



# Criminal Elements in Debt Restructuring During The Covid-19 Pandemic: Between Business Continuity and Legal Compliance

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## Abstract

*The coronavirus (Covid-19) pandemic has hit the world economy, including Indonesia. In addition to direct handling of the epidemic problem, the government is also preparing to anticipate the impact of the economic slowdown caused by the pandemic. The government has issued regulations in relation to the forms of restructuring that can be carried out by banks and national financial institutions with their debtors that open up various alternative patterns of restructuring the settlement of obligations based on POJK No. 11 of 2020. This regulation has the potential to create an imbalance between creditors and debtors. The regulation provides the dominant flexibility for creditors to assess and offer forms of restructuring, so that there is the potential for an imbalance in the form of restructuring between creditors and debtors. The law enforcement scheme has its relevance to Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK and PKPU). Some adjustments are needed so that the law which is intended to restore economic conditions by providing protection to creditors and debtors can find its context with the crisis caused by Covid-19. The results of this study indicate that PKPU is a strategic tool in designing debt restructuring. If the PKPU application is granted and peace is reached between the debtor and his creditors, the debtor concerned can continue his business activities. Some adjustments are needed so that the law which is intended to restore economic conditions by providing protection to creditors and debtors can find its context with the crisis caused by Covid-19. The results of this study indicate that PKPU is a strategic tool in designing debt restructuring. If the PKPU application is granted and peace is reached between the debtor and his creditors, the debtor concerned can continue his business activities. Some adjustments are needed so that the law which is intended to restore economic conditions by providing protection to creditors and debtors can find its context with the crisis caused by Covid-19. The results of this study indicate that PKPU is a strategic tool in designing debt restructuring. If the PKPU application is granted and peace is reached between the debtor and his creditors, the debtor concerned can continue his business activities.*

**Keywords:** Covid-19; Restructuring; Government; Business Continuity.

## A. Introduction

A statement by a debtor of bankruptcy based solely on the provisions of Article 2 paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations can indirectly interfere with the implementation of the business continuity process, even though the normalization of the business continuity principle is stated as the basis for the regulation of Indonesian Bankruptcy Law. This is as regulated in the General Elucidation of UUK and PKPU where prospective debtors are allowed to continue their business. To be able to see whether the debtor company is still prospective or not to continue its business activities, one of them is to measure the debtor's financial condition.

The regulation of the business continuity principle in Bankruptcy Law also has an important role in providing legal protection for debtors who have the ability to

restructure the company as an effort to realize the principle of justice for all parties.<sup>1</sup> Restructuring is an opportunity for debtors who do not have the ability to pay debts but the debtor company has great potential to be able to carry out its business activities so that debtors are able to pay off debts to their creditors. Before the restructuring process is carried out, it begins with a feasibility study which aims to determine whether the debtor's debt is feasible or not for restructuring.<sup>2</sup>

The concept of the principle of continuity as a philosophical basis for legal protection of bankrupt debtors in connection with the absence of testing the debtor's ability to pay debts (insolvency test) in the settlement of bankruptcy disputes for debtors who have not materialized must be considered because it relates to the value of justice and the value of legal certainty for debtors.<sup>3</sup> The concept of legal protection provided by the Government of the Republic of Indonesia in providing a guarantee to all parties in this case in relation to debtors to be able to exercise their legal rights and interests in their capacity as legal subjects has not been maximized.<sup>4</sup> What is meant by right here is the power to do something because it has been determined by law.<sup>5</sup> The guarantee of legal protection provided by this state is in accordance with the provisions of Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia which states that "Indonesia is a state of law". The guarantee referred to is legal protection for debtors through efforts to create legal regulations regarding the setting of the philosophical basis for regulating the principle of business continuity in the UUK and PKPU as the philosophical basis for legal protection for solvent debtors in the bankruptcy declaration decision regarding the absence of an insolvency test.<sup>6</sup>

Albert Venn Dicey stated that the rule of law is a country that has the rule of law. This concept emphasizes three benchmarks or main elements of the rule of law, namely: (1) the rule of law (supremacy of law); (2) equality before the law (equality before the law); and (3) the constitution based on individual rights.<sup>7</sup> The absence of an insolvency test as one of the requirements to declare a debtor bankrupt can harm the interests of the debtor because the debtor whose company is still prospective to be rescued must be declared bankrupt because the debtor is unable to pay his debts, this is considered contrary to the concept of the rule of law which upholds equality before the law. This is because the Bankruptcy Law is more dominant in protecting the interests of creditors.

Legal protection for debtors in connection with the absence of an insolvency test is an effort to realize the principle of business continuity which is one of the principles regulated by UUK and PKPU, where prospective debtors are allowed to carry on their business. To see the prospective debtor's business, one of them can be seen from his financial condition. This shows that currently the norm of the business continuity principle in the Bankruptcy Laws in Indonesia is mentioned as the basis of the Indonesian Bankruptcy Law regulation. However, the Bankruptcy Law does not

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<sup>1</sup> Adrian Sutendi, *Bankruptcy Law*, Bogor: Ghalia Indonesia, 2009, p.9.

<sup>2</sup> Yuanita Harahap, *Legal Analysis on Debt Restructuring of PT. Open to the Peace Process under the Bankruptcy Law*, Thesis, USU Masters of Law Program, North Sumatra, p.18.

<sup>3</sup> Rr. Dijan Widijowati, *Commercial Law*, Yogyakarta: ANDI, 2012, p.226.

<sup>4</sup> Junita Eko Setiyowati, *Legal Protection of Profit Sharing Participants in a Company*, Bandung: CV. Mandar Maju, 2003, p.13.

<sup>5</sup> Sudarsono, *Legal Dictionary*, Jakarta: Rineka Cipta, 2002, p. 154.

<sup>6</sup> Martiman Prodjohamidjojo, *Bankruptcy Process According to Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law*, Bandung: CV. Mandar Maju, 2002, pp. 86.

<sup>7</sup> Albert Venn Dicey, in Juhaya S, *Legal Theory and Its Applications*, Bandung: CV. Pustaka Setia, 2011, p.135.

mention at all about testing the debtor's financial condition as a condition for the bankruptcy decision to be imposed on the debtor, as reinforced by FennikaKristianto's opinion.<sup>8</sup>

This condition shows that legal protection for debtors in this case shows that the principle of balance for debtors and creditors as embraced by UUK and PKPU, even though the concept of balanced legal protection for debtors and creditors in the Bankruptcy Law is in line with the concept of balanced interest protection. with the basis of the Republic of Indonesia, namely Pancasila.<sup>9</sup> Based on the concept of legal protection based on Pancasila, it is explained that the interests of all parties or the community must be prioritized, without prioritizing individual or personal interests. On the basis of this explanation, it shows that the concept of legal protection based on Pancasila contains the meaning of human rights. Human rights are meant to prioritize the interests and obligations of all parties or the community. Based on the precepts of "Just and civilized humanity" must be developed not arbitrary attitude towards others.

The concept of protecting balanced interests as regulated in Pancasila shows the recognition of human rights. In the provisions of Article 1 paragraph 1 of Law Number 39 of 1999 concerning Human Rights states that:

"Human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gift that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of dignity and worth." human".

Based on the provisions of the article above, it shows that both debtors and creditors have human rights where this right is inherent in the nature and existence of humans as a gift from God Almighty, which must be protected by the state, government and law. On this basis, the Bankruptcy Law must provide balanced protection for debtors and creditors as a manifestation of the fulfillment of human rights protection. This is because a good Bankruptcy Law must be based on the principle of balanced protection for all parties involved and interested in bankruptcy. In this regard, a good Bankruptcy Law should not only provide protection for creditors but also for debtors.

Unbalanced legal protection for debtors is also closely related to the relationship between human rights and democracy, which is a conception of humanity and social relations born from the history of human civilization in all corners of the world. Human rights and democracy can also be interpreted as the result of human struggle to maintain and achieve their human dignity because until now only the conceptions of human rights and democracy have been proven to best recognize and guarantee human dignity, as explained by JimlyAshiddiqie.<sup>10</sup>

This business continuity principle provides an opportunity for debtors to restructure their companies with the aim of preventing the arbitrariness of the collectors seeking payment of their respective claims against the debtor, ignoring other

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<sup>8</sup> FennikaKristianto, Authority to Sue Bankruptcy in Syndicated Credit Agreements, Jakarta: Minerva Athena PressindoPersada, 2009, p.12.

<sup>9</sup> Daniel F. Aling, "Protection of Debtors and Creditors in Law Number 37 of 2004 concerning Bankruptcy and PKPU and Their Impact on Banking", Scientific Paper, Ministry of National Education of the Republic of Indonesia, Faculty of Law, SamRatulangi University, Manado, 2009, p.4

<sup>10</sup> JimlyAshiddiqie, in Nurul Qamar, *Human Rights in a Democratic State of Law (Human Rights in DemocratischeRechtsstaat)*, Jakarta: Sinar Graphic, 2014, p.21.

creditors by declaring the debtor has the ability to pay debts (solvent). ) bankrupt.<sup>11</sup> The principle of business continuity which is the philosophical basis of legal protection for debtors in connection with the absence of an insolvency test in relation to providing balanced legal protection for debtors in the application of bankruptcy cases is still often neglected considering that UUK and PKPU emphasize this principle on the process of settling the debtor's assets after the declaration of bankruptcy is pronounced, this condition creates a necessity that judges in commercial cases never consider the principle of business continuity in the consideration of making a bankruptcy decision when the conditions as stipulated in Article 2 paragraph 1 of the UUK and PKPU have been fulfilled. when in fact placing a company that has good business prospects and solvency in a state of bankruptcy will cause a lot of losses for the company and society in general. In addition, even though in Modern Bankruptcy Law theory, bankruptcy theory actually begins by recognizing the bankruptcy system that is needed to find solutions to problems related to debt repayment from a company experiencing liquidity difficulties (insolvency) to pay its debts.<sup>12</sup>

A debtor is considered insolvent if the amount of debt is greater based on a fair assessment of the company's total capital. Solvency testing according to a normatively reasonable calculation has not yet been regulated in the UUK and PKPU. This is the reason the author raises a study related to the urgency and application of the fair calculation of solvency in bankruptcy cases. Considering this test is part of the manifestation of the principle of business continuity.

The principle of business continuity is one of the principles adopted by UUK and PKPU. The UUK and PKPU in their General Elucidations expressly stated that they had adopted several principles, namely:

### **1. Balance Principle**

This law regulates several provisions which are the embodiment of the principle of balance. On the one hand, there are provisions that can prevent the misuse of bankruptcy institutions and institutions by dishonest debtors. on the other hand, there are provisions that can prevent the misuse of bankruptcy institutions and institutions by creditors who do not have good intentions. In practice, the application of this principle in the UUK and PKPU include:

- a. Prevention of misuse of bankruptcy institutions and institutions by creditors with bad intentions;
- b. Prevention of abuse of bankruptcy institutions and institutions by dishonest debtors.

In its application, although the principle of balance has been firmly adhered to in the UUK and PKPU, based on the description above, it can be seen that the application of the principle of balance in the UUK and PKPU tends to favor the benefit of the creditor (creditor heavy) so that UUK and PKPU appear to be positioning the debtor. as the wrong party and always has bad faith towards its creditors, and vice versa always considers the creditor as a disadvantaged and weak party and deserves more protection than the debtor.<sup>13</sup> This is a very unfortunate situation, because that is not

<sup>11</sup> Victorianus MH RandaPuang, *Application of the Principle of Simple Evidence in Imposing Bankruptcy Decisions*, Jakarta:PT. Sarana Tutorial Conscience Prosperity (SATU NUSA), 2011, p.10.

<sup>12</sup> AndrianiNurdin, *Bankruptcy BUMN Persero Based on the Principle of Legal Certainty*, Bandung:PT. Alumni, 2012, p.125.

<sup>13</sup> SerlikaAprita, *Bankruptcy Law and Postponement of Debt Payment Obligations: Theoretical Perspective*, Setara Press, Malang, 2018, p.12.

always the case. There are also many creditors who often impose their will and try in bad faith to harm and of course end up bankrupting the debtor. But unfortunately for debtors who experience things like this do not get sufficient protection in the UUK and PKPU.

## **2. Business Continuity Principle**

This principle is intended to provide opportunities for prospective debtor companies to continue their business. The implementation of this principle in the UUK and PKPU is only limited to the business continuity of the debtor after the bankruptcy decision falls on the debtor, while for debtors who have not been declared bankrupt this does not apply, considering the conditions for bankruptcy of the debtor regardless of whether the debtor's financial condition is still solvent or not.<sup>14</sup>

Articles related to this principle include:

- a. Article 56 paragraph (3) which gives the curator the right during the period of suspension of the creditor's execution rights (waiting period of 90 days from the date the bankruptcy declaration is pronounced) to use the bankrupt assets "harta pailit" in the form of movable or immovable objects or selling bankrupt assets in the form of movable objects in the context of the business continuity of the debtor;
- b. Article 179 paragraph (1) which gives the right to the curator and creditor to propose that the debtor company for bankruptcy be continued if the reconciliation meeting is not offered a reconciliation plan or the proposed reconciliation plan is not accepted; and
- c. Article 181 paragraph (1) which requires the supervisory judge to hold a meeting if the curator or creditor submits a proposal to him to continue the bankrupt debtor company which must be held no later than 14 days after the proposal is submitted.

## **3. Principles of Justice**

In bankruptcy law, this principle implies that the provisions regarding bankruptcy can fulfill a sense of justice for the parties concerned. This principle of justice is useful to prevent the occurrence of arbitrariness by creditors who seek to collect payments on the amount of each bill to the debtor, regardless of other creditors.<sup>15</sup>

Several forms of normalization of the principle of justice in the UUK and PKPU include:

- a. Provisions that during the course of the bankruptcy, all claims to obtain fulfillment of the engagement from the bankruptcy estate "harta pailit" can only be submitted by registering it for a match;
- b. All lawsuits in court aimed at obtaining fulfillment of obligations from bankrupt assets "harta pailit", becomes null and void after the pronouncement of the bankruptcy declaration decision against the debtor;
- c. Provisions that the right of execution of creditors holding liens, fiduciaries, mortgages, or other collateral rights on property is suspended for a maximum

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<sup>14</sup> Serlika Aprita, *The Application of the Continuity Principle Using the Insolvency Test: Efforts to Realize Restructuring Justice-Based Legal Protection for Bankrupt Debtors in Bankruptcy Dispute Resolution*, CV Pustaka Abadi, East Java, 2019, p.22.

<sup>15</sup> Serlika Aprita, *Restructuring Justice: Perspectives on Legal Protection of Debtors in Bankruptcy*, CV. Sarnu Untung, Central Java, 2019, p.54.

period of 90 days from the date the bankruptcy declaration decision is pronounced; etc.

#### 4. Integration Principle

This principle of integration in the UUK and PKPU implies that the formal legal system and its material law are an integral part of the national civil law system and civil procedure. There are many articles in the UUK and PKPU which are manifestations of this integration principle. Most of the formal laws included in the UUK and PKPU are civil procedural laws which are different from the civil procedural laws regulated in the HIR (Het Herziene Indonesisch Reglement). In other words, it can be seen that the UUK and PKPU have special civil procedural laws that regulate the proceedings in bankruptcy cases. An example of this revolutionary change in procedural law carried out by UUK and PKPU is regarding the period of the case trial process which is strictly limited, namely the examination at the level of the commercial court which must be decided no later than 60 days after the date the petition for a declaration of bankruptcy is registered, at the cassation level with a decision that must be pronounced no later than 60 days after the date the cassation request is received by the Supreme Court, and at the level of review (PK) which must be decided no later than 30 days after the date the PK application is received. While the examples of material law in the UUK and PKPU for example regarding the conditions for bankruptcy as regulated in Article 2 paragraph (1), provisions regarding the waiting period (stay) for creditors as according to Article 56 paragraph (1) jo. Article 55 (1), and so on. and at the level of review (PK) which must be decided no later than 30 days after the date the PK application is received. While the examples of material law in the UUK and PKPU for example regarding the conditions for bankruptcy as regulated in Article 2 paragraph (1), provisions regarding the waiting period (stay) for creditors as according to Article 56 paragraph (1) jo. Article 55 (1), and so on.<sup>16</sup>

Based on the explanation of the types of legal principles adopted by UUK and PKPU, what is in accordance with the discussion of the dissertation in terms of scientific aspects is the principle of business continuity, because this principle is a milestone principle in the bankruptcy law regime. The regulation of the business continuity principle in Bankruptcy Law has an important role in providing legal protection for debtors who have the ability to restructure the company as an effort to realize the principle of justice for all parties.<sup>17</sup> Restructuring is an opportunity for debtors who do not have the ability to pay debts but the debtor company has great potential to be able to carry out its business activities so that debtors are able to pay off debts to their creditors. Before the restructuring process is carried out, it begins with a feasibility study which aims to determine whether the debtor's debt is feasible or not for restructuring.

<sup>16</sup> Randi Ikhlas Sardoni, Instrument of InsolvencyXE "Insolvensi" Test on Bankruptcy CasesXE "Perkara Kepailitan" in Indonesia, Thesis, Faculty of Law, Depok Law Studies Program, January 2011, p.20.

<sup>17</sup> Adrian Sutendi, *Bankruptcy Law*, Bogor: Ghalia Indonesia, 2009, p.9.

The principle of business continuity has an important meaning in providing legal protection for debtors who are in a state of inability to pay must be defined as an effort to prevent bad faith from the bankruptcy applicant against debtors who are clearly based on the going concern principle are still able to continue operating and to protect legally debtors who still have good faith in settling their debts to be able to carry on their business. This business continuity principle becomes important especially if the debtor is a large company, which has many interested parties, such as employees, creditors (because not all creditors agree to bankrupt their debtors), taxes as sustainable state revenue.

Going concern or the principle of business continuity, is the principle of survival of an entity (business entity). Going concern shows an entity (business entity) is considered to be able to maintain its business activities in the long term, will not be liquidated in the short term. Evidence of the potential and survival of a business entity or company that is included in the category is proven in the form of an auditor's report as a party having competence in assessing whether a company can properly carry on its business or is eligible for bankruptcy. The principle of business continuity as adopted by the UUK and PKPU is the only principle that only exists in bankruptcy law, while other bankruptcy law principles such as the principle of balance, the principle of justice and the principle of integration can be found in other fields of law,

The urgency of the business continuity principle in an effort to provide legal protection for prospective debtors whose companies can be seen through the data contained in the financial statements, needs to be another consideration as a condition for the declaration of a bankrupt business entity or debtor company. This principle can be used to measure or measure the ability and potential of the debtor to continue his business activities through the Insolvency Test.XE "insolvency test". The use of this principle can lead to a debtor who is financially insolvent, meaning that the debtor has a debt that is greater than his assets. A company debtor whose assets are smaller than his debt, but still has hope of paying his debts in the future, is given the opportunity to restructure his debt and company. The concept of the continuity principle as the application of the principle of business continuity based on the value of restructuring justice in the context of legal protection for bankrupt debtors in the settlement of disputes in commercial courts that have not been realized must be considered because it is related to the value of justice and the value of legal certainty for debtors.<sup>18</sup> The concept of legal protection provided by the Government of the Republic of Indonesia in a guarantee to all parties in this case in relation to debtors to be able to exercise their legal rights and interests in their capacity as legal subjects has not been maximized.<sup>19</sup> What is meant by right here is the power to do something because it has been determined by law.<sup>20</sup> The guarantee in question is legal protection for debtors through efforts to create legal regulations regarding the application of the principle of business continuity based on the value of restructuring justice in the context of legal protection for bankrupt debtors in dispute resolution in the commercial court. The constitutional legal basis for the legal protection system for debtors in the settlement of bankruptcy disputes in the commercial court is as regulated in Article 1 paragraph (3), Article 5

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<sup>18</sup> Rr. DijanWidijowati, *Commercial Law*, Yogyakarta:ANDI, 2012, p.226.

<sup>19</sup> Junita EkoSetiyowati, *Legal Protection of Profit Sharing Participants in a Company*, Bandung: CV. Mandar Maju, 2003, p.13

<sup>20</sup> Sudarsono, *Legal Dictionary*, Jakarta: RinekaCipta, 2002, p. 154.

paragraph (1), Article 20, Article 24, Article and Article 33 paragraph (4) of the Constitution of the Republic of Indonesia. 1945<sup>21</sup>.

The guarantee of legal protection provided by the state to debtors is in accordance with the provisions of Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia which states that "Indonesia is a state of law". Albert Venn Dicey stated that the rule of law is a country that has the rule of law. This concept emphasizes three benchmarks or main elements of the rule of law, namely: (1) the rule of law (supremacy of law); (2) equality before the law (equality before the law); and (3) the constitution based on individual rights. The absence of testing the debtor's ability to pay debts (Insolvency Test "insolvency test") as one of the requirements to declare a debtor bankrupt can harm the interests of the debtor because the debtor whose company is still prospective to be rescued must be declared bankrupt because the debtor is unable to pay his debts, this is considered contrary to the concept of the rule of law which upholds equality before the law, this is due to the Bankruptcy Act "Undang-Undang Kepailitan" more dominant in protecting the interests of creditors.

Legal protection for debtors in connection with the absence of a debtor's ability to pay debts (Insolvency Test "insolvency test") is an effort to realize the principle of business continuity which is one of the principles regulated by UUK and PKPU, where prospective debtors are allowed to carry on their business. To see the prospective debtor's business, one of them can be seen from his financial condition. This shows that currently the norm of the business continuity principle in the Bankruptcy Laws in Indonesia is mentioned as the basis of the Indonesian Bankruptcy Law regulation. However, the Bankruptcy Act "Undang-Undang Kepailitan" does not mention at all about testing the debtor's financial condition as a condition for the bankruptcy decision to be imposed on the debtor, this is reinforced by the opinion of FennikaKristianto<sup>22</sup>.

This condition shows that legal protection for debtors in this case shows that the principle of balance for debtors and creditors as adopted by UUK and PKPU, even though the concept of balanced legal protection for debtors and creditors in the Bankruptcy Law "Undang-Undang Kepailitan" in line with the concept of protecting interests that are balanced with the basis of the Republic of Indonesia, namely Pancasila "Pancasila". Based on the concept of legal protection based on Pancasila, it is explained that the interests of all parties or the community must be prioritized, without prioritizing individual or personal interests. On the basis of this explanation, it shows that the concept of legal protection based on Pancasila contains the meaning of human rights. Human rights are meant to prioritize the interests and obligations of all parties or the community. Based on the precepts of "Just and civilized humanity" must be developed not arbitrary attitude towards others.

The concept of protecting balanced interests regulated in Pancasila "Pancasila" This shows the recognition of human rights. In the provisions of Article 1 paragraph 1 of Law Number 39 of 1999 concerning Human Rights states that:

"Human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gift that must be respected,

<sup>21</sup> Albert Venn Dicey, in Juhaya S, *Legal Theory and Its Applications*, Bandung: CV. Pustaka Setia, 2011, p.135.

<sup>22</sup> FennikaKristianto, *Authority to Sue Bankruptcy in Credit Agreement "Perjanjian Kredit" Syndication*, Jakarta: Minerva Athena PressindoPersada, 2009, p.12.



upheld and protected by the state, law, government, and everyone for the sake of honor and protection of dignity and worth." human"

Based on the provisions of the article above, it shows that both debtors and creditors have human rights where this right is inherent in the nature and existence of humans as a gift from God Almighty, which must be protected by the state, government and law. On this basis, the Bankruptcy Law "Undang-Undang Kepailitan" must provide balanced protection for debtors and creditors as a manifestation of the fulfillment of human rights protection.<sup>23</sup> This is because a good Bankruptcy Law must be based on the principle of balanced protection for all parties involved and interested in bankruptcy. In this regard, a good Bankruptcy Law should not only provide protection for creditors but also for debtors.

A Bankruptcy Act "Undang-Undang Kepailitan" Good governance must be based on the principle of providing balanced benefits and protection for all parties who are related and have an interest in the bankruptcy of a person or company.<sup>24</sup> In this regard, a good Bankruptcy Law should not only provide benefits and protection for creditors but also debtors and their stakeholders.

Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law "Undang-Undang Kepailitan" which was later confirmed as Law Number 4 of 1998 concerning Stipulation of the Government in Lieu of Law as in the end the Law was replaced by UUK and PKPU has adopted the principle of balance by mentioning it as the "fair" principle.

One of the paradigms of bankruptcy law is the value of justice so that the law can provide its real purpose, namely providing benefits, usefulness, and legal certainty. In connection with the absence of testing the debtor's ability to pay debts (Insolvency Test) "insolvency test") the UUK and PKPU show that justice has not been fulfilled for debtors as it is known that the implementation of the business continuity principle can run well if the function of the bankruptcy institution can run well too. The case of a debtor who has been declared bankrupt with the condition that the company is still possible to be restructured shows that the function of the bankruptcy institution to prevent arbitrariness by creditors in obtaining debt repayment by carrying out mass executions has not been achieved. This shows that legal certainty and the objective of a fair implementation of the Bankruptcy Law will not be achieved.

UUK and PKPU pay more attention to and protect the interests of creditors than debtors even though both debtors and creditors are citizens who have equal standing before the law. Proportional equality gives each person what he is entitled to according to his abilities, achievements, and so on. From this distinction, Aristotle presents a lot of controversies and debates around justice. Furthermore, he distinguishes justice into types of distributive justice and corrective justice. The first applies to public law, the second applies to civil and criminal law. Corrective justice focuses on correcting something that went wrong. If a violation is violated or an error is committed, corrective justice seeks to provide adequate compensation for the injured party, if a

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<sup>23</sup> Daniel F. Aling, "Debtor Protection "Debitur:Badan Hukum" and Creditors in Law Number 37 of 2004 concerning Bankruptcy and PKPU and Their Impact on Banking", Scientific Works, Ministry of National Education of the Republic of Indonesia, Faculty of Law, SamRatulangi University, Manado, 2009, p.4.

<sup>24</sup> FenniekaKristianto, Authority to Sue Bankruptcy in Credit Agreement "Perjanjian Kredit" *Syndication*, *Op. Cit.*, p.3.

crime has been committed, the appropriate punishment needs to be given to the perpetrator. However, injustice will result in the disruption of the "equality" that is already established or has been formed. Corrective justice is tasked with rebuilding this equality.<sup>25</sup>

The provisions of Article 2 paragraph 1 UUK and PKPU which do not provide balanced benefits and protection for debtors and creditors in their application. Due to these provisions, debtors who are still in a state of being able to pay (solvent) must be declared bankrupt. Even though the declaration of the debtor's bankruptcy will result in the debtor closing his business, so that parties with an interest in the debtor's business will lose the opportunity to depend on debtors who are still able to pay (solvent). Judges should not only pay attention to the interests of creditors by granting bankruptcy petitions against debtors based on the provisions of Article 2 paragraph (1) of the UUK and PKPU legally and textually but also have to pay attention to the interests of other parties whose lives depend on the debtor if the debtor is declared bankrupt by the Commercial Court. The judge should consider the financial condition of the bankruptcy respondent company in a healthy condition or not through a financial audit or financial due diligence conducted by an independent public accounting firm.

Changes in bankruptcy law will be beneficial and fair, when the basic philosophy of the nature of bankruptcy is interpreted as a statement by a debtor who is in a state of insolvency, that is, has stopped paying, so that because it is clear and disaggregated, only debtors are in a state of stopping paying because they are unable to pay. pay is declared bankrupt, with the meaning of the nature of bankruptcy as stated above and include it as a change to the provisions of Article 2 paragraph (1) UUK and PKPU then a balance of interests between debtors and creditors is achieved. In the sense that the creditor gets his receivables repaid, namely the payment of receivables through general confiscation and the sale of debtor assets. Debtors get their status as bankrupt debtors so they are not allowed to be neglected after the payment of their debts through general confiscation and asset sales. Thus, the parties with an interest in the debtor's business will have the opportunity to depend on their lives because they avoid being declared bankrupt by debtors who are still in a state of being able to pay their debts (solvent).

## B. Methods

The type of research in writing this journal is prescriptive normative legal research, which according to Peter Mahmud Marzuki is legal research that aims to study the purpose of law, values of justice, validity of the rule of law, legal concepts, and legal norms.<sup>26</sup>

Journal research according to Peter Mahmud Marzuki was conducted to generate arguments, theories, or new concepts as prescriptions in solving problems at hand. The arguments here are made to provide a prescriptive about whether or not according to the law the facts or legal events from the results of the research.

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<sup>25</sup> Hariyanto, *Principles of Justice and Deliberation in Islamic Law and Its Implementation in the Indonesian State of Law*, Article, Department of Sharia STAIN Purwokerto, p.7.

<sup>26</sup> Peter Mahmud Marzuki, "Legal Research", Kencana, Jakarta, 2010, p.22.

The research in this journal is intended to conduct an assessment of the rules, legal concepts, doctrines and norms related to debt restructuring during the COVID-19 pandemic: between business continuity and legal compliance. In this study the author will provide a prescriptive regarding whether or not according to the law the facts or legal events from the results of research on debt restructuring during the covid 19 pandemic: between business continuity and legal compliance.

### **C. Results and Discussion**

The decision on the bankruptcy statement by the court against debtors who do not pay their debts will have an impact not only on the debtor but also for the state and society because it can affect the amount of state income in the form of taxes to cause termination of employment relations for employees and workers which can affect the level of community welfare. Sometimes debtors who are declared bankrupt are debtors who still have good business prospects and can return to being a healthy company if they are given some relief from their debts through restructuring. Debt restructuring "Restrukturisasi utang" is the payment of debt with lighter terms with the terms of debt repayment before the debt restructuring process is implemented due to special concessions granted by creditors to debtors. This kind of concession is not granted to the debtor if the debtor is not in a state of financial difficulty. The financial difficulties faced by companies vary widely, including liquidity difficulties where the company is unable to meet its financial obligations temporarily to severe financial difficulties (bankruptcy), where the company's financial obligations exceed its wealth. Restructuring in the business world, especially for companies in Indonesia, is very important because it can help companies get out of the economic crisis or from being unable to pay (insolvency).

Companies are state assets so that if the problematic is liquidated or bankrupt, the state will lose other sources of income from taxes. Thus the company's debts must be rescheduled and carried out *restructurisation*. Companies that are given the opportunity will potentially be able to pay off their debts. Debtors who are considered to still have prospects and good intentions to continue their business can get financial assistance so that they can continue and manage their company again because the debtor's inability to pay debts is not always due to the debtor's own fault and if the debtor is given the opportunity he will be able to get back up to continue his business activities and be able to pay debts to creditors so that both debtors and creditors are in a mutually beneficial position.

For the debtor, it is a waste if after the implementation period, *restructurisation* ends, it turns out that the company will again experience a state of insolvency. Therefore, for the interest of the debtor, he must believe that at the end of the restructuring implementation period, it is estimated that the debtor company which previously experienced a state of insolvency will return to being solvent. If this is not the case, then restructuring is only beneficial for creditors but not for debtors which results in injustice for debtors. Therefore, it is necessary to pay attention to the concept of restructuring justice for debtors in an effort to make debtor companies healthy.

Justice *restructuring* focuses on the restructuring of debtor companies. Restructuring is an effort taken by debtors to avoid bankruptcy. Restructuring

contained in the peace agreement, by restructuring the debtor is given certain leeway in paying off its obligations through rescheduling debt repayment (rescheduling), reconditioning the debt agreement (reconditioning), reducing the amount of principal debt (haircut), lowering interest rates, granting debt new, and other forms that do not conflict with the prevailing laws and regulations.<sup>27</sup> Debtors must have confidence that at the end of the restructuring implementation period, it is estimated that the debtor company that was originally in a state of insolvency will be able to repay its debts (solvent). If for the success of debt restructuring it is necessary to make efforts to restructure the debtor's company, it should be accompanied by restructuring or restructuring of the debtor company, because for the debtor it is futile if at the end of the implementation period it turns out that the debtor company will admit to being unable to pay (insolvent). back. The debtor company that has been restructured will help the survival of the company as well as the parties interested in the sustainability of the debtor company.

Restructuring justice aims to rebuild equality for debtors. If there is an unfair action against the debtor in connection with the absence of a debt service test (Insolvency TestXE "insolvency test") which makes it easy for the debtor to be declared bankrupt, so the efforts made by the debtor to prevent bankruptcy are carried out by restructuring so that the previously lost condition (debtor continuity) can return again, this is where restructuring justice develops.

Bankruptcy ActXE "Undang-Undang Kepailitan" philosophically must provide protection to debtors and creditors in a balanced way. A fair way to unite different interests is through the balance of interests themselves, without any preferential treatment of an interest so as to create justice for each party, this is as explained by John Rawls.<sup>28</sup> Based on the concept of the notion of justice taught by John Rawls in relation to the implementation of the Principle of Business Continuity Using the Insolvency Test: Efforts to Realize Restructuring Justice-Based Legal Protection for Bankrupt Debtors in Bankruptcy Dispute Resolution.

The principle of business continuity in the application of bankruptcy cases is still often neglected considering that the UUK and PKPU emphasize the principle on the process of settling debtor's assets after the declaration of bankruptcy is pronounced, this condition creates a necessity that judges in commercial cases do not consider the principle of business continuity in issuing bankruptcy decisions against debtors.<sup>29</sup> In this regard, Satjipto Rahardjo stated that law as the embodiment of values implies that its presence is to protect and promote values that are upheld by society.<sup>30</sup> Legal protection for debtors in connection with the absence of testing the debtor's ability to pay debts (Insolvency Test)XE "insolvency test") closely related to the principles that apply to bankruptcy law. In the General Elucidation of the UUK and PKPU, it is explained that the principle of business continuity implies that the provisions regarding bankruptcy can fulfill a sense of justice for the interested parties. This business continuity principle provides an opportunity for debtors to restructure their

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<sup>27</sup> Sutan Remy Sjahdeini, *Bankruptcy Law: Understanding Law no. 37 of 2004 concerning Bankruptcy*, Jakarta: PT. Pustaka Utama Graffiti, 2010, p.381.

<sup>28</sup> John Rawls, in Karen Leback, *Theories of Justice: A Critical Analysis of JSMill Thought*, John Rawls, Robert Nozick, Reinhold Neibuhr, Jose Porfirio Miranda, Bandung: Nusa Media, 2012, p.53.

<sup>29</sup> Adriani Nurdin, *State-Owned Enterprise Bankruptcy Based on Legal Certainty Principles*, Bandung: Alumni, 2012, p.318.

<sup>30</sup> Satjipto Rahardjo, "Sociology of Law: Development of Legal Methods and Choices", Surakarta: University of Muhammadiyah, 2002, p.60.

companies with the aim of preventing the arbitrariness of the collectors seeking payment of their respective claims against the debtor, ignoring other creditors by declaring the debtor solvent bankrupt.<sup>31</sup>

In the opinion of SoetandyoWignjosoebroto in his book "Paradigm Laws, Methods, and Dynamics of the Problem", stated about the legal principles in his discussion of "Legal Studies Methods with law conceptualized as Principles of Justice in the Moral System of Natural Law Doctrine" states that the principle of justice which is in the realm of Morals are generally very general and often unwritten and open to any interpretation by anyone when it is needed, although they are generally formulated as mere principles, but these abstract norms in life practice serve as guidelines for people to behave and behave in everyday life.<sup>32</sup>

Indonesian bankruptcy law which is based on the principle of justice is very relevant to the concept of understanding justice taught by Aristotle and John Rawls. Aristotle in his concept states that justice is a virtue related to the relationship between humans. Fair can mean according to law and what is proportionate and proper. A creditor is said to be acting unfairly if he takes more than his proper share.<sup>33</sup> While the concept of justice taught by John Rawls who developed the concept of justice of fairness (fairness as equality), can be realized by distributing freedom and opportunity to all parties involved in debtor bankruptcy cases fairly and equally.<sup>34</sup> based on the concept of understanding of justice taught by Aristotle and John Rawls in relation to the realization of the principle of business continuity as a philosophical basis for legal protection for bankrupt debtors in the resolution of bankruptcy disputes oriented to the value of restructuring justice in commercial courts shows that a positive legal rule in this case UUK and PKPU must reflects legal principles because legal principles are the foundation of the legal system.

Continuity of business as a legal principle when viewed from an ideal factor can be applied if it has been stated in positive legal rules, this is because the legal rules of Legislation have coercive power to be implemented. The ideal factor in every nation or society may not be uniform, there must be different views on this because everyone has different feelings, desires and ways of thinking. Likewise, the real factors found in each society will show differences. Every legal order must pay attention to these two factors, both real factors and ideal factors greatly influence the formation and scope of legal principles.

The whole description above shows that the principle of business continuity requires justice for debtors as a manifestation to fulfill the same position in law (equality before the law) so that they are entitled to equal legal protection. The concept of understanding the principle of business continuity is used as the basis for the formation of the UUK and PKPU. Although the principle of business continuity has become the principle that underlies the formation of UUK and PKPU in order to have a clear philosophical basis, the concept of understanding the principle of business continuity should be included in the articles of future bankruptcy laws and regulations

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<sup>31</sup> Victorianus MH RandaPuang., Op.Cit, p.10.

<sup>32</sup> SoetandyoWignjosoebroto, in *Muhammad Djumhana, Principles of Banking Law in Indonesia*, Bandung: PT. Citra Aditya Bakti, 2008, pp. 78-79.

<sup>33</sup> Aristotle, in *AndrianiNurdin, Persero Bankruptcy Based on Legal Certainty Principles*, Bandung: Alumni, 2012, p. 318.

<sup>34</sup> John Rawls, in *AndrianiNurdin, Persero Bankruptcy Based on Legal Certainty Principles*, Bandung: Alumni, 2012, p. 318.

so as to provide opportunities for debtors and creditors to seek settlement of debts and receivables in an amicable manner. fair, fast, open and effective.<sup>35</sup>

Unbalanced legal protection for debtors is also closely related to the relationship between human rights and democracy, which is a conception of humanity and social relations born from the history of human civilization in all corners of the world. Human rights and democracy can also be interpreted as the result of human struggle to maintain and achieve their human dignity because until now only the conception of human rights and democracy has been proven to best recognize and guarantee human dignity, as explained by JimlyAshiddiqie.<sup>36</sup>

This business continuity principle provides an opportunity for debtors to restructure their companies with the aim of preventing the arbitrariness of the collectors seeking payment of their respective claims against the debtor, ignoring other creditors by declaring the debtor has the ability to pay debts (solvent). ) bankrupt.<sup>37</sup> when in fact placing a company that has good business prospects and solvency in a state of bankruptcy will cause a lot of losses for the company and society in general. In addition, even though in the theory of Modern Bankruptcy Law, the bankruptcy theory actually begins by recognizing the bankruptcy system that is needed to find solutions to problems related to repaying debt from a company experiencing liquidity difficulties (insolvency) to pay its debts.<sup>38</sup>

The coronavirus (Covid-19) pandemic has hit the world economy, including Indonesia. In addition to direct handling of the epidemic problem, the government is also preparing to anticipate the impact of the economic slowdown caused by the pandemic. The economic stimulus is not only direct cash assistance to affected communities, but also in the form of relaxation and restructuring programs for business actors and their business organs. Everything is done so that the economy does not collapse because of this epidemic. The government has issued regulations relating to the forms of restructuring that can be carried out by banks and national financial institutions with their debtors that open up various alternative patterns of restructuring of the settlement of obligations based on POJK no. 11 Year 2020.<sup>39</sup> 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK and PKPU). Several adjustments are needed so that the law which is intended to restore economic conditions by providing protection to creditors and debtors can find its context with the crisis caused by Covid-19.

In this law, the interests of both debtors and creditors are accommodated in the form of legal protection and legal certainty. The government has a vision of relaxation and restructuring that is only a stimulus, while the daily business operations faced by business actors are much more complex. So in regulating financial relations between business actors and other business actors, including business actors in the financial

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<sup>35</sup> Ahmad Yani and GunawanWidjaja, *Bankruptcy Business Law Series*, Jakarta: Raja GrafindoPersada, 1999, page 2.

<sup>36</sup> JimlyAshiddiqie, in *Nurul Qamar, Human Rights in a Democratic State of Law (Human Rights in Democratic Rechtsstaat)*, Jakarta: Sinar Graphic, 2014, p.21.

<sup>37</sup> Victorianus MH RandaPuang, *Application of the Principle of Simple Evidence in Imposing Bankruptcy Decisions*, Jakarta:PT. Sarana Tutorial Science Prosperity (SATU NUSA), 2011, p.10.

<sup>38</sup> AndrianNurdin, *Bankruptcy BUMN Persero Based on the Principle of Legal Certainty*, Bandung:PT. Alumni, 2012, p.125.

<sup>39</sup>Covid-19, This is the Suggested Restructuring Pattern to Save the Economy, in HYPERLINK "<https://www.beritasatu.com/ekonomi/624089-covid19-ini-pola-restrukturisasi-yang-disarankan-guna-penyelamatan-ekonomi>" \ <https://www.beritasatu.com/economy/624089-covid19-ini-pattern-restructuring-yang-suggested-guna-pemesalan-economy>, accessed on May 23, 2020, at 09.45 WIB.

sector, the special civil law order is very significant because provide a more comprehensive solution and include the settlement of all creditors owned by the debtor. The legal relationship that occurs between the debtor and the creditor will begin to show whether there is good faith or not from the debtor, when a company that is a debtor being declared bankrupt at this time will have a bad impact and influence not only on the company, but also globally. Furthermore, the turmoil has also had a major impact on the ability of the business community to meet their debt repayment obligations to creditors. This situation in turn has given birth to a chain of consequences, and if it is not resolved it will have a wider impact. Not only in terms of business continuity and economic aspects in general, but also on employment issues and social aspects that need to be resolved fairly in the sense of paying attention to the interests of entrepreneurs as debtors or creditor interests in a balanced way. In addition to restructuring agreements between business actors, Until now, UUK and PKPU are the latest regulations that regulate the relationship of financial obligations between debtors and creditors when there is a financial crisis between debtors and creditors. Where the relationship of financial obligations between debtors and creditors can be restructured with legal certainty that binds both parties. Debtors who are able to measure their ability to survive this crisis period can submit a restructuring program proposal to creditors, and the assessment of the proposal is carried out directly by creditors.

Government relations, debtors and creditors can be carried out to overcome the crisis by means of debtors who can of course take advantage of the relaxation and restructuring facilities from the government to be formulated by the debtors through a restructuring proposal submitted to creditors based on POJK No. 11 of 2020. However, if the form of the restructuring pattern offered by the creditor is deemed inadequate by the debtor, the debtor can take the initiative to carry out a restructuring pattern based on an agreement or for a more complex relationship, UUK and PKPU can be used to make the restructuring more balanced and comprehensive.

The Financial Services Authority (OJK) has begun to implement a policy of providing stimulus as an effort to mitigate the impact of the corona virus on the economy. The stimulus was published in POJK No.11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the 2019 Coronavirus Disease Spread.<sup>40</sup> "With the issuance of this POJK, the stimulus for the banking industry has been in effect from March 13, 2020 to March 31, 2021. Banking is expected to be proactive in identifying debtors affected by the spread of Covid-19 and immediately implement the POJK stimulus. The POJK regarding the economic stimulus was issued to reduce the impact on debtor performance and capacity which is expected to decline due to the Corona virus outbreak so as to increase credit risk that has the potential to disrupt banking performance and financial system stability. Through this stimulus policy, banks also have a wider movement so that the formation of bad loans can be controlled and makes it easier to provide new loans to debtors. This POJK is also expected to be a countercyclical impact of the spread of the Corona virus so that it can encourage the optimization of banking performance, especially the

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<sup>40</sup>Debtors Affected by Corona Virus Can Restructure Debt, in HYPERLINK "https://economy.okezone.com/read/2020/03/19/20/2186057/debitur-yang-terdampak-virus-corono-bisa-restrukturisasi-utang" \hhttps://economy.okezone.com/read/2020/03/19/20/2186057/debitur-yang-terdampak-virus-corono-bisa-restructuring-utang accessed on 23 May 2020 at 10.00 WIB.

intermediation function, maintain financial system stability, and support economic growth. The provision of stimulus is aimed at debtors in sectors affected by the spread of the COVID-19 virus, including in this case MSME debtors and is applied with due regard to the precautionary principle accompanied by a monitoring mechanism to prevent abuse in the application of provisions (moral hazard). The stimulus policy in question consists of: The provision of stimulus is aimed at debtors in sectors affected by the spread of the COVID-19 virus, including in this case MSME debtors and is applied with due regard to the precautionary principle accompanied by a monitoring mechanism to prevent abuse in the application of provisions (moral hazard). The stimulus policy in question consists of: The provision of stimulus is aimed at debtors in sectors affected by the spread of the COVID-19 virus, including in this case MSME debtors and is applied with due regard to the precautionary principle accompanied by a monitoring mechanism to prevent abuse in the application of provisions (moral hazard). The stimulus policy in question consists of:

1. Assessment of the quality of credit/financing/other funds provision is only based on the accuracy of payment of principal and/or interest for loans of up to Rp10 billion; and
2. Restructuring by improving credit/financing quality becomes smooth after restructuring. This restructuring provision can be applied by the Bank without a credit limit.
3. This relaxation of regulation applies to Non-MSME and MSME debtors, and will be enforced up to one year after it is stipulated. The implementation mechanism is left entirely to the policies of each bank and is adjusted to the debtor's capacity to pay.

The big hope is of course the availability of liquidity and guarantees for debtors as mandated in Perppu No.1 of 2020, so that debtor and creditor relations can be saved, especially the relationship of civil rights and obligations to keep business processes and situations alive. So that the macroeconomic encouragement by the government through various relaxation and restructuring products will find the details of the microeconomics through special civil law. Thus the debtor is able to be productive again without having to sacrifice his relationship with his creditors. *Withsurvive* and the massive return of productive debtors on a national scale, the Indonesian economy will be saved. In addition, it is hoped that the Indonesian economy will have immunity to ongoing crises by understanding the economics of Covid-19.

Debtors directly and indirectly affected by the Corona Virus Disease 2019 (Covid-19) pandemic have the opportunity to restructure debt in financial service institutions (LJK) such as banks and finance companies (leasing). These provisions are regulated in the Financial Services Authority Regulation [HYPERLINK "https://www.hukumonline.com/pusatdata/detail/lt5e733d394104c/node/534/peraturan-otoritas-jasa-keuangan-nomor-11-pojk03-2020-tahun-2020"](https://www.hukumonline.com/pusatdata/detail/lt5e733d394104c/node/534/peraturan-otoritas-jasa-keuangan-nomor-11-pojk03-2020-tahun-2020) \hPOJK Number 11/POJK.03/2020 about National Economic Stimulus as a Countercyclical Policy Impact of the Spread of Coronavirus Disease 2019 (Covid-19). In practice, this restructuring process must go through various stages and require a period of time, especially debtors in the form of legal entities such as limited liability companies. For the debtor, to get the opportunity to restructure the debt, the debtor must first submit it to a financial service institution. Later, the financial services institution will assess



the ability of the debtor, such as capital to business plans. Then, the two parties, namely debtors and financial service institutions, agreed on the debt restructuring scheme. Adisuryo Dwinanto & Co (ADCO) partner, Rizky Dwinanto, explained that corporate debt restructuring is a restructuring of corporate debt with the aim of maintaining liquidity and business continuity. Thus, the debtor must know the business targets to be achieved through the debt restructuring.

The initial stage of the debtor must first identify the problems that cause financial difficulties. In connection with Covid 19, Rizky explained that the financial difficulties due to the decline in sales were not only due to loss of income but also other factors such as the loss of main clients to fraud. "Fraud by management, this is the biggest potential for financial distress, the most available indicator is that the debt is not intended properly. Then, he explained that debtors must also prepare accurate working capital projections. With this working capital, it is hoped that it will help debtors achieve the targets that had been planned at the beginning. Then, the debtor must also communicate openly and clearly to all creditors regarding these plans. Good communication can convince creditors to provide debt restructuring in accordance with the debtor's business conditions. Another important thing that creditors must also do is make a mature, good, and new business plan. Because the current inability to pay debts may be the result of the company's business being no longer profitable. so, the debtor must prepare a new business strategy so that the restructuring can proceed according to plan. Debtors must also prepare legal consultants, financial consultants and tax consultants in filing the restructuring. According to him, the advice from the consultant is needed because restructuring is very closely related to the fields of law, finance and tax.

The debt restructuring scheme in the POJK has six ways, namely reducing interest rates, extending the period, reducing principal arrears, reducing interest arrears., addition of credit/financing facilities and conversion of credit/financing into Temporary Equity Participation. The restructuring schemes can be combined or one of them. Unlike in general, restructuring related to Covid-19 is prioritized for debtors affected by Covid-19 with credit or leasing values below Rp. 10 billion, including informal workers, daily income, micro and small businesses (MSME Credit and KUR). Then, relief can be given for a maximum period of 1 year in the form of adjustments to payment of principal or interest installments, time extensions or other matters determined by the bank and leasing. Based on OJK data, the number of debtors that have been restructured in the banking industry is 262,966 debtors. Then, the number of debtors approved for restructuring by the Financing Company is 65,363 debtors and 150,345 debtors are still in the application process. Realization of the implementation of restructuring policies for debtors affected by Covid-19 as of April 13, 2020 "Debtors affected by Covid-19 must apply for restructuring to banks and finance companies. Approval of the request, scheme and period of restructuring will be determined based on the assessment and assessment of banks and finance companies on the ability to pay debtors and also the agreement of both parties," explained OJK Spokesperson, Sekar Putih Djarot, Tuesday (14/4).

In Indonesia, the Bankruptcy Law and PKPU do not require that the debtor is truly insolvent to be a requirement for the debtor to be declared bankrupt. Not applying an instrument in the form of Insolvency Test XE "insolvency test" This causes many

companies in Indonesia to go bankrupt legally, even though these companies may still be classified as solvent companies that are able to pay their debts well. In relation to the Insolvency Test instrument, what is meant by the Insolvency Test is a financial audit (financial audit) conducted by an independent public accounting firm to determine whether the financial condition of the debtor who has been declared bankrupt is truly in a state of inability to pay the debts. the debt, or in other words the debtor is insolvent.<sup>41</sup>

In the bankruptcy regulations in Indonesia, the term insolvency is not a condition for bankruptcy. InsolvencyXE "Insolvensi" used, among others, in Law Number 40 of 2007 concerning Limited Liability CompaniesXE "Perseroan Terbatas"(UUPT) which is in Chapter XI concerning the Dissolution, Liquidation, and expiration of the Company's Legal Entity Status (articles 142-152). In the Limited Liability Company Law, liquidation is carried out in connection with the dissolution of the company due to the reasons stipulated in Article 142 paragraph (1).<sup>42</sup> One of the reasons for the dissolution of the company is due to bankruptcy assetsXE "harta pailit"Companies that have been declared bankrupt are in a state of insolvency as regulated in Article 178 paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and PKPU. Furthermore, in article 143 paragraph (1) of the company law, it is regulated that the dissolution of the company does not result in the company losing its status as a legal entity until the completion of liquidation and the liability of the liquidator is accepted by the GMS or the court.<sup>43</sup> In the explanation of article 143 paragraph (1), it is emphasized among other things that the statement of bankruptcy does not change the status of a company that has been dissolved and therefore the company must be liquidated.

Even in bankruptcy applications in other countries, the principle of insolvency is one of the most important points in filing a bankruptcy application. It is said so because with the normalization of this principle in the Indonesian bankruptcy regulations, all debtor bankruptcy applications submitted to the commercial court must be tested for eligibility to be declared bankrupt. A debtor is declared eligible to be declared bankrupt if the debtor is in a state of insolvency, which means that the debtor is in a state of inability to pay off all of his debts.<sup>44</sup> However, if the test results show that the debtor is still solvent and has good business prospects, then the debtor will be attempted to restructure its debts and do not need to be declared bankrupt. This of course can only be proven through the Insolvency Test methodXE "insolvency test".

UUK and PKPU in its regulation are debtors who have the ability to pay their debts even though their assets are smaller than their debts, but still have the hope of paying their debts in the future by being given the opportunity to reorganize but due to the absence of testing the debtor's ability to pay debts. InsolvencyXE "insolvency test") must be declared bankrupt, while UUK and PKPU adhere to the principle of business continuity where debtors whose companies are still prospective can continue their

<sup>41</sup> MisahardiWilamarta, *Accountability of Directors and Commissioners for Unlawful Acts in a Limited Liability CompanyXE "Perseroan Terbatas" and Legal Protection for Shareholders and Stakeholders*, Depok: Center for Education and Legal Studies, 2006, hlm, 65.

<sup>42</sup> Abdul Hakim Garuda Nusantara and Benny K Harman, *Critical Analysis of Commercial Court Decisions*, Jakarta: CINLES, 2000, CHAPTER VII.

<sup>43</sup> I NengahMudani, *History of Duties and Functions of the Heritage Office and Relations with Related Agencies*, Heritage Center, Semarang.

<sup>44</sup> Adi Nugroho Setiarso, *Juridical Analysis of the Situation of InsolvencyXE "Insolvensi" in Bankruptcy (Normative Study of Article 2 paragraph 1 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Obligation to Pay DebtXE "Penundaan Kewajiban Pembayaran Utang"*, Brawijaya University, Malang, 2013.

business. Indonesian Bankruptcy Law does not recognize the existence of testing the debtor's ability to pay debts (Insolvency Test) as one of the requirements to bring a debtor into bankruptcy. In the future, the UUK and PKPU should contain rules regarding the Insolvency Test before submitting a petition for a declaration of bankruptcy against the debtor.

Bankruptcy ActXE "Undang-Undang Kepailitan" must not only lead to the possibility or ease of bankruptcy of debtors who do not pay debts. The Bankruptcy Law must provide another estuary alternative, namely in the form of providing opportunities for companies that do not pay their debts but still have good business prospects and whose management has good intentions and is cooperative with creditors to pay off their debts, debt restructuring -debts, and healthy the company. Debt restructuringXE "Restrukturisasi utang" and the company (debt and corporate restructuring, or corporate reorganization, or corporate rehabilitation) will allow the debtor company to return to being able to pay its debts.<sup>45</sup>

It is this estuary that creditors and debtors must first and foremost try before submitting a petition for a declaration of bankruptcy against the debtor, for the purposes mentioned above. In other words, bankruptcy should only be an *ultimumremidium*.<sup>46</sup> Law Number 4 of 1998 concerning Stipulation of the Government in Lieu of Law, UUK and PKPU do not hold that bankruptcy is a last resort or an *ultimumremidium* after creditors and debtors first attempted debt restructuring efforts and it turned out that these efforts failed.<sup>47</sup> This failure can occur either because it is declared unfit after a feasibility study is carried out or because there is no agreement between the debtor and the creditors regarding the terms of the restructuring.

Bankruptcy laws must not only lead to the possibility or ease of bankruptcy of debtors who do not pay their debts. The bankruptcy law must provide another estuary alternative, namely in the form of providing opportunities for companies that do not pay their debts but still have good business prospects and whose management has good intentions and is cooperative with creditors to pay off their debts, restructure debts. -debts, and healthy the company. Debt restructuringXE "Restrukturisasi utang" and the company (debt and corporate restructuring, or corporate reorganization, or corporate rehabilitation) will allow the debtor company to return to being able to pay its debts.<sup>48</sup>

It is this estuary that must first and foremost be attempted by creditors and debtors, prior to filing a petition for a declaration of bankruptcy against the debtor, for the purposes mentioned above. In other words, bankruptcy should only be an *ultimumremidium*. Unfortunately, both Law Number 4 of 1998 and UUK-PKPU do not take the view that bankruptcy is a last resort or an *ultimumremidium* after creditors and debtors first attempted to restructure debt and it turned out that these efforts

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<sup>45</sup> Evi Purwaningsi, Authority of Creditors in Debtor Bankruptcy, Master's Thesis of Faculty of Law, Gadjah Mada University, Yogyakarta, 2012, pp. 34.

<sup>46</sup> KartiniMuljadi. "Understanding and General Principles of Bankruptcy Law", in RuddyLontoh (Ed.), Settlement of Debts and Receivables through Bankruptcy or Suspension of Debt Payment Obligations, Bandung: Alumni, 2001, p. 75-76.

<sup>47</sup> Sri Redjeki, Legal Protection and Position of Separatist Creditors in the Event of Bankruptcy Against Debtors, Scientific Forum, Volume 13, Number 1, January, 2016, p. 52- 59

<sup>48</sup> Pande Raja. Silalahi, The Impact of the Bankruptcy Law on the Business World, in Settlement of Debts and Receivables Through Bankruptcy or Postponement of Obligations for Payment of DebtsXE "Penundaan Kewajiban Pembayaran Utang".Bandung: Alumni, 2001, p.45.

failed. This failure can occur either because it is declared unfit after a feasibility study is carried out or because there is no agreement between the debtor and the creditors regarding the terms of the restructuring.

*Restructurisation* "Restrukturisasi utang" may be followed with or without corporate restructuring or restructuring. If for the success of debt restructuring, it is necessary to make efforts to restructure the debtor company, then it should be accompanied by restructuring or restructuring of the debtor company.

The scope of restructuring justice is the success of the implementation of debtor debt restructuring, where the debtor company still has good business prospects to be able to pay off these debts if the debtor company is given a delay in paying off debt within a certain period of time either with or without being granted relief. waivers of requirements and/or given new additions. Furthermore, creditors will get their large debts repaid through restructuring than if the debtor company is declared bankrupt; or if the debt terms under the restructuring agreement become more favorable to the creditors than if the restructuring was not carried out.<sup>49</sup>

For debtors, it is futile if after the restructuring implementation period ends, the company will again experience a state of insolvency. Therefore, for the interest of the debtor, he must believe that at the end of the restructuring implementation period, it is estimated that the debtor company that was previously insolvent will return to being solvent. If this is not the case, then restructuring is only beneficial for creditors but not for debtors which results in injustice for debtors. Therefore, it is necessary to pay attention to the concept of restructuring justice for debtors in an effort to make debtor companies healthy.

#### **D. Conclusion**

The current state of the corona crisis raises the risk of bad credit. The risk of bad credit arises because of the wider spread of the Covid-19 pandemic, which affects the ability of debtors to carry out their credit payment obligations. Therefore, it is important for banks to carry out risk management and actions to minimize potential losses. POJK 11/2020 needs to be maximized for its implementation to debtors, especially debtors who are directly or indirectly affected by the COVID-19 pandemic in the business world. It is important for banks to carry out this as soon as possible because it is not impossible that the increased risk of bad credit will not only result in banking stability but can attack the country's economic system as a whole. So the restructuring policy must be assessed as a risk control policy in order to avoid a continuous crisis. Throughout the restructuring process, the bank must also adhere to the principle of prudence as well as carry out effective and strict risk management. The hope is that the restructuring policy that will be implemented can avoid the risk of misuse of the application of the rules (moral hazard) that can be misused by irresponsible debtors.

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<sup>49</sup> Frederick BGTumbuan, Settlement of Debts Through Bankruptcy and Suspension of Debt Payment Obligations "Penundaan Kewajiban Pembayaran Utang". Bandung: Alumni., 2001, hlm. 34.

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