

The Indonesian Government's Economic Policy During the Pandemic: A Study of Legal Protection for Debtors Affected by Covid-19

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Abstract: This article discusses government policies to protect debtors affected by Covid-19 and its implementation in banking institutions. This article used a juridical-empirical approach with the theory of default, overmatch, and hardship. This article collects data sources from some legislations and government policies during the Covid-19 pandemic and some credit institutions' policies and debtors affected by Covid-19. This article reveals that the government has made a policy requiring creditors of banking financial institutions to relax credit for creditors affected by Covid-19, as contained in POJK Number 11/OJK.3/2020. With this policy, financial institutions can restructure credit for debtors. Due to difficult circumstances, the debtor who does not pay the credit installments in the credit agreement is no longer a default. They also cannot be subject to sanctions or demanded compensation for their inaccuracies in fulfilling their responsibility to pay installments. The government made a policy to provide legal protection for debtors affected by Covid-19.

Keywords: *Covid-19 pandemic; government policies; debtors affected; legal protection.*

Abstract: Artikel ini membahas tentang kebijakan pemerintah dalam upaya melindungi debitur terdampak Covid-19 dan implementasinya pada lembaga perbankan. Artikel ini menggunakan pendekatan yuridis-empiris dengan memanfaatkan teori wan prestasi, overmacht dan keadaan sulit (*hardship*). Data digali dari sejumlah peraturan perundang-undangan dan kebijakan pemerintah di masa pandemi Covid-19 dan juga sejumlah kebijakan lembaga kredit serta para debitur terdampak Covid-19. Artikel ini mengungkapkan bahwa pemerintah membuat kebijakan yang mengharuskan para kreditur lembaga-lembaga keuangan perbankan melakukan relaksasi kredit bagi para debitur terdampak Covid-19. Hal ini termuat dalam POJK Nomor 11/OJK.3/2020. Dengan adanya kebijakan ini, lembaga-lembaga keuangan dapat melakukan restrukturisasi kredit bagi para debitur terdampak Covid-19. Para debitur yang tidak membayar angsuran kredit sesuai dengan perjanjian kredit yang telah dibuat tidak lagi dikatakan sebagai sebuah wanprestasi, karena adanya

keadaan sulit (*hardship*). Mereka juga tidak dapat dikenai sanksi atau dituntut ganti rugi atas ketidakpatannya dalam memenuhi tanggung jawabnya membayar angsuran. Kebijakan pemerintah tersebut dibuat dalam rangka memberikan perlindungan hukum terhadap para debitur terdampak Covid-19.

Kata kunci: *Pandemi Covid-19; kebijakan pemerintah, debitur terdampak; perlindungan hukum.*

Introduction

The Covid-19 pandemic in the world dominated 2020. This outbreak is a disaster that has hit almost all countries worldwide. Covid-19 began in China, precisely in Wuhan City. However, the Covid-19 outbreak spread to nearly all countries due to the extraordinary migration flow.¹

Indonesia is also a country affected by the Covid-19 outbreak. From mid-March until now, the Indonesian government declared an emergency handling of Covid-19. Several cities have declared a Covid-19 emergency because the number of residents exposed to this virus is increasing. Due to activity restrictions, everyone must keep their distance socially and physically from the people around them. The government urges people not to leave their homes or travel except for essential needs.²

The Covid-19 pandemic has caused the loss of various facets of human life worldwide. Covid-19 disrupted public health, food supply, and work. In addition, it has also caused the degradation of social and economic life. Thousands of companies or professional orders are in danger of being canceled. Government-funded projects in 2020 were almost 100% canceled. The central government withdrew the money from the regional treasury, so government projects were canceled and delayed. Many private orders ran aground so that many companies lost money, terminated employment relationships, and the company did

¹ I. Kadek Marchel Suarjana, "Perlindungan Hukum Terhadap Debitur Dan Kreditur Dalam Situasi Covid-19," *LEX PRIVATUM* 9, no. 3 (2021).

² Rakhmat Nur Hakim, "Pembatasan Sosial Berskala Besar Berhak Batasi Orang Keluar Masuk Suatu Daerah," accessed January 3, 2021, <https://nasional.kompas.com/read/2020/04/01/11054771/pembatasan-sosial-berskala-besar-berhak-batasi-orang-keluar-masuk-suatu>.

not operate for almost a year. As a result, hundreds of companies are in danger of going out of business.³ Informal workers can barely make money. They also find it increasingly difficult to access health care, social security, and other productive assets.

In Indonesia, the Covid-19 pandemic has caused an economic recession. Millions of people are at risk of falling into the abyss of poverty. National economic growth, targeted to reach 5%, has only been able to grow by around 1% to 4%.⁴ In addition, the Covid-19 pandemic has increased the poverty rate from 9.2% in September 2019 to 9.7% at the end of 2020.⁵

One of the groups that have been severely affected by the Covid-19 outbreak is a new vulnerable group. They are business groups that need crowds and gatherings of people, freelancers, street vendors, and farmers.⁶ The occurrence of massive layoffs has also further weakened the economy of this vulnerable group. The government's call to *stay at home* decreased their income because their work activities also decreased and even disappeared significantly.⁷ Therefore, the Covid-19 pandemic has impacted the Indonesian economy on a macro and micro scale. This article focuses more on examining the micro-impact caused

³ For example, the Ministry of Public Works and Public Housing / *Kementerian Pekerjaan Umum dan Perumahan Rakyat Republik Indonesia* (PUPR) postponed a number of infrastructure projects in 2020 due to the pandemic, and funds were diverted to handling Covid-19. Kompas.com; Manado, 2/3/2020. In the private sector, the Covid-19 pandemic has resulted in the postponement and cancellation of a number of projects at OT Langgeng Makmur Industri Tbk., Ubah laku, Surabaya, 11/12/2020.

⁴ "The Impact of COVID-19 Outbreak on Poverty: An Estimation for Indonesia," accessed January 7, 2021, https://www.smeru.or.id/sites/default/files/publication/wp_covid19impact_draft.pdf.

⁵ "Dampak Pandemi COVID-19 Terhadap Kemiskinan: Estimasi Bagi Indonesia," accessed January 8, 2021, <https://smeru.or.id/id/publication-id/dampak-pandemi-covid-19-terhadap-kemiskinan-estimasi-bagi-indonesia>.

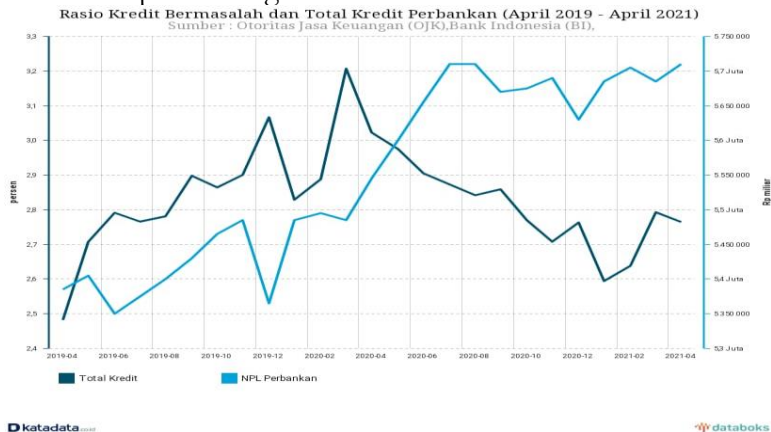
⁶ Suzanna Eddyono, Ayu D. Rahmawati, and T. F. Ginting, "Pandemi Dan Yang Tersingkir: Menakar Urgensi Kebijakan Inklusif Penanganan Covid-19," *Tata Kelola Penanganan COVID-19 Di Indonesia: Kajian Awal*, (2020), pp. 214–37.

⁷ Wawan Mas'udi and Poppy S. Winanti, "Covid 19: Dari Krisis Kesehatan Ke Krisis Tata Kelola," *Tata Kelola Penanganan Covid-19 Di Indonesia: Kajian Awal*. Yogyakarta, (2020).

by the Covid-19 pandemic on individuals or Micro, Small, and Medium Enterprises (MSME) that become debtors.

The conditions mentioned above make it difficult for debtors affected by Covid-19 to continue paying credit installments or financing. Due to the Covid-19 Pandemic, many companies have experienced congestion and the loss of many people's jobs. For parties with debts to the bank, this condition significantly suffers. Many of them can no longer afford to repay their debts to the bank. As a consequence, the phenomenon of bad debts arises.⁸ The Financial Services Authority (OJK) stated that the ratio of gross non-performing loans (NPL) during 2019 reached 2.5 %. In 2020 the NPL rose to reach 3.06 %.⁹

There was a decrease in the number of loans and an increase in the number of non-performing loans:¹⁰



⁸ Credit scores show a significant decline and Non-Performing Loans or bad loans rise high; bad loans from 158 trillion rose to 162 trillion in just a month in March 2020 Kuntari Dasih, "Bank Capotal dan Credit Crush: Apakah Modal Memainkan peran dalam Credit Crush di masa pandemi", 2021. <https://www.bi.go.id>.

⁹ Vincent Fabian Thomas, "OJK Catat Rasio Kredit Bermasalah Perbankan Pada 2020 Tembus 3,06%,"., <https://tirto.id/f9ic>.

¹⁰ Viva Budy Kusnandar, "Rasio Kredit Bermasalah Dan Total Kredit Perbankan (April 2019 - April 2021),"., <https://databoks.katadata.co.id/datapublish/2021/07/05/terimbas-pandemi-rasio-rasio-kredit-bermasalah-perbankan-semakin-meningkat>.

Based on this reality, the government makes policies or regulations to deal with these hardships. Government regulation is manifested in credit restructuring to protect debtors affected by the Covid-19 emergency. Based on this, the Financial Services Authority issued regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy impacting the Spread of Coronavirus Disease 2019. Article 5, paragraph (2) stated that debtors before and after being affected by Covid-19 could accept this restructuring policy.¹¹

This article examines government policies in the banking sector and their implementation in various financial institutions related to credit restructuring to protect the debtors affected by Covid-19. Therefore, the main issue to be answered in this article is how is the government's policy in providing legal protection to debtors affected by Covid-19. This article's data sources contain several credit institutions' policies, banks and nonbanks, and debtors affected by Covid-19. The problem is analyzed using a normative-juridical approach with the theory of default and hardships or difficult circumstances.

There have been many studies on Covid-19 focusing on its major health problems and the economic impacts it causes. Among the existing studies is S. Hanoatunbun's article on the impact of Covid-19 on the Indonesian economy.¹² IK Budastra, in his article entitled "*Dampak Sosial Ekonomi Covid-19 dan Program Potensial Untuk Penanganannya: Studi Kasus di Kabupaten Lombok Barat*";¹³ SN. Rohmah, in this article entitled, "*Adakah Peluang Bisnis di Tengah Kelesuan Perekonomian Akibat Corona?*";¹⁴ NM. Abdi's article entitled "*Krisis*

¹¹ <https://www.kemenkeu.go.id/media/14810/pojk-11-2020.pdf> accessed on 28 December 2021.

¹² Silpa Hanoatunbun, "Dampak Covid-19 Terhadap Perekonomian Indonesia," *EduPsyCouns: Journal of Education, Psychology and Counseling* 2, no. 1 (2020), pp. 146–53.

¹³ I. Ketut Budastra, "Dampak Sosial Ekonomi Covid-19 Dan Program Potensial Untuk Penanganannya: Studi Kasus Di Kabupaten Lombok Barat," *Jurnal Agrimansion* 21, no. 1 (2020), pp. 48–57.

¹⁴ Siti Ngainnur Rohmah, "Adakah Peluang Bisnis Di Tengah Kelesuan Perekonomian Akibat Pandemi Corona?," *Adalah* 4, no. 1 (2020), pp. 63–74.

Ekonomi Global Dari Dampak Penyebaran Virus Corona (Covid-19)”;¹⁵ W Hadiwardoyo’s article entitled “*Kerugian Ekonomi Nasional Akibat Pandemi Covid-19*”;¹⁶ AK Pakpahan in an article entitled “*Covid-19 dan Implikasi Bagi Usaha Mikro Kecil dan Menengah*”.¹⁷ These articles discuss the impact of the corona outbreak or the Covid-19 pandemic on the economic sector, both on a national macro scale and a micro scale, regarding the impact on small and medium enterprises. However, the study has not touched on discussions about state policy, either economically.

More specifically, some studies examine government policies related to Covid-19 in the economic field, such as the article of H. Kurniawansyah and Amrullah entitled “*Konsep Kebijakan Strategi Dalam Menangani Estternaltas Ekonomi Dari Covid-19 pada Masyarakat Rentan Indonesia*”. This article is more of a study of government policy in general, especially in the field of employment and the impact caused by the economic depression of the community.¹⁸

There is also other research on credit restructuring during the pandemic, and especially I Made Rai Sukerta’s article. His article explains that debtors entitled to receive policies, such as business owners vulnerable to Covid-19 and experiencing decreased income, get restructuring.¹⁹ Credit restructuring can save bad debts and losses that banks will suffer. In its implementation, restructuring at Regional Bank “X” is carried out by delaying and changing the number of installments.²⁰ This restructuring program has proven beneficial for

¹⁵ Muhammad Nur Abdi, “Krisis Ekonomi Global Dari Dampak Penyebaran Virus Corona (Covid-19),” *AkMen Jurnal Ilmiah* 17, no. 1 (2020), pp. 90–98.

¹⁶ Wibowo Hadiwardoyo, “Kerugian Ekonomi Nasional Akibat Pandemi Covid-19,” *Baskara: Journal of Business and Entrepreneurship* 2, no. 2 (2020), pp. 83–92.

¹⁷ Aknolt Kristian Pakpahan, “Covid-19 Dan Implikasi Bagi Usaha Mikro, Kecil, Dan Menengah,” *Jurnal Ilmiah Hubungan Internasional*, (2020), pp. 59–64.

¹⁸ Ni Putu Ari Aryawati and Indah Suprabawati Kusuma Negara, “Covid-19: Kebijakan Strategis dalam Menangani Dampak Sosial Ekonomi dari Sisi Biaya Tidak Langsung di Indonesia,” *Sophia Dharma: Jurnal Filsafat, Agama Hindu, Dan Masyarakat* 3, no. 1 (2020), pp. 1–11.

¹⁹ I. Made Rai Sukerta, I. Nyoman Putu Budiarttha, and Desak Gde Dwi Arini, “Restrukturisasi Kredit Terhadap Debitur Akibat Wanprestasi Karena Dampak Pandemi Covid-19,” *Jurnal Preferensi Hukum* 2, no. 2 (2021), pp. 326–31.

²⁰ Lina Maya Sari, Luluk Musfiroh, and Ambarwati Ambarwati, “Restrukturisasi Kredit Bank Daerah X Pada Masa Pademi Covid-19,” *Jurnal Akuntansi Dan Manajemen Mutiara Madani* 8, no. 1 (2020), pp. 46–57.

most debtors who experience credit reduction problems during the pandemic.²¹ In practice, the bank can approve the restructuring mechanism if it meets the precautionary principle.²² Therefore, parties must make a notarized credit restructuring agreement to guarantee and ensure legal certainty.²³

Many articles state that the Covid-19 pandemic is a form of overmatch that results in the implementation of agreements.²⁴ Covid-19 is an outbreak that has qualified as an overmatch mentioned explicitly, as in Law Number 24 of 2007 and Government Regulation in Lieu of Law (Perppu) Number 1 of 2020.²⁵ The existence of this overmatch causes the settlement of the agreement to be by non-litigation means.²⁶ This article more specifically discusses government policies on the issue of credit restructuring or banking financing for customers or debtors affected by Covid-19. This article examines this problem in more detail by using the theory of default, overmatch, hardship circumstances, and government policy theory as a form of state interference in the civil aspect as the state's responsibility to the welfare of its people.

²¹ Adi Winardi, Atik Rochaeni, and Entang Adhi Muhtar, "Analisis Program Restrukturisasi Kredit Debitur Umkm Yang Terdampak Covid-19 Di Bri Kep Cihampelas Bandung," *MANNERS* 4, no. 2 (2021), pp. 73–86.

²² Lastuti Abubakar and Tri Handayani, "Pelaksanaan Program Pemulihan Ekonomi Nasional Akibat COVID-19 Melalui Restrukturisasi Kredit Perbankan," *Rechtdede* 16, no. 1 (2021), pp. 88–111.

²³ Talita Fildzah Nadilah, "Kepastian Hukum Restrukturisasi Kredit Perbankan Kepada Usaha Mikro, Kecil dan Menengah pada Masa Covid-19 di PT. Bank Sumut Kantor Cabang Pembantu Tanjung Morawa," *Jurnal Hukum Samudra Keadilan* 16, no. 2 (2021), pp. 293–304.

²⁴ Sherlin Sherlin and Lu Sudirman, "Pandemi Covid-19 Sebagai Bentuk Overmacht Terhadap Pelaksanaan Perjanjian Kredit Di Perbankan," *Widya Yuridika: Jurnal Hukum* 4, no. 2 (2021).

²⁵ Rachma Ayu Kusuma Dewi, Amelia Bellatrix Pantjo'u, and Widya Dika Chandra, "Analisis Pembebasan Pemenuhan Prestasi Akibat Adanya Overmacht Karena Corona Virus Disease 2019 (Covid-19) Di Indonesia," *Jurnal Selat* 8, no. 1 (2020), pp. 1–19.

²⁶ Anak Agung Ayu Agung Cleo Bayu, I. Nyoman Putu Budiarta, and Desak Gde Dwi Arini, "Pelaksanaan Perjanjian Sewa Beli Kendaraan Bermotor Akibat Overmacht Karena Covid-19 Di PT. Federal International Finance (FIF) Kabupaten Karangasem," *Jurnal Interpretasi Hukum* 2, no. 2 (2021), pp. 223–28.

Defaults, Overmatch, and Hardship

In terms of credit debt or borrowing, there is a creditor, a debtor, and an agreement. A covenant is an attempt to bind oneself between two or more persons. An agreement is a legal relationship between two or more people, one party has the right to sue, and the other party must meet the demand. The demands of the first party to the second party are the so-called “achievements”.²⁷ Legal liability caused by non-payment of such “achievements” is called default. This responsibility arises based on a reciprocal contractual relationship due to an agreement or the existence of regulations governing it. Thus, default is the non-fulfillment of a party's obligations as stipulated in the agreement or agreement. The presence of 2 factors can cause this; negligence and overmatch (*force majeure*).²⁸

Based on these understandings, default is a condition where the debtor does not keep the “achievement” or meet the creditor's demands. This default has several forms: 1) it does not meet the “achievement” at all; 2) fulfilling “achievements” but being late or not on time; 3) fulfilling some of the “achievements”; and 4) fulfilling “achievements” but violating the prohibited things in the agreement.²⁹

When the debtor does not meet the “achievement” (default), then under Article 1243 of the Civil Code, it will result in 1) demand payment of compensation; 2) the cancellation of the agreement; 3) risk transfer; and 4) pay the costs of the case in court. This default may occur due to a lack of good faith by one of the parties to the agreement. These defaults can manifest in various forms, such as not executing an agreement at all; late execution of the agreement's contents (not by the time specified in the initial agreement); doing things outside of the agreement, and doing prohibited agreements.³⁰

²⁷ Raden Subekti and Raden Tjitrosudibio, “Kitab Undang-Undang Hukum Perdata,” (1999), p. 338.

²⁸ Bachtiar Bachtiar and Tono Sumarna, “Pembebanan Tanggung Jawab Perdata Kepada Kepala Daerah Akibat Wanprestasi Oleh Kepala Dinas,” *Jurnal Yudisial* 11, no. 2 (2018), pp. 209–25.

²⁹ Partogi Natigor Hamonangan Simanjuntak, *Pokok-Pokok Hukum Perdata Indonesia* (Djambatan, 2020).

³⁰ Hardian Iskandar, “Akibat Hukum Wanprestasi Pada Kasus Pembatalan Konser Musik,” *Jurnal Justiciabelen* 1, no. 2 (2019), pp. 233–40.

In the implementation of an agreement, many conditions can hinder the payment of one party's obligations to the other party, one of which is overmatch. This coercive condition occurs beyond everyone's ability to cause the debtor to be unable to fulfill "achievements". Conditions like this, for example, when a disaster occurs so that the debtor is unable to fulfill "achievements" because it is beyond his intentionality. If the default committed by the debtor is due to overmatch conditions like this, then he does not bear the risk. There are two kinds of overmatch, namely absolute or absolute and relative. Absolute overmatch is a condition that makes anyone utterly incapable of fulfilling "achievements". While overmatch is relative, i.e., a condition that causes the debtor not to be able to meet the feat at a particular moment, he can fulfill it later.³¹

On the other hand, another reason that causes obstacles to the use of agreements is hardship or difficult circumstances. The principle of *rebus sic stantibus* is a concept of changing events for the debtor when he cannot fulfill an agreement.³² Such challenging conditions significantly allow the debtor to not meet the "achievements" (defaults) due to hardship. This problematic situation does not occur individually, but the general condition in society is what it is.

During the Covid-19 pandemic, these hardship circumstances occurred. When debtors cannot perform "achievements", namely paying their credit installments, default occurs. However, the inability to pay is due to the difficult circumstances that have plagued them, namely business lethargy and declining income due to the Covid-19 pandemic.

Covid-19 Pandemic and Government Socio-Economic Policy

Since the beginning of the Covid-19 pandemic, the Indonesian government has sought to protect itself by wearing masks in public areas, physically distancing itself, and washing hands regularly. At the end of 2020, the government began to create national vaccination programs.³³ To handle this pandemic, the Indonesian government also

³¹ Article 1 paragraph (3) Law no. 24 of 2007 concerning Disaster Management.

³² Giorgio Gogiashvili, "Clausula Rebus Sic Stantibus, Dynamics and Statics in Law," *Georgian Law Review*, no. 9 (2006).

³³ *Kompas*, Sunday 20 December 2020.

decided to implement large-scale social restrictions (PSBB) and micro-scale public activity restrictions (PPKM).³⁴

In addition to the health sector, the government also pays attention to the national economic sector affected by the Covid-19 pandemic. In this regard, the government made several policies related to finance and fiscal during the Covid-19 pandemic period. Several financial and fiscal policies issued by the government are Government Regulation in Lieu of Law Number 1 of 2020 on State Financial Policy and Stability of Financial Systems for the Management of Corona Virus Disease 2019 (Covid-19) and/or Encounter the Threat to National Economy and/or Stability of Financial Systems;³⁵ Government Regulation in place of Law Number 1 of 2020, which is currently Law Number 2 of 2020;³⁶ Presidential Regulation No 54 of 2020 on “The Revision of Allocation and Details in the Income and Expenses of the State Budget 2020”;³⁷ Presidential Regulation Number 72 of 2020 replacing Presidential Regulation Number 54 of 2020;³⁸ and Government Regulation Number 23 of 2020 concerning the Implementation of the National Economic Recovery Program in Supporting State Financial Policy for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and/or Dealing with the Threats Endangering the National Economy and/or Financial System Stability and Saving National Economy.³⁹

In order to restore the national economy, the government makes comprehensive fiscal and monetary policies. The government also

³⁴ *Kompas*, 1 August 2021.

³⁵ Law (Perppu) Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic in the Context of Dealing with Threats that endanger the National Economy or Financial System Stability.

³⁶ Law Number 2 of 2020 concerning Stipulation of Government Regulation in lieu of Law Number 1 of 2020.

³⁷ Presidential Regulation Number 54 of 2020 concerning Changes in Posture and Details of the State Budget for Fiscal Year 2020.

³⁸ Presidential Regulation Number 72 of 2020 concerning Changes in Posture and Details of the 2020 State Budget.

³⁹ Government Regulation Number 23 of 2020 concerning National Economic Recovery in the Context of Supporting State Financial Policies for Handling the Covid-19 Pandemic and/or Facing Threats that Endanger the National Economy and/or Financial System Stability and Rescue the National Economy.

allocated IDR 695.2 trillion to the National Economic Recovery (PEN) program.⁴⁰ In the fiscal sector, the government carries out a policy of refocusing activities and reallocating the budget. For this reason, the President of the Republic of Indonesia, Joko Widodo, issued a policy in the form of Presidential Instruction Number 4 of 2020 concerning refocusing activities, reallocation of budgets, and procurement of goods and services in the context of accelerating the handling of COVID-19.⁴¹ As a follow-up to this policy, the Ministry of Finance will reallocate APBN funds amounting to IDR 62.3 trillion. The funds consist of official travel budgets, non-operational spending, handling the honor of Covid-19, social protection, and business incentives. The regional revenues and expenditures budget (APBD) will also be refocused and reallocated for these three things.⁴²

The government targets national economic recovery in the third and fourth quarters. Followed by the government's target for the national economy to grow positively in suppressing as slight contraction as possible in 2020. Meanwhile, in 2021, the national economy is targeted to experience a significant recovery.⁴³ To achieve this goal, the government made three policies increasing domestic consumption, increasing business activity, and maintaining economic stability and monetary expansion. Fiscal and monetary policyholders, also related agencies, carry out these policies simultaneously.

To increase domestic consumption, the government has allocated a budget of IDR 172.1 trillion to encourage consumption/ability of people's purchasing power. The government distributes these funds through direct cash assistance, pre-employment cards, electricity exemptions, and other assistance. The local government is trying to move the business world by providing incentives or stimulus to MSMEs and the informal sector. In addition,

⁴⁰ Dedy Sasongko, "Strategi Kebijakan Pemulihan Ekonomi Nasional (PEN)," accessed August 3, 2020, <https://www.djkn.kemenkeu.go.id/artikel/baca/13287/Strategi-Kebijakan-Pemulihan-Ekonomi-Nasional.html>.

⁴¹ Edward UP Nainggolan, "Kebijakan Fiskal Dan Moneter Mengadapi Dampak Covid-19," accessed April 1, 2020, <https://www.djkn.kemenkeu.go.id/artikel/baca/13017/Kebijakan-Fiskal-dan-Moneter-Mengadapi-Dampak-Covid-19.html>.

⁴² UP Nainggolan.

⁴³ Sasongko, "Strategi Kebijakan Pemulihan Ekonomi Nasional (PEN)."

consumption is also directed at domestic products to provide a significant multiplier effect.⁴⁴ At the same time, social protection increases people's purchasing power through the Family Hope Program (PKH), Indonesia Smart Card (KIP), staple food assistance, and the distribution of welfare rice. Meanwhile, government stakeholders are encouraged to expand work-intensive programs, including village funds.

The government is also trying to move the business world by providing incentives or stimuli to MSMEs and corporations. For MSMEs, the government provides installment delays and interest subsidies for banking loans, interest subsidies through People's Business Credit (KUR), working capital guarantees of up to IDR 10 billion, and the provision of tax incentives such as Income Tax (Article 21) borne by the government. For corporations, the government provides tax incentives, including free import income tax, reduction of income tax installments, and preliminary return of VAT, placing government funds in banks for debtor restructuring. The government provides working capital guarantees for strategic, priority, or labor-intensive corporations.⁴⁵ On the other hand, Bank Indonesia is maintaining the stability of the rupiah exchange rate, lowering interest rates, purchasing government bonds, and macroeconomic and financial system stability.⁴⁶

Government Policy Towards Debtors Affected by Covid-19

The government makes policies to protect people effects of the Covid-19 pandemic. On March 5, 2020, through a press release, the Financial Services Authority (OJK) asked banks to immediately implement the stimulus policy issued by the government to anticipate the impact of the coronavirus (Covid-19) outbreak. In this case, banks or credit institutions must play a role in transmitting stimulus policies of the government, OJK, and Bank Indonesia. The transmission should be able to provide space for the real sector to continue to run its business.

The OJK then published the policy in OJK Regulation (POJK) Number 11/OJK.3/2020. The policy applies to conventional banks,

⁴⁴ Sasongko.

⁴⁵ Sasongko.

⁴⁶ Sasongko.

Islamic commercial banks, sharia business unit banks, rural banks, and Sharia BPRs. Economic stimulus policy in POJK Number 11/POJK.03/ 2020 consists of the following:⁴⁷

- 1) relaxation of the arrangement for assessing the quality of credit assets with a ceiling of up to IDR 10,000,000,000.00 (ten billion rupiahs), based only on one pillar, namely the determination of principal and interest payments on loan disbursement to debtors in sectors affected by covid-19 (in line with providing incentives to the sector by the government);
- 2) relaxation of credit restructuring arrangements disbursed to debtors in sectors affected by the spread of the coronavirus (in line with providing incentives to the sector by the government);
- 3) relaxation of this arrangement will be valid for up to 1 year from the stipulation.

The POJK is a follow-up to the government's policy on protecting citizens who are debtors affected by Covid-19 in the banking sector. Furthermore, there are implications of the POJK for creditor institutions (banks) or leasing. In response, MSME customers tried contacting their creditor institutions to get relief per the established restructuring directions.

Not long after the emergence of POJK Number 11 of 2020, on March 30, 2020, several banks immediately socialized related to customer credit relief. They are Mandiri Bank, BNI Bank, BRI Bank, DBS Indonesia Bank, Index Bank, Panin Bank, Permata Bank, BTPN, and Ganesha Bank.⁴⁸ On March 31, 2020, many banks also participated in the restructuring program, such as Nobu Bank, Victoria Bank, Jasa Jakarta Bank, Mas Bank, Sahabat Sampoerna Bank, IBK Indonesia Bank, Capital Bank, Bukopin Bank, Mega Bank, Mayora Bank, UOB Indonesia Bank, FAMA International Bank, Mayapada International Bank, Mandiri Taspen Bank, BKE Bank, Resona Perdana Bank, BRI Agro, SBI Indonesia Bank, Artha Graha International Bank, Commonwealth Bank, HSBC, ICBC, JP Morgan, OKE Bank, MNC Bank, KEB Hana, Shinhan Indonesia Bank, Standard Chartered, Bank

⁴⁷ SP 14/DHMS/OJK/3/2020.

⁴⁸ Ni Putu Eka Wiratmini, "Bank Yang Beri Keringanan Kredit Terus Bertambah, Ini Daftarnya!," January 9, 2021, <https://finansial.bisnis.com/read/20200331/90/1220510/bank-yang-beri-keringanan-kredit-terus-bertambah-ini-daftarnya>.

of China, BNP Paribas Indonesia Bank, and Artos Bank.⁴⁹ The customer must meet the requirements to get relief or restructuring by the socialization of the banking institution.

The debtors who get relief or restructuring are directly affected by Covid-19 with a maximum credit value of IDR 10,000,000,000 (ten billion rupiahs). That way, debtors with a credit value above 10 billion rupiahs do not get relief from this policy. The government set a maximum limit of 10 billion, assuming that anyone who borrows above that amount is a financially capable debtor. Therefore, debtors unable and proven to be affected by Covid-19 are eligible for restructuring. They are debtors (entrepreneurs) who have businesses classified as vulnerable or have decreased income due to Covid-19. Therefore, debtors unable and proven to be affected by Covid 19 are eligible for restructuring. They are debtors (entrepreneurs) whose businesses are classified as vulnerable or have experienced a decrease in income due to Covid-19.⁵⁰

Requirements for debtors to get restructuring are informal workers, MSMEs, begging daily, and those who carry out coronavirus efforts and have difficulty paying installments. In addition, debtors who have no arrears or debt dependents, or if they have arrears, must not be older than 90 days until April 1, 2020. They will get relief or restructuring after the bank or finance company assesses the condition of the affected debtor.⁵¹ The forms of restructuring or credit/financing relief that banks or finance companies can provide are (1) reduction in lending rates; (2) extension/addition of the credit term; (3) deduction of principal interest; (4) reduction of interest arrears; (5) additional credit/financing facilities; (6) conversion of credit/financing into temporary capital participation; (7) other relief by the condition of the affected debtor; and (8) temporary capital participation.⁵²

Debtors who want to get a restructuring policy must submit an application letter to the office of the creditor institution to get the amount of relief obtained. Therefore, each customer will get a different

⁴⁹ Ni Putu Eka Wiratmini.

⁵⁰ Sukerta, Budiarta, and Arini, "Restrukturisasi Kredit Terhadap Debitur Akibat Wanprestasi Karena Dampak Pandemi Covid-19."

⁵¹ Interview with Ferdi, employee of BSM (now called BSI), December 14, 2020.

⁵² Law Number 10 of 1998 concerning Banking and PBI 7/2005).

amount of financing relief. Providing relief refers to the debtor's business type, cash flow conditions, and the debtor's ability to pay installments. In addition, at the time of submission, customers must also fill out a formula that proves that their business conditions are affected by Covid-19.⁵³

As long as the bank has not decided on the application for relief, the customer must still pay off the credit as usual. The relief granted by the bank is based on POJK 11/POJK.03/2020 as its legal umbrella. PJOK in the Minister of Cooperatives and MSMEs Regulation and the 2019 Presidential Decree does not carry out restructuring or relief of financing installments without a legal umbrella. Therefore, even though WHO has imposed Covid-19 as a pandemic or a global natural disaster in the health sector, creditor institutions cannot necessarily consider it an economic disaster. Disaster or phenomenon is not a legal umbrella for imposing restructuring or financing installment relief. The issuance of the Presidential Decree, Ministerial Regulation, and POJK 11/2020 is essential for creditor institutions to provide relief to customers in making installments. This regulation is a form of the welfare of the Indonesian, as stated in Article 33 of the 1945 Constitution.⁵⁴ In addition, this POJK can also be a giant leap for the government to provide financial protection to customers, especially from the MSME sector. If there is no POJK, then there is no protection. This regulation is the implementation of external law, namely legal protection, created by the government or the owner of the power through regulatory regulation.⁵⁵ As of October 5, 2020, the realization of the restructuring policy reached IDR 914.65 trillion, covering 7.53 million debtors. The details are 5.88 million debtors from the MSME business group with IDR 361.98 trillion and 1.65 million non-MSME debtors with IDR 552.69 trillion.⁵⁶

⁵³ Sukerta, Budiarta, and Arini, "Restrukturisasi Kredit Terhadap Debitur Akibat Wanprestasi Karena Dampak Pandemi Covid-19."

⁵⁴ Andreas Florenzo Ruwe, "Akibat Hukum Dan Perlindungan Hukum Bagi Debitur Yang Tidak Mampu Melakukan Pembayaran Kredit Pada Masa Pandemi Covid-19," *Al-Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* 19, no. 2 (2021), pp. 526–37.

⁵⁵ Ruwe.

⁵⁶ Ni Putu Eka Wiratmini, "Realisasi Restrukturisasi Kredit Bank Sentuh Rp914,65 Triliun," n.d., accessed January 10, 2021.

Based on the description above, the government's policy regarding legal protection for debtors affected by Covid-19 has helped debtors in dealing with economic and financial conditions. Government policies in the form of cash assistance and credit relaxation for MSME actors within a certain period are a form of implementing credit restructuring during the pandemic. This implementation has provided economic relief for most business actors with whom MSMEs dominate.

The Government's Role in Providing Legal Protection to Debtors Affected by Covid-19

In civil law, the credit agreement is drafted together with the initial agreement. Credit is also agreed upon with certain installments for a certain period. When the debtor does not pay the installments according to the agreed agreement, he has committed an act of default (the debtor cannot fulfill the achievement). The creditor may give some or even execute the collateral in these conditions. However, when there was an economic crisis during the Covid-19 pandemic, the inability of debtors to pay credit installments cannot be said to be a default. A condition beyond his reach causes the debtor's inability to pay the installments. Thus, the inability or delay of the debtor in paying installments is an overmatch (*force majeure*)⁵⁷, hardship, or difficult circumstance. Thus, under these conditions, the debtor cannot be subject to sanctions.

However, not all of these coercive or difficult conditions can make the debtor free from default. A coercive or complex situation that could relieve the debtor and expose them to an act of default must be declared and established by the competent authority. Therefore, no matter how difficult the debtor faces the conditions, he is still subject to the obligation to pay installments by the agreement he has made. If not, he committed an act of default. During the Covid-19 pandemic, many debtors could not pay installments according to the set time. However, the existence of government policies in the form of restructuring due to the Covid-19 pandemic has saved debtors who cannot pay installments according to a predetermined time.

⁵⁷ Sherlin and Sudirman, "Pandemi Covid-19 Sebagai Bentuk Overmacht Terhadap Pelaksanaan Perjanjian Kredit Di Perbankan."

Sudikno Mertokusumo refers to this as the social sharing process, which is the process of state interference with aspects of civil law. As with the concept of a welfare state, the state also needs to intervene in private or civil matters between citizens that contain a public element, such as labor, agricultural, and land issues.⁵⁸ This state interference attempts to defend the weaker parties in a legal relationship.

In banking credit traction, there are also state regulations related to interest rates. In the era of the Covid-19 outbreak, which has become difficult for affected customers, the state even intervened more by regulating banks and financial institutions to restructure the loans of debtors affected by Covid-19.

Credit is a civil law act commensurate with borrowing in *Burgerlijk Wetboek* (BW). Lending and borrowing are agreements, which are actions in which two or more people are bound to each other. The principles of the agreement include the principle of agreement, freedom of contract, good faith, *facta sunt servanda*, and the principle of personality.⁵⁹ This agreement must occur between the parties with freedom of contract, with no coercion, fraud, or negligence. However, when the parties are unbalanced, the principle of freedom of contract can make an unfair agreement;⁶⁰ for example, bank credit agreements, leasing agreements, and company work agreements. The parties are free to determine whether or not to agree, as it is free to decide on the agreement's content. However, in this legal relationship, the company has more bargaining position than the workforce. A worker, for example, has an inferior position to an employer because the workers are people who need jobs and salaries to support them. Likewise, a person who wants to apply for credit or financing at a bank or other financial institution has a weaker position than the bank or financial

⁵⁸ Muhammad Fahri Mokodompit, "Konseptual Tentang Kebebasan Berkontrak Dan Perlindungan Bagi Para Pihak Dalam Suatu Perjanjian Kredit," *Lex Privatum* 7, no. 6 (2020).

⁵⁹ Putri Alam Prabancani, Desak Gde Dwi Arini, and I. Gusti Ketut Sri Astiti, "Penyelesaian Wanprestasi Dalam Perjanjian Pinjam Meminjam Uang," *Jurnal Analogi Hukum* 1, no. 1 (2019), pp. 67–70.

⁶⁰ Ade Putri Lestari, "Kepastian Perlindungan Hukum Pada Klausula Baku Dalam Perjanjian Pinjaman Online Di Indonesia," *SUPREMASI: Jurnal Hukum* 2, no. 2 (2020), pp. 174–93.

institution. Under such conditions, the weaker party is likely to agree to the terms made by the stronger party.

Suppose the positions of the two parties making this agreement are unbalanced. In that case, the principle of freedom of contract (Article 1338, paragraph 1) becomes biased. It cannot achieve justice and a perfect agreement. Hence, the state needs to appear to make regulations or rules that benefit the parties.⁶¹ The regulation is justice by providing provisions regarding the rights of weaker and the obligations of other parties.

Regarding Covid-19, the government has made regulations to regulate the protection of weaker parties in an agreement. One of these regulations is a policy of relaxation or flexibility in paying installments aimed at affected debtors who cannot pay credit installments or financing to the bank.

The main objective of the government's policy on credit relaxation is to save non-performing loans so that there are no losses to creditors and debtors. It is also a form of legal protection made by the government for the parties bound in the agreement. This form of legal protection also falls into the category of internal and external legal protection. Internal legal protection aims to protect the needs of the parties. In contrast, external legal protection manifests through policies implemented by stakeholders in various derivative regulations.⁶²

The government's policy in the banking sector regarding credit restructuring has provided relief to debtors affected by Covid-19 in paying installments to banks or other financial institutions. This policy is the government's effort to realize public welfare and, at the same time, restore the economic sector, especially in the MSME sector.⁶³

Conclusion

This study concludes that the government has made a policy so that creditors of financial institutions, both banking and non-banking,

⁶¹ Ery Agus Priyono, "Aspek Keadilan Dalam Kontrak Bisnis Di Indonesia (Kajian Pada Perjanjian Waralaba)," *Law Reform* 14, no. 1 (2018), pp. 15–28.

⁶² Sukerta, Budiarta, and Arini, "Restrukturisasi Kredit Terhadap Debitur Akibat Wanprestasi Karena Dampak Pandemi Covid-19."

⁶³ Rais Agil Bahtiar, "Dampak Pandemi Covid-19 Terhadap Sektor Usaha Mikro, Kecil, Dan Menengah Serta Solusinya," *Info Singkat* 13, no. 10 (2021), pp. 19–24.

loosen credit for debtor customers affected by Covid-19. Financial Services Authority Regulation (POJK) Number 11/OJK.3/2020 was motivated by hardship and overmatch during the Covid-19 pandemic. With this POJK, creditors of financial institutions must restructure credit for debit affected by Covid-19. Based on this policy, the debtors who cannot pay the credit installments following the established agreement cannot be said to have defaulted. In addition, they cannot be sued or compensated for their inaccuracy in paying credit installments as mutually agreed upon by creditors and debtors. The government policy is to implement legal protection for debtors affected by Covid-19 and restore the economic level of the community, especially business actors in the MSME sector.

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