

**BANKRUPTCY MORATORIUM PLAN AND SUSPENSION OF DEBT  
PAYMENT OBLIGATIONS REVIEWED FROM LEGAL PROTECTION  
OF CREDITORS**

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**ABSTRACT**

*The formulation of a bankruptcy moratorium policy and Postponement of Debt Payment Obligations (PKPU) is not an urgent matter to be enacted in the form of a Perppu because it has been regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. If this policy is enforced, then legally the legal authority for the application for filing for bankruptcy and the application for Postponement of Debt Payment Obligations (PKPU) is in the hands of the Government. And the tendency of this which initially aims to provide opportunities for debtors to be able to resolve debt problems within a certain period of time will actually lead to losses experienced by other parties, such as the banking industry. It is not only a loss, but this pattern also leads the interested parties to use this as a momentum to benefit themselves through the moral hazard mode.*

**Keywords:** *Moratorium, Bankruptcy and Suspension of Debt Payment Obligations, Creditors*

## A. BACKGROUND

Indonesian Bankruptcy Law which consists of the concept of bankruptcy and the concept of Suspension of Debt Payment Obligations (PKPU) for the first time introduced in *Staatsblad* 1905 No. 217 jo. *Staatsblad* 1906 No. 348. Furthermore, updated in Law No. 4 of 1998 and was eventually replaced position by Law No. 37 Year 2004. To do law enforcement in the field of bankruptcy, there is a procession that must be carried out by every justice seeker that is Bankruptcy process nor PKPU process. A commonly used term within the field of Bankruptcy is peace..

In the PKPU process, as well as the Bankruptcy process above, it begins with an application which is then examined in a trial that is open to the public in order to achieve the main requirements in Article 222 of Law No. 37 of 2004 which essentially states that creditors and debtors who cannot or expect will not be able to continue to pay their overdue and collectible debts, may apply for a postponement of debt repayment obligations, with a view to submitting a peace plan that includes an offer of partial or full repayment of the debt to creditors.

Empirical facts in previous research conducted by Manahan Sitompul in the era of 1998-2006 concluded that peace in the bankruptcy procession and PKPU was not optimally achieved. In other study which carried out by Yudi Kornelis and Florianus Yudhi Priyo Amboro<sup>1</sup>, it was revealed that some bankruptcy and PKPU cases end in peace, although there are others ended up

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<sup>2</sup> Yudi Kornelis and Florianus Yudhi Priyo Amboro, *Reorganization in the United States Bankruptcy Code Against Provision Delay Obligation Payment Debt ( PKPU ) In Law Bankruptcy Indonesia With Perspective Culture Law Indonesia* (Batam, 2014)

being declared bankrupt and settlement of bankrupt assets. Especially if Bankruptcy and PKPU requested based on bad faith, for example a debtor who is dishonest and runs away. There may also be creditors who cheat by proposing PKPU to get a bankruptcy title for debtors, considering that there is no legal remedy for PKPU and can be carried out quickly. But in the event that peace is achieved, it can happen and the draft or peace plan that has been drawn up by the debtor can satisfy the interests of creditors, including the debt restructuring model and the corporate restructuring model economy has never been separated from the existence of competition, both internal and external competition. This can happen if one party does not know the goals and desires desired by the other party. As a result of actions from interested parties that affect the existence of the corporation so that it will have an impact on the sustainability and stability of the condition of the corporation is known as moral hazard.

This moral hazard behavior can be used as a mode to solve debt problems, especially in the midst of the Covid-19 pandemic. Where currently business actors propose to the government to issue a moratorium on bankruptcy and Postponement of Debt Payment Obligations (PKPU). The government is currently reviewing employers' proposals related to temporarily suspending or moratorium on filing for postponement of debt payment obligations (PKPU) and bankruptcy.

Bankruptcy and insolvency originate from the inability to pay but in practice it is often the debtor's unwillingness to pay his overdue and collectible debts. If the debtor is in such a condition, then the debtor, creditor or other party specified in the laws and regulations can apply for bankruptcy to the court. PKPU itself can be submitted by the debtor or by the creditor. The provision that creditors can apply for PKPU is a new provision in the Insolvency Law. The importance of identifying this problem is so that readers can understand the Bankruptcy Moratorium Plan and PKPU in terms of the perspective of Law and Human Rights in the midst of the Covid-19 pandemic.

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 supremacy of law ( *supremacy of law* ); (2) equality before the law ( *equality before the law* ); and (3) *the constitution based on individual rights* .<sup>2</sup>

Legal protection for debtors in relation to *moral hazard behavior* can be used as a mode to resolve debt problems, especially in the midst of the Covid-19 pandemic. Currently, business actors are proposing to the government to issue a bankruptcy moratorium and Postponement of Debt Payment Obligations (PKPU).

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 is in line with the concept of balanced interest protection. with the basis of the Republic of Indonesia, namely 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 that is not arbitrary towards others.

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<sup>2</sup>Albert Venn Dicey, in Juhaya S, *Legal Theory and Its Applications* , Bandung: CV. Pustaka Setia, 2011, p.135.

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:

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 human dignity."

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 <sup>3</sup>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 good Bankruptcy Law must be based on the principle of providing balanced benefits and protection for all parties involved and interested in the bankruptcy of an individual or a company. In this regard, <sup>4</sup>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 which was later confirmed as Law Number 4 of 1998 concerning Stipulation of the Government in Lieu of Law

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<sup>3</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>4</sup>Fennieka Kristianto, *Authority to Sue Bankruptcy in Syndicated Credit Agreements* , Jakarta:Minerva Athena Pressindo Persada, 2009,p.3.

as finally the Law has been replaced by UUK and PKPU has adopted the principle of balance by mentioning it as the principle of "fair".

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 this *moral hazard* behavior, it can be used as a mode to solve debt problems, especially in the midst of the Covid-19 pandemic. Currently, business actors are proposing to the government to issue a bankruptcy moratorium and Postponement of Debt Payment Obligations (PKPU).

This shows that legal certainty and the objective of a fair implementation of the Bankruptcy Law will not be achieved.

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 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>5</sup>

## B. RESEARCH METHODS

Study this use type study law normative for get description implementation restructurisation which occur in procession Bankruptcy and PKPU. Due to its nature, data secondary, in this case the decision court related, for Becomes part which main so that answer all Research problems

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<sup>5</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.

that arise , especially regarding the Bankruptcy Moratorium Plan and PKPU are reviewed from the perspective of Law and Human Rights in the midst of the Covid-19 pandemic.

### C. DISCUSSION

The peace plan in the bankruptcy procession as well as the postponement of debt repayment obligations is a restructuring plan. This is seen in any draft or peace plan presented by the debtor, whether in the insolvency procession or the postponement of debt repayment obligations, always leading to the theory of debt restructuring. Of the restructuring practices above, Gunadi further summarized into several restructuring methods and methods that are commonly used in the business world, that is<sup>6</sup> :

- 1) *Rescheduling* is a method of extending the payback period or scheduling return to debt debtor. *Rescheduling* conducted with method change period time repayment which set in agreement debts.
- 2) *Hair Cut* is giving a cut or reduction on payment interest and/or debt. This method is carried out to prevent losses more big again if debtor can not pay the debt.
- 3) *Debt to asset swap* is the transfer of assets belonging to the debtor with the aim of to be controlled by creditors. The assets controlled are only temporary, until later bought party other and result worn for pay off debtor's debt.

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<sup>6</sup>Gunadi, *Restructurisation Company In Various Form And Taxation* , Jakarta: Salemba Four, 2001, p.21.

4) *Debt to equity swap* is carried out by converting debt into shares capital, this can be done if the creditor sees the debtor has score and prospect business the good one.

Of the various forms of debt restructuring proposed by the debtor to the the creditor, which most often is scheduling return repayment debt (*rescheduling*). This was conveyed by the Supervisory Judge at the Commercial Court on Court Country Jakarta Center, which state that *rescheduling* Becomes favorite plans of debtors in the procession in bankruptcy and suspension of obligations debt payments. The restructuring can be carried out in time that short nor long, even there is also debtor which submit the Peace plan in the form of *rescheduling* up to tens of years. Creditors in practice more like accept plan peace *rescheduling* in time short, between 5-6 years at most, considering that during that time affordable for creditor for wait. Especially for creditor which has spend all their capital to be able to do business with debtors, which finally the payment even congested.

In certain cases, there are debtors who apply for business restructuring and also debt repayment as appropriate. As in case No. 21/Pdt.Sus/PKPU/2014/PN. Niaga.Jkt.Pst which in this case the Cipaganti Karya Guna Persada Cooperative as the debtor. After many meetings between the PKPU Management Team, the Creditors and the Restructuring Team of the debtors, it was then decided that the two paths were carried out by the debtors. According to Kukuh Komandoko Hadiwidjojo,<sup>7</sup> solvency analysis is carried out by comparing the state of total assets with total liabilities. A company is said to have good conditions if the company can fulfill its obligations, short-term and long-term. In this case, an analysis of solvency is carried out to ascertain whether the assets owned by the debtor are able to support all his business activities.

The most important thing in the filing of a peace plan in the insolvency

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<sup>7</sup> Kukuh Komandoko Hadiwidjojo, "Methods and Concepts of Restructuring as Implementation of the Principles of Sustainability Efforts in Postponing Debt Payment Obligations (PKPU) to Public and Non-Public Companies," *Journal Law & Market Capital set Consultant Law Market Capital (HKHPM)* Vol.VII Ed , 2016 , p. 72.



procession and the postponement of debt payment obligations is the knowledge of the debtor and his attorney related to insolvency and the postponement of debt payment obligations. In the end, it is the debtor who is harmed, because he becomes in the position of insolvency, if in the insolvency procession, and continues the process in the settlement of the bankruptcy boedel even though the debtor still files an appeal, in the position of bankruptcy and direct insolvency, if in the procession of delaying debt payment obligations, and continues the process in the settlement of the bankruptcy boedel. Related understanding which not enough from debtor nor power the law, sometimes it also happens when the debtor or his legal representative does not know how make plan peace which good, which by futuristic can accommodate interest para creditor but in accordance with ability debtor. Because lack of understanding the, so plan peace which be delivered by debtor only see from interest unilateral debtor just, even though the consequences of rejecting the proposed peace plan are *insolvency* for procession bankruptcy, and bankrupt next with *insolvency* for procession delay obligation payment debt. misunderstanding this, especially for the debtor's attorney, often because of mastery of the material to prepare a plan peace especially from the side counting the economy. In implementation also, plan peace good in in procession bankruptcy nor delay obligation payment debt, seldom very using a team of experts, so that in submitting a peace plan it has the potential for received by para the creditor. Experience practitioner bankruptcy and delay obligation payment debt showing that debtor which no being able to draw up a peace plan properly will direct the debtor to difficulty, good treasure debtor will enter to realm *insolvency* and his treasure liquidated in procession bankruptcy or debtor declared bankrupt and *insolvency* and their assets are liquidated in the process of delaying debt repayment obligations.

Sutan Remy Sjahdeini said that because of the preparation of the peace plan that no easy, so required something team consultant expert which formed by the debtor as the party that must submit a reconciliation plan, which consists of: public accountants, legal consultants, financial and business management consultants, and company evaluator. Next each member consultant expert will

on duty in accordance with ability each. Accountant public will handle aspect finance from company debtor and para guarantor debt debtor.

Decision bankrupt which nature as well as immediately this could used by party which no certain responsibility for the absence of peace so that boedel bankrupt can still be liquidated. It means debtor though status in bankrupt, but still allowed for continue its business activities, supervised by the court through the curator. It is opened opportunity in Chapter 104 paragraph (1) Constitution No. 37 Year 2004 which state:

"Based on agreement committee creditor temporary, curator could continue the business of the debtor who is declared bankrupt despite the decision statement bankrupt the appealed or review return."

According to Deni Purba, in practice, such a team of experts could be provided by the debtor with or on the recommendation of the curator if in procession bankruptcy and management if in the process of delaying debt payment obligations. Curator nor administrator have potency for help debtor in arrange plan peace the, because curator and administrator usually has its own team of experts, especially public accountants and independent appraisers. By juridical, position curator and administrator is independent and independent, and by therefore his existence appointed by court, though by sociological potential siding to wrong one party because his existence brought by creditor or debtor in in application, good application declaration of bankruptcy or request for postponement of payment obligations debt. This sociological position has an impact on the attitude of the debtor's rejection of the presence of curators and administrators. In this case, the debtor plays a role in the potential the failure alone. Curator nor administrator which by juridical is independent, can actually help the debtor if the debtor opens himself up to describe the condition of the company. Case No. 08/PAILIT/2011/PN.Niaga.Medan is an example it is clear that the debtor rejects the existence of a curator even though it is not by frontal did. PT. Gimmil Industrial Bintan as debtor in the case actually rejects the bankruptcy mechanism to resolve problems with employees, but the Commercial Court at the District Court Medan decide different, though on finally Court great

decide that problem the should be solved in in mechanism dispute resolution connection industrial.

Cancellation peace in on is reflection failure something restructurisation debt which run by debtor. Based on study from Body coaching Law National, effort restructurisation could just end with failure, especially if : (1) existence violation obligation which specified in the Restructuring Agreement; (2) The Company does not perform in accordance with a set schedule in the Restructuring Agreement; (3) Not delivered report implementation restructurisation which result in distrust of creditors; (4) During the restructuring period, drop score assets debtor until exceed 25% from score beginning and According to the Creditor Committee, the reduction is detrimental to the interests of creditors; (5) In time restructurisation, occur loss for debtor until reduce capital company until 50% and subtraction the according to Committee Creditors harmful para creditors; (6) In time restructurisation Directors company act in bad faith in carrying out the business activities of the debtor company or in To do management its assets; (7) Existence intentional directors company for harmful one party or more the creditor.<sup>8</sup>

The legal relationship between debtors and creditors is born out of an engagement and creates mutual rights and obligations. <sup>9</sup>One party has the right to demand something from the other party, and the other party is obliged to fulfill

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<sup>8</sup>Development Agency Law National, *Analysis and Evaluation Law about Restructurisation Debt on Postponement of Debt Payment Obligations* (Jakarta: National Legal Development Agency, Ministry of Justice and Right basic Man, 2000).

<sup>9</sup>Sri Rejeki Hartono, 2008, *Bankruptcy Law*, UMM Press, Malang, p. 10

that demand, and vice versa.<sup>10</sup>In this case, if there is one party who commits an unknown act or there is an element of dishonesty in carrying out the agreement, this is said to be a moral hazard. It is not only corporate profits that are used as the goal in carrying out moral hazard, but there are personal interests that trigger losses in corporations. This loss causes a corporation to be plagued with problems such as not being able to pay off debts from several creditors or even not being able to pay the installments that have arrived on time.<sup>11</sup>This situation will later be used as a *modus operandi* by several actors in the *moral hazard mode* with the bankruptcy moratorium and Debt Payment Suspension (PKPU) policies whose authority is in the hands of the government as if the Government believes the problem of paying off debt is purely from the inability of the corporations. Precisely this problem was caused by intentional perpetrators of *moral hazard mode* who take advantage of this moment. The legal principles of Indonesian Bankruptcy Law are generally regulated in Article 1131 of the Civil Code and specific principles are contained in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.<sup>12</sup>

This bankruptcy does not only affect individuals but also companies. Companies or corporations that are declared bankrupt at this time will have a bad impact and influence, not only on the company but also globally. Bankruptcy pursuant to Article 1 point 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debts Bankruptcy is general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law.

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<sup>10</sup>David Tambunan, Besty Habeahan, August Silaen. 2018. Postponement of Debt Payment Obligations on Lease Agreements According to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, *Journal of Law PATIK*. 7(2).

<sup>11</sup>Siti Anisa h , 2008, Protection of the Interests of Creditors and Debtors in Bankruptcy Law in Indonesia, Cet I, Total Media Publishers, Yogyakarta, p. 54.

<sup>12</sup>Syamsudin Sinaga, 2012, Indonesian Bankruptcy Law, Tatanusa, Jakarta, p. 34

A creditor who estimates that the debtor is unable to continue to pay his debts that are due and collectible can request that the debtor be given a postponement of debt payment obligations, to allow the debtor to submit a reconciliation plan which includes an offer to pay part or all of the debt to his creditor. Therefore, bankruptcy institutions are one of the basic needs in business activities because the existence of bankruptcy status is one of the reasons why business people leave the market . If business people are no longer able to play in the market arena, they can leave the market. It is in such cases that the bankruptcy institution plays a role.<sup>13</sup> It is only limited to a solution space for creditors or debtors related to the PKPU mechanism to conduct discussions and negotiations. However, the knot in this problem is the *moral hazard mode*, which indicates that it is through the moral hazard mode which has easy conditions for submitting a PKPU application and a declaration of bankruptcy.

The government is reportedly planning to issue a Government Regulation in lieu of law (Perppu) to stop the filing of cases for the postponement of debt payment obligations (PKPU). This is in view of the Covid-19 pandemic which has hit many economic sectors. The purpose of this perppu is to save the business world and prevent *moral hazard* for irresponsible companies. Because the mechanism for PKPU registration and bankruptcy is too easy. So that increasing PKPU and bankruptcy cases during a pandemic like now, the Government is obliged to consider the fate of creditors with good intentions who have worked or sold their products or channeled credit to debtors but did not receive payment. Without PKPU efforts and bankruptcy, the only option for creditors is through civil lawsuits.<sup>14</sup> Those in conditions before the PKPU moratorium and bankruptcy alone can take years. If the Government considers that PKPU

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<sup>13</sup>Sudargo Gautama, 1998, *Commentary on Bankruptcy Regulations for Indonesia*, Citra Aditya Bakti, Bandung, p. 205

<sup>14</sup>Hariyanto, *Principles of Justice and Deliberation in Islamic Law and Its Implementation in Indonesian Law*, Article, Department of Sharia STAIN Purwokerto.

registration and bankruptcy so far have been too easy or can be used by rogue elements, the best option is to add conditions, procedural law and various provisions related to PKPU or bankruptcy cases called *insolvency tests*. This *insolvency test* can be a test stone for judges in examining PKPU applications or bankruptcy. The government can also work with the Supreme Court and the organization of administrators and curators to improve the oversight mechanism against elements of the bankruptcy mafia. So fix the shortcomings of the PKPU filing procedure and bankruptcy, don't eliminate the entire process. The fate of creditors with good intentions must be a concern and guarded by the government, especially since the number of creditors is far more than the debtors.<sup>15</sup>

#### **D. Conclusion**

The restructuring that occurs in the insolvency procession and the postponement of debt payment obligations is debt restructuring, although there are certain cases also including business restructuring, starting with a peace plan, both in the insolvency procession and the procession of delaying debt payment obligations. The implementation of restructuring through this peace plan uses the most rescheduling model. Although in practice there are also those who use a combination method, either rescheduling is added with a model of selling assets from partial debtors, looking for new equity, or with other models that in addition to rescheduling also convert debt into shares (debt to equity swap)..

The government's plan to review the moratorium on the suspension of debt payment obligations (PKPU) and bankruptcy has become quite an interesting discussion. This plan cannot be separated from the proposals of business actors who are experiencing a number of financial difficulties in the midst of the Covid-19 pandemic. It is also feared that the Covid-19 pandemic will be used by lenders

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<sup>15</sup> Devi Andani, Wiwin Budi Pratiwi, 2021. The Principle of Simple Evidence in Applications for Suspension of Debt Payment Obligations. *Journal of Law IUS QUIA IUSTUM* 28 (3).

to bankrupt companies. Even though the company is still able to carry out business activities. Reflecting the improving economic conditions in Indonesia, Bank Indonesia on its official website stated that the Indonesian economy in the second quarter of 2021 recorded positive growth for the first time since the outbreak of the Covid-19 pandemic at the beginning of 2020. However, the government has prepared a number of options for assistance to carry out debt restructuring, which is regulated in the Regulation of the Financial Services Authority (OJK). However, widening the aid by temporarily stopping PKPU and bankruptcy can be done. However, the moratorium cannot be applied to all of Law Number 37 of 2004 concerning bankruptcy. The formulation of the bankruptcy moratorium policy and the Suspension of Debt Payment Obligations (PKPU) is not an urgent matter to be enacted in the form of a Perppu because it has been regulated in Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. If this policy is enforced, then legally, the legal authority for the application for filing for bankruptcy and the application for Postponement of Debt Payment Obligations (PKPU) is in the hands of the Government.<sup>16</sup> And the tendency of this which initially aims to provide opportunities for debtors to be able to resolve debt problems within a certain period of time will actually lead to losses experienced by other parties, such as the banking industry. Not only losses, but this pattern also brings the interested parties to use this as a momentum to benefit themselves through the *moral hazard mode*.

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<sup>16</sup>Evi Dwi Hastri, Rusfandi. 2021. Conflict of Interest Caused by Moral Hazard in the Formulation of Bankruptcy Moratorium and PKPU Policies, *Journal of Legal Window* 8(2).

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