

The Covid-19 Pandemic and Developing the Legal Certainty on Bankruptcy for Health Institution in Indonesia

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Abstract

This research aims to analyze how to develop the legal certainty for health institution during the Covid-19 pandemic period. The method used in this research is the normative research method, which analyzes the related constitutional regulations and legal materials. In handling the impacts of the Covid-19 pandemic which leads to the weakening of the economy, the government has issued some economic stimuli which are not limited to direct cash aid to the impacted people, but also relaxation and restructurization programs for health institution and their business organs. The writer concludes that those things are not enough to cope with the bankruptcy which threatens the nation. Because of that, there needs to be restructurization agreements between the health institution. This is because until now, the Constitution on Bankruptcy and the Postponement of Debt Payment Obligations are the latest legislations which regulate the debtors and creditors' relation regarding their financial obligations during a financial crisis during the period of the Covid-19 pandemic to protect the health institution.

Keywords: Health institution, Workers, Bankruptcy, Covid-19.

Introduction

The 2019–2020 coronavirus pandemic or what is known as the Covid-19 pandemic is the phenomenon of the spread of a coronavirus disease, starting from 2019 to the whole world. This disease is caused by a new type of coronavirus, which is called the SARS-CoV-2.¹ The Covid-19 pandemic was initially detected in Wuhan City, Hubei Province, China, on December 2019. It is determined as a pandemic by the World Health Organization (WHO) on March 11th, 2020.² Until April 23rd, 2020, more than 2.000.000 Covid-19 cases have been reported from more than 210 countries and areas. It has caused the death of more than 195,755 people. Meanwhile, more than 781,109 were healed from this disease.³

This pandemic has caused disturbances in the socio-economic sectors in the globe. There has been postponements or annulations of sporting and cultural events, and there were widespread concerns on the limited supply of goods, which causes panic-buying.⁴ Misinformation and conspiracy theories on the virus spread online. There have also been xenophobic and racism incidents towards Chinese people, East Asian people, and Southeast Asian people.⁵

The International Labor Organization (ILO) recorded that as much as 81 percent of the 3.3 billion global labor, with the amount of around 2.67 billion workers have been impacted by the closing of the workplaces due to the Covid-19 pandemic. Meanwhile, 1.25 billion workers are threatened by work termination.⁶ ILO estimates that the coronavirus crisis on the second quartal of 2020 has decreased 6.7 percent of the global-level work hours, which is equal to 195 million full-time workers.

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Meanwhile, the sectors which are most impacted by the weakening economy due to the coronavirus include accommodation and food services, manufacturing,

retail, and also business and administrative activities. The coronavirus pandemic is the worst global crisis since the World War II.

Based on the newest study from the International Labor Organization, as much as 1.25 billion workers who are in the most impacted sectors are risked to face work termination, decreasing wage, and work hours.⁶ In Indonesia, the Covid-19 disease has “forced the government” to issue some special policies by appealing the temporary termination of activities which create crowds, such as education activities at schools, work activities in companies, activities in public spaces, and also religious activities in places of worship.⁷

The Covid-19 pandemic has forced most health institution to increase their activities. Numerous health institution experience difficulties in surviving during this pandemic. The weakening of the economy due to the coronavirus has threatened health sector activities. It will cause work termination and even threaten the health institution to go bankrupt. Then, the worsening condition. In addition, many of the health institution not yet paid by government like the social security funds or even the Covid-19 subsidies fund from the government have the potential to the health institution to experience problems regarding liquidity and insolvency.

From January 2020 to March 2020, the number of Postponement of Debt Payment Obligations cases have increased compared to that in the same period last year. the trend of Postponement of Debt Payment Obligations cases kept on increasing because the health funds cant paid by the government because beaureaucracy circles.⁸ This condition has the chance to trigger hospital or health institution to become bankrupt, which will lead to the increase of spending money but decrease income.⁹

The increase of health institution who go through the road of Postponement of Debt Payment Obligations. The slow process of the case resolution in health ministry and the long courtly process from the level of District to the ministry office pushes the health institution internal bleeding then seek credits or debt from bank or financials companies.

The increase of spending money for health services led some of them can't pay the debt. Surely the health institution seek mediation. Maybe, with the mediation

do not prefer bankruptcy. This is because when bankruptcy is offered, the debtors and the lawyers may reject the proposal by offering Postponement of Debt Payment Obligations and simultaneously proposing the prospecting administrator's Postponement of Debt Payment Obligations. If the condition of the national economy causes condition to be weak, it will then cause many health institution debtors to fail in repaying the debt. The consequence is that it may cause many disputes, including the increasing cases in the Court of Trade.

The situation of the Covid-19 pandemic must be understood by health institution and workers, as parties which are both impacted. This is because no one wanted this situation to happen. The spread of the Covid-19 limits all activities in the society, including the operational activities. The operational limitation surely impacts the income of the institution. This causes the institution to have trouble in fulfilling its obligations in giving the normative rights to the workers in health institutions. The pandemic causes more spending in hazmat (protection suit, face shield, or other including respiratory device). For the workers like doctor, nurses, midwife, the Covid-19 has a wider impact, but it also regards the life of the workers and the family.¹⁰ The Government's role is crucial in the condition of the Covid-19. The government must be able to issue some clear regulations which may protect the health institution and cut off the bureaucracy process.

To prevent more health institution from being bankrupt or health institution who take the option of being bankrupt or to temporarily terminate the operation of the health services, Shinta suggests that the government must give effective help in by relaxing the pressure of the institution's financial condition. This must be done from two directions: the first is from the aspect of the imposition of the costs, etc. The second is from the aspect of acquisition, especially in the forms or fresh capital injection and acceleration government health subsidies or health funds from government. To make sure that there are not many health institutions who experience bankruptcy, it must be guaranteed that the process would be shortcut. This is so that the financial pressure's relaxation effect of the health institution may be sensed significantly and may prevent bankruptcy.

Research Method

The research method used by the writer in this study is the normative research method. This method is used to find the suitable concrete laws and policy to be applied with the aim to solve certain legal problems.¹¹ In this research, the approaches used are the statute approach and the conceptual approach. The statute approach is carried out by analyzing all constitutions and regulations which are related to the legal issues being treated.¹²

Results and Discussion

The government has made efforts in making special policies for those impacted by Covid-19 through the Decree of the Financial Service Authority No. 11/POJK.03/2020 regarding the National Economic Stimuli. With the issuing of this decree, the giving of stimuli had been applied since March 13th, 2020 to March 21st, 2020¹³.

Problems arise from other companies which are not included in the Decree of the Financial Service Authority above. The number is still many, including those who have debt to non-financial service institutions like health institutions. They are impacted by the Covid-19, yet their condition is not protected because they are not part of the group which is protected by the Decree above. Another difficulty is that even though the institution is included as that which receives financial stimulus, the creditors (the banks and the funding institution) do not exactly give ease. The debt must still be repaid, meanwhile what is accommodated is perhaps only the period of repayment, for example from 1 year to 1,5 years.

Kartini Mulyani states that during the Postponement of Debt Payment Obligations, the debtors do not lose their power and rights over their wealth, yet they only lose their freedom in having authority over their wealth. In Postponement of Debt Payment Obligations, the Debtors and the Administrators must work together as one cannot act legitimately without the other.¹⁴

Postponement of Debt Payment Obligations or bankruptcy is the last resort in the case resolution (Ultimum Remeidium) when other efforts have failed. This means that both the creditors and the debtors must beforehand carry out some resolution efforts before going to court. In line with this, the first step of anticipation which must be carried out by the debtor is

talk about his/her difficulties to the creditors as soon as possible. Considering that this difficulty comes due to the Covid-19 national disaster, which may be categorized as a force majeure, the creditors should give a credit relaxation in the form of debt restructurization. Yet, the debtors must be able to convince the creditors regarding the possibility of that restructurization.

In the view of the government, a policy which may carried out is by extending the Stipulations of Decree of the Financial Service Authority No. 11/POJK.03/2020. This is so that the financial stimulus is given to all sector impacted by the Covid-19. So, it should give financial stimulus to all sector impacted, so that it may save as many companies as possible.

The aim is surely not to think narrowly and take the side of the debtors, yet it is for the greater good, which is so that the nation's economy may grow again after the sluggishness due to the Covid-19 pandemic. There are at least three arguments which may be developed in facing the cases in court. First, is the force majeure, which is regulated in Article 1245 in the Code of Civil Law, which states that, "Cost of loss and interests must be replaced. If, due to a force majeure or an accidental phenomenon, the debtor is unable to give or to carry out their obligations, or due to the same causes, the debtor has done a prohibited action." Based on the stipulations of Article 1245 in the Code of Civil Law above, if the party which cannot carry out their obligations can prove that it is due to a force majeure, thus the other party cannot ask for the fulfillment of that achievement. Thus, in this case, the crucial point is that the debtors must be able to prove that their inability to repay is due to the force majeure of Covid-19.

Since March 2020, the government has issued some policies to prevent the spread of the coronavirus disease. One of them is through the Governmental Decree No. 21 of 2020 regarding the Large-Scale Social Restrictions to Speed the Handling of Covid-19 (Governmental Decree 21/2020). In this governmental decree, what is meant by the the Large-Scale Social Restriction is the limitation of a society's activity in an area which is allegedly infected by the Covid-19 so that the chance for the spread of that disease is minimized.

The Regional Government may also apply the Large-Scale Social Restrictions in a particular province

or regency/city by obtaining the approval of the minister who carries out the governmental role in the health sector beforehand.

The implementation of the Large-Scale Social Restrictions in various regions makes most of the industries apply the work-from-home system to decrease the mobility and others activity. Differentially with others sector, the health sector experiences increase activity. This may cause the decrease of income and profits, and may even lead to financial loss. The financial losses faced by the health institution will surely impact the creditors, which create a bad credit in repaying debt. If this keeps on going, it is not impossible that many health institutions will go bankrupt in a short time. The bankruptcy of a institution will the pandemic because the health sector collapse.

Apart from that, another regulation which regulates and protects the workers' health and safety during the Covid-19 pandemic is the Decree of the Minister of Labor 3/2020. It regulates some efforts to prevent the spread and in handling the Covid-19 at the work environment, by:

a. Carrying out guidings and monitoring towards the application of the constitutional regulations in the aspect of occupational health and safety.

b. Spreading information to all levels of the organization and the parties related who are in the Governor's area of guiding and monitoring.

c. Collecting data and reporting every case or every alleged case of the Covid-19 at workplaces to the related institutions.

d. Ordering all heads of the health sector to carry out efforts to anticipate the spread of the Covid-19 and take preventive actions such as applying the healthy and clean behavior in life by integrating the the occupational health and safety, empowering the Guiding Committee of the occupational health and safety, and optimizing the functions of occupational health services¹⁵.

e. There may be many forms for intensive programs. One of the currently relevant ones is the production of masks, disinfectants, and other equipments needed to handle the Covid-19 pandemic. Later on, this health-intensive program for workers in health service

but not yet fully transferred because a complicated bureaucracy process¹⁶.

Conclusion

The impacts caused by this Covid 19 becomes the burden of the health institution. For example, the workers in wages in health institutions must still be paid, the increase spending for safety device for health service, Social security fund and Covid 19 Fund not yet paid by the government, etc. This causes severe legal consequences for health institution which may cause bankruptcy. The bankruptcy has big impacts to the nations. Because of that, the government needs to carry out direct treatment regarding the pandemic.

The government has had the vision of relaxation and restructurization which are only in the form of stimuli. Thus, in regulating the financial relations between the health institution, including those in the financial sector, the special civil law regulations are very significant as they give a more holistic solution and includes the resolution of all creditors owned by debtors. Because of that, according to the writer, there needs to be restructurization agreements between the parties of the health institution. The government must act and shortcut the bureaucracy process for the subsidies for health institution especially social security and Covid 19 funds including the incentives

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