of special regulations for MSMEs, both in the form of simple procedures (summary proceedings) and the elimination of bankruptcy fees/PKPU for certain small businesses. A debt restructuring mechanism based on restorative economy is needed for MSMEs. Non-Litigation Alternative Approach; Optimization of mediation, arbitration, and restructuring forums based on cooperatives or BUMDes. Increasing the role of Alternative Dispute Resolution Institutions (LAPS) in the financial sector. Collaboration between OJK, Kemenkop UKM, and the Commercial Court; Establishment of an early warning system to detect potential MSME bad debts.; Basic bankruptcy legal training for MSMEs and small business legal facilitators.

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