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Legal Protection for Investors and Business Actors who had Thorough Bankruptcy Due to Force Majeure in Micro, Small, and Medium Enterprises (MSMEs)

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ABSTRACT

This research examines the legal protection provided to investors and business actors regarding bankruptcy caused by force majeure in micro, small and medium enterprises (MSMEs). Force majeure is a condition beyond control that may lead to the inability to fulfill financial obligations. The primary objective of this research is to examine the existing legal protection mechanisms for investors and MSME businesses in handling bankruptcy situations caused by force majeure. Through a normative law approach and literature study, this research investigates the legal framework governing the responsibilities and protections for investors and MSME businesses against force majeure. The research findings are expected to provide a better comprehension of the legal measures that can be taken to protect the interests of investors and MSME businesses in handling the risk of bankruptcy due to force majeure. Although there are several regulations that provide a framework to protect investors and MSME businesses in bankruptcy situations, implementation and enforcement often causes challenges. Hence, it is significant to have more active endeavors from the government, financial institutions, and other stakeholders to strengthen legal protection for investors and MSME businesses in handling the risk of bankruptcy due to force majeure.

Keywords: Force Majeure, Investors and Business Actors, Legal Protection

INTRODUCTION

MSMEs have a significant role in the economy. It has been discussed on multiple opportunities that MSMEs are truly a pillar of the economy, especially in Indonesia. The contribution made by MSMEs will become more significant in economic development if they can continue to be developed.¹ According to the statistics provided by the Ministry of SMEs and Cooperatives, there will be 64.19 million MSMEs in Indonesia on 2023. Up to 64.19 million business units can generate 123.3 thousand workers. Moreover, micro and small enterprises have contributed IDR 318.6 trillion out of IDR 1,207 trillion in 2022 and provided jobs for 7.6 million people.

However, the rapid development of MSMEs in Indonesia has also created a significant problem, which is about capital. In fact, MSMEs have a major problem, that is capital that will be used in business development. MSMEs in Indonesia itself have great potential, especially in the long term investment. Since MSMEs start from the smallest community, the economic growth of MSMEs is extremely fast so that the profits obtained are also very fast. Many investors are finally interested in investing in the realm of MSMEs by using investment loans. In addition to the government providing credit facilities in the form of People's Business Credit (KUR) for MSME capital, MSME entrepreneurs also get their capital from MSME loan investment funds. Capital for micro, small, and medium-sized businesses that is provided or lent by third parties is referred to as MSME investment funds.² The process of seeking MSME investment funds is a way for businesses to grow. This capital also makes investors as owners of some shares so that investors benefit. There are several ways to get MSME investment funds, such as bank loan funds which are usually called People's Business Credit (KUR) and non-bank loan funds such as peer to peer lending or crowdfunding. An amount of capital is lent to MSME owners in order to make this loan investment, and they utilize the money to develop the businesses they own.

The laws and regulations provided by the government facilitate investors and MSME businesses to benefit from each other through partnership agreements. However, MSME investment with loans or partnerships such as these have a high risk for both parties. When the business becomes bankrupt and is no longer able to generate profits, investors will suffer losses and will confiscate assets owned by business actors as a substitute for capital that does not return to them depending on the contents of the investment agreement made by both parties. Although when

¹ R Juli Moertiono, "Perlindungan Hukum Terhadap Izin Usaha UMKM Pasca Lahirnya UU No. 11 Tahun 2020 Tentang Cipta Kerja," *Jurnal Ilmiah METADATA* 5, no. 1 (January 30, 2023): 169–180, <https://ejournal.steitholabulilmi.ac.id/index.php/metadata/article/view/316>.

² Ni Luh Made Mahendrawati, "PKM Pada Koperasi Simpan Pinjam Mas Sedana Merta Sempidi, Kelurahan Sempidi, Kecamatan Mengwi, Kabupaten Badung," *International Journal of Community Service Learning* 4, no. 4 (November 10, 2020), <https://ejournal.undiksha.ac.id/index.php/IJCSL/article/view/29764>.

making an agreement, the rights and obligations for the parties are clearly stated, the legal protection between investors and MSME entrepreneurs also still experiences legal uncertainty if MSMEs are bankrupt for reasons of force majeure such as natural disasters, fires and so on.

Meanwhile, bankruptcy is when a company suffers a huge loss and goes out of business. The main cause of a company's bankruptcy is the losses it experiences. Bankrupt companies can be identified by certain operational and managerial indications. Bankruptcy is defined as the general confiscation of all assets of an insolvent debtor, with a curator managing and settling these assets under the supervision of a supervisory judge as provided by Law No. 37/2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (State Gazette of Republic Indonesia of 2004 Number 131), hereinafter referred to as the Bankruptcy Law.

When COVID-19 hit the whole world around 2020 to 2021, many MSMEs, especially in Indonesia, were forced to go out of business and went bankrupt. Investors will not only suffer losses because they cannot return their capital, but the assets that should have been given to them are also not worth selling anymore. Force Majeure is defined under the Civil Code as an overmatch that causes the debtor to fail to perform its obligations to the creditor due to events beyond their control. Force majeure is a contract clause that removes liability for unpredictable and unforeseen disasters that disrupt the anticipated sequence of events and prohibit the involved party from meeting its obligations. Human acts, such as military conflict, can also be considered force majeure. In general, for an event to fall under this category it must be unexpected, beyond the parties to the contract, and unavoidable. In Indonesia, the legal basis of force majeure is set out in the Civil Code (KUHPer) Article 1244 and Article 1245.

However, these two articles have not provided clear legal certainty and legal protection for investors and MSME entrepreneurs themselves because the two parties have made an agreement and have agreed beforehand but both parties cannot fulfill their rights and obligations. The Investment Law, MSME Law and Job Creation Law have not discussed this force majeure. A circumstance known as force majeure is not urgent so that the regulation does not exist clearly and does not provide legal certainty between investors and business actors. Meanwhile, if MSMEs experience force majeure and cannot provide profits to investors, legal protection for investors and MSME entrepreneurs is still uncertain because both parties are also disadvantaged and if the investor sues the business actor for reasons of the agreement that has been made, investors and business actors also do not have clear legal protection that can be used as a legal umbrella for them to defend themselves.

In 2016, Novi Ratna Sari conducted research which revealed that there are still some obstacles in the approach of Law No. 20/2008 concerning Micro, Small, and Medium Enterprises' implementation. Government solutions in improving the

welfare of MSME actors include improving the quality of human resources, improving facilities and infrastructure, expanding marketing networks, and increasing legal awareness in the community. If MSMEs in Indonesia are well-prepared to compete both the quality of goods and services, the goal of national economic development to improve the welfare of MSME actors based on Article 33 Paragraph (1) of the 1945 Law will be achieved.³

Meanwhile, another research initiated by Elza Umami Fitri in 2020 found that basically Law No. 25/2007 on Capital Investment provides Equal treatment for domestic and foreign investors while protecting national interests, assuring legal certainty, and providing business protection for investors from the licensing procedure to the conclusion of investment operations in compliance with applicable laws and regulations. Unfortunately, the reality is different, and as a result of this uncertainty, the development of foreign investment in Riau Province has been volatile, with substantial increases and decreases. Meanwhile, the element that causes the reduction in foreign investment in Riau is the disparity in licensing, raw materials, and protection for foreign and domestic investors in Riau, leaving foreign investors feel uncertain to invest in Riau.⁴

Then, other research conducted by Joko Narwanto in 2015, which found that legal protection for investors or bankrupt issuers is still very weak. The situation can be seen when the issuers settle their finances on internal problems first. Settlement of losses on the investor side is made after the assets of the bankrupt issuer have been resolved. Protection and law enforcement against capital market irregularities are rarely implemented; instead, the Capital Market and Financial Institutions Supervisory Agency (Bapepam) applies non-penal methods to resolve these unusual circumstances, such as issuing administrative fines.⁵ Based on these backgrounds, this research attempts to evaluate and assess the duties and legal protections for business actors against investors when a Micro, Small, and Medium Enterprise (MSME) encounters bankruptcy due to force majeure.

LITERATURE REVIEW

Business Actors

The concept of a business actor is fairly comprehensive, as it covers not only manufacturers, but also distributors and their associations, as well as importers. The definition of a business actor is established in Article 1 point 3 of

³ Novi Ratna Sari, "Implementasi Perlindungan Hukum Terhadap Usaha Mikro, Kecil, Dan Menengah Berdasarkan Undang-Undang Nomor 20 Tahun 2008 Tentang Usaha Mikro, Kecil, Dan Menengah Dalam Menghadapi Masyarakat Ekonomi ASEAN" (Universitas Sebelas Maret Surakarta, 2016).

⁴ Elza Umami Fitri, "Perlindungan Hukum Terhadap Investor Asing Berdasarkan Undang-Undang Nomor 25 Tahun 2007 Tentang Penanaman Modal Atas Perolehan Bahan Baku Pada PT. Riau Perkasa Steel Di Provinsi Riau" (Universitas Islam Riau Pekanbaru, 2020).

⁵ Joko Narwanto, "Perlindungan Hukum Terhadap Investor Pada Pasar Modal Dalam Hal Emiten Dinyatakan Pailit" (Universitas Islam Indonesia Yogyakarta, 2015).

Law No. 8/1999 on Consumer Protection (State Gazette of Indonesia 1999/22), hereinafter abbreviated as the Consumer Protection Law. In this article, it is explained that business actors, or persons conducting business, are individuals or groups of people who conduct business as legal entities or without including legal entities that were established or located in Indonesia's jurisdiction and engage in specific activities there, either independently or in concert through agreements that organize business activities in a variety of economic fields. The form of business actors can be divided into two, those are as follows:

1. Individuals, which are every individual who conducts business activities individually.
2. Business entity, which is a group of individuals who jointly organize business activities. Business entities could be classified into two categories:
 - a. A legal entity is a commercial entity that has registered with a notary to acquire a deed of establishment that has been allowed by the Minister of Law and Human Rights, such as a Limited Liability Company (PT).
 - b. A non-legal entity is a business entity that registers itself at a notary with merely an authentic deed and no deed of establishment authorized by the Minister of Law and Human Rights, such as a firm.

Micro, Small and Medium Enterprises (MSMEs)

According to Rudjito, MSMEs are enterprises that play a vital role in the Indonesian economy, both in terms of providing employment and the quantity of businesses.⁶ Micro businesses are defined as productive enterprises owned by people or individual business entities meeting the micro business requirements outlined in Article 1 of the MSME Law.⁷ A small business is defined by the law as an autonomous, profitable enterprise operated by an individual or organization that does not belong to, control, or function as a branch or subsidiary of a medium-sized or large company and that satisfies the requirements for small businesses.⁸

⁶ Sam'un Jaja Raharja and Sari Usih Natari, "Pengembangan Usaha UMKM Di Masa Pandemi Melalui Optimalisasi Penggunaan Dan Pengelolaan Media Digital," *Kumawula: Jurnal Pengabdian Kepada Masyarakat* 4, no. 1 (May 5, 2021): 108, <http://jurnal.unpad.ac.id/kumawula/article/view/32361>.

⁷ Pemerintah Pusat Indonesia, *Undang-Undang (UU) Nomor 20 Tahun 2008 Tentang Usaha Mikro, Kecil, Dan Menengah* (Jakarta, 2008).

⁸ Salman Al Farisi, Muhammad Iqbal Fasa, and Suharto, "Peran UMKM (Usaha Mikro Kecil Menengah) Dalam Meningkatkan Kesejahteraan Masyarakat," *Jurnal Dinamika Ekonomi Syariah* 9, no. 1 (January 28, 2022): 73–84, <http://ejurnal.iaipd-nganjuk.ac.id/index.php/es/article/view/307>.

Bankruptcy

Bankruptcy is a significant liquidity crisis that prevents an enterprise or company from running the business properly.⁹ Toto also highlighted that bankruptcy occurs when a corporation is no further capable to meet its obligations. This particular issue does not typically appear in the company; there are early warning signs that can be identified earlier if the financial records are examined more closely in a certain method. Financial ratios might be used to indicate bankruptcy in a business.¹⁰ The inability to repay debt indicates negative performance and indicates a liquidity problem. Default means that a company is in breach of agreements with creditors and can lead to legal action. Bankruptcy is the culmination of failure in managing a business. This failure can be a failure to manage the working capital available in the company or a failure to survive in increasingly uncertain competition.

According to Bankruptcy Law Article 1 Paragraph (1), bankruptcy is a general residue of a bankrupt debtor's assets, which are managed by a Curator under the supervision of a Supervisory Judge in accordance with this law. Article 2 Paragraph (1) clarifies that if a debtor has two or more creditors and fails to pay in full at least one debt that has matured and is collectible, they can be declared bankrupt by a decision of the court, either at their own request or at the request of one or more of their creditors.

Force Majeure

Force majeure is a circumstance that arises after an agreement is reached that disables the debtor from completing the terms of the agreement. In this instance, the debtor cannot be blamed, has no obligation to assume the risk, and cannot anticipate such an event at the time the agreement is signed. Force majeure owing to unforeseen circumstances can be caused by matters beyond the debtor's control, which may serve as a ground to be relieved from the responsibility to pay compensation.¹¹

Legal Protection

Hadjon contends that legal protection for the people is both preventive and oppressive government action. Preventive legal protection attempts to prevent disagreements, which requires government intervention to be careful in making discretionary judgments, whereas repressive protection aims to settle problems, including resolving them in the judiciary.¹² Basically, legal protection does not distinguish between men and women. Indonesia as a legal state based on

⁹ Zulkarnaini, "Sukses Investasi Di Pasar Modal," *Jurnal Manajemen STEI* 1, no. 1 (2018): 104–112.

¹⁰ Prihadi Toto, *Analisis Laporan Keuangan Teori Dan Aplikasi* (PPM, 2011).

¹¹ Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah: Penemuan Dan Kaidah Hukum* (Jakarta: Prenadamedia Group, 2018).

¹² et al Philipus M Hadjon, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2019).

Pancasila should provide its citizens with legal protection since it will lead to the recognition and defense of human rights in their entirety as individual and social entities in a unitary state that respects the principle of kin in order to attain common prosperity.

RESEARCH METHODOLOGY

This is a normative legal research. Normative legal research applies literature studies that considers the law as a foundation for norms. Soetandyo Wignjoseobroto stated that normative legal research is legal research that resembles an inventory of positive law, identifying the principles and philosophical foundations (dogma or doctrine) of positive law, and the discovery of inconcretto law.¹³ The research is focused on examining the application of rules or norms in positive law, especially regarding legal protection for investors and MSME entrepreneurs when forje majeure occurs in Law No. 25/2007 on Capital Investment. The sources of legal materials in this research consist of primary legal sources and secondary legal materials.¹⁴ Primary legal sources are the main legal materials, as legal materials that are authoritative and have authority to cover legislation and all official documents that contain legal provisions. Meanwhile, secondary legal sources are sources of legal material obtained from second sources such as legal journals, other literatures besides legislation, legal research results, and other materials relevant to the research topics.

RESULT AND DISCUSSION

Legal Protection for Investors and Business Actors who had Thorough Bankruptcy Due to Force Majeure in MSMEs

Legal protection is a right owned by everyone provided by law so that they can protect it without interference from other people that harm them. Legal protection for investors who invest in MSMEs can be divided into two forms. The two forms are preventive and repressive legal protection. The purpose of preventive legal protection is to prevent violations of investor rights before they occur. Preventive investor protection is signified by provisions or norms that demand supervision, assistance, and education by the supervisory exchange authority. Repressive protection provided after a violation of investor rights is typically sanctioned. The Financial Services Authority (OJK) will provide legal defense to investors whose rights have been violated in the lawsuit that was filed. The form of legal defense is often an instruction to financial services institutions

¹³ Soetandyo Wignjoseobroto, *Hukum Konsep Dan Metode* (Malang: Setara Press, 2013).

¹⁴ Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara*, 11th ed. (Jakarta: Rajawali Pers, 2019).

to handle consumer lawsuits that have received losses and demand compensation for their losses.¹⁵

The role of OJK in Legal Protection for Investors in the event that MSMEs experience bankruptcy due to force majeure is as follows:

1. The preventive actions of OJK in protecting investors and the public in the investment sector as follows:
 - a. Conducting public socialization regarding the characteristics of managing investments and raising funds. The socialization of the program to prevent unlawful acts in the collection of public funds and investment management aims to inform and remind the public to be aware of illegal investment offers and investment management efforts made by certain parties accompanied by the high lure of unreasonable returns.
 - b. The issuance of business licenses by the authority to parties that collect public funds. Operational activities of institutions, individuals, and companies that violate the law in gathering public funds and managing investments illegally are not equipped with valid licensing documents from Bank Indonesia, Bapepam and LK, or Bappepti. Therefore, make sure that the person or company making the investment offer has a license in accordance with its designation from one of the authorized institutions, such as the Capital Market and Financial Institutions.
 - c. Optimizing the function of Integrated Financial Customer Care (IFCC). One of the consumer service facilities provided by OJK is the (IFCC) facility with a contact number (area code) 1-500-655, which utilizes the latest technology capable of providing traceable and trackable facilities. The traceable feature is a feature that can be accessed and utilized by Financial Services Business Actors (PUJK) to find out and/or take over consumer complaints to their institutions for resolution. Meanwhile, trackable is a feature that can be accessed by consumers (as complainants) to find out the status of the progress of complaints submitted to OJK. Several supervisory authorities from various countries, including Bank Negara Malaysia, who had the opportunity to visit IFCC, were interested in learning from OJK about the system.
 - d. OJK issued implementing rules for offering financial products and services. OJK issued Circular Letter of the Financial

¹⁵ Kadek Yudi Astrawan, Ni Luh Made Mahendrawati, and Putu Ayu Sriasih Wesna, "Perlindungan Hukum Bagi Investor Terhadap Pelaku Usaha Yang Melakukan Bisnis Online Secara Ilegal," *Jurnal Analogi Hukum* 4, no. 2 (2022).

Services Authority No. 12/SEOJK.07/2014 on the Submission of Information. The Circular Letter of the Financial Services Authority (SE-OJK) is an implementing regulation of the Financial Services Authority Regulation Number 1/POJK.07/2013 on August 6, 2013 on Consumer Protection in the Financial Services Sector which will be effective from August 6, 2014. This Circular Letter stipulates that offers by PUJK must use data that has been approved by consumers or people who are willing to be contacted via SMS, telephone or email.

- e. Improving people's financial literacy. Rivlin argues that in order to support economic functions, financial literacy is necessary. The potential for financial transactions to grow and eventually propel the economy will increase with the number of individuals aware of the advantages of financial services and products. This perspective is similar to Akhtar's, who argues that financial literacy has a significant impact on the economy. This is reasonable because there will be a rise in the usage of financial products and services along with the number of individuals who are aware of them, thus moving the economy faster.
2. The repressive actions of OJK in overcoming bankruptcy due to force majeure that harms investors, such following below:
 - a. Establishment of Task Force (Satgas) *Waspada Investasi* Based on the Decree of the Chairman of Bapepam-LK No. Kep-208/BL/2007, and extended by the Decree of the Chairman of Bappepam-LK No. Kep-124/BL/2012, a Task Force for Handling Allegations of Unlawful Actions in the Field of Investment Management was established. This The Task Force is the outcome of the coordination of numerous linked institutions with a total of 41 members and reports on the implementation of its duties to the Chairman of Bapepam-LK.
 - b. OJK established the Investor Protection Fund (IPF). IPF is an institution aiming to protect investor, especially in the capital market. The IPF was established to provide protection and be able to increase public confidence in the Indonesian capital market industry as a means of investment.
 - c. Financial Services Authority Regulation No. 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector. OJK released a regulation on financial services consumer protection, namely Financial Services Authority Regulation Number 1/POJK.07/2013 which will serve as a guideline for financial services institutions and the public. The public's guideline is that

this rule will serve as a benchmark since it will inform the public with the financial industry that is supervised by OJK, the varieties of complaints that the public may file, the procedures involved in filing a complaint, and the requirements.

- d. Dispute Resolution in the Financial Services Sector Transaction activities will have the potential for future disputes, so OJK regulates the obligation for financial services business actors to resolve consumer complaints. In resolving complaints by financial services institutions, agreements between consumers and financial services institutions are often not reached. If the consumer is not satisfied with the handling of the complaint, then the financial consumer can continue the dispute to the court or Alternative Dispute Resolution Institution (LAPS). The regulation on dispute resolution mechanism in the financial services sector is also an implementation of Article 29 letter c of Law No. 21/2011 on OJK, where OJK is responsible to facilitate the resolution of consumer complaints that are affected by actors in financial services institutions in line with the laws and regulations in the financial services sector. The definition of facilitating the settlement of consumer complaints needs to be interpreted broadly, that is through the policy of dispute resolution mechanisms.

The form of legal protection provided by OJK to investors is preventive and punitive because the task of OJK is implementing the regulatory and supervisory functions of the financial services sector including the capital market.¹⁶ OJK has the function of regulating, supervising, examining and investigating in order to protect the interests of each party in conducting capital market activities. OJK has an important role in providing understanding to the investor community regarding investment in the capital market, which is one of the tasks of OJK, in order that the investor community can understand all aspects of investing in the capital market and other fields such as investment in MSMEs.

Furthermore, the legal protection of MSME business actors regarding the occurrence of bankruptcy due to force majeure is adjusting to the contents of the agreement made by the business actor with the investor itself.¹⁷ Business actors as explained in Article 1 of Law No. 5/1999, are Individuals or commercial

¹⁶ Efrain Janke Zet Mangindaan, Diva Rombot, and Alsam Polontalo, "Perlindungan Hukum Bagi Investor Dalam Transaksi Jual Beli Efek Di Pasar Modal," *Lex Administratum* 10, no. 4 (2022).

¹⁷ Agus Agus, Nandan Limakrisna, and Hari Muharram, "Increasing the Business Performance of Food Processing Msmes in Cirebon by Creating Competitive Advantages through Entrepreneurship Orientation, Dynamic Capabilities, and Market Orientation," *Journal of Entrepreneurship* (December 8, 2023): 53–70, <https://journal.jfpublisher.com/index.php/joe/article/view/437>.

enterprises, both in the form of legal entities and non-legal entities founded and headquartered or operating within the jurisdiction of Indonesia, either independently or jointly through agreements, coordinating diverse economic activities.¹⁸

The rules regarding force majeure in the Civil Code are contained in Article 1244 which states that the debtor must face punishment for reimbursing costs, losses, and interest if they cannot prove that the non-performance of the obligation or the incorrect time in completing the obligation was caused by something unforeseen, which cannot be attributed to them even though there is no bad faith on behalf of them.. Furthermore, Article 1245 of the Civil Code also states that there is no reimbursement of interest and charges if due to force majeure or circumstances which happen by any chance, the debtor cannot refrain from giving or doing all that is necessary, or doing an act that is forbidden for them. These two articles provide that debtors, or participants in the MSME in this case, must reimburse investors for expenses if they are unable to provide proof that unanticipated events or a force majeure event caused the MSME's bankruptcy rather than the business actors' own negligence. However, when investors insist on claiming compensation against the business actors in compliance with the agreement made by both parties, legal protection and legal certainty for MSME business actors themselves do not exist. The rules regarding force majeure in the Civil Code are not yet strong enough to provide protection for investors and MSME businesses.

Furthermore, the Investment Law and MSME Law do not explain this force majeure rule so that both parties only rely on the contents of the agreement they made. Legal protection in business investment, it is based on an agreement that has been called valid or born when a joint agreement takes place or an agreement takes place between the two parties on the subject matter of the agreement. The agreement that is the explanation here is the understanding of the two parties between the business actor and the willing investor. If in business investment the agreement takes place then one party has agreed from the other party. The problem leads to the contents of Article 1320 of the Civil Code which explains the requirements for the validity of an agreement, namely there is agreement; capability; a certain subject matter; and halal intent. Based on one of the experts, Achmad Ichsan, explains that agreement is used from the term *verbinten* which contains an understanding that an agreement is a legal bond of wealth over a property between two or more people which gives one party the right to obtain a performance at the same time giving an obligation to the other party to perform or fulfill the performance.

¹⁸ Sopyan Hadi, Ari Rahmad Hakim B.F., and Diman Ade Mulada, "Perlindungan Hukum Usaha Mikro Kecil Dan Menengah (UMKM) Terhadap Praktik Monopoli Dilihat Dari Perspektif Hukum Persaingan Usaha," *Commerce Law* 2, no. 1 (June 27, 2022), <https://journal.unram.ac.id/index.php/commercelaw/article/view/1345>.

Regarding the legal protection of small and medium enterprises, the government issued Law No. 20/2008 on MSMEs. In order for small and medium entrepreneurs to run their businesses with confidence, they need protection and legal certainty to fulfill the welfare of the Indonesian people. Furthermore, in Government Regulation No. 7/2021, legal protection for MSMEs has been explained in Articles 48 to 51. Article 48 Paragraph (1) explains that the central government and local governments are obliged to provide legal assistance and assistance services to Micro and Small Business actors. Furthermore, Article 48 Paragraph (3) states that legal assistance and assistance services as referred to in Paragraph (1) include legal counseling, legal consultation, mediation, legal document counseling, and/or out-of-court assistance Micro and Small Businesses must fulfill the following requirements to obtain legal assistance and assistance services as referred to in Article 48: (1) submit a written application to the Central Government or Regional Government; (2) have a business registration number and submit documents relating to the case.

Preventive legal protection for MSME actors based on Law No. 6/2023 jo Law No. 20/2008 concerning MSMEs is divided into the following:

1. Prevent business actors from making agreements or partnerships that are not in compliance with the laws and regulations.
2. Partnerships between MSMEs and investors are implemented by complying with partnership principles and upholding fair business ethics.
3. Preventing business actors from making agreements that do not include clauses on force majeure that can lead to disputes between the two parties.
4. Preventing business actors from making agreements that are detrimental to one of the parties.
5. Prevent the distribution of profits received or losses incurred by the parties to the agreement from being unbalanced between one another. This should be in accordance with the profit sharing based on the agreed agreement.

Repressive legal protection for MSME actors based on the UMKM Law which consists of the following:

1. Administration Sanctions

In the MSME Law, administrative sanctions are explained. It has previously been explained that agreements made between investors and MSME actors are set forth in written agreements that at least regulate business activities, rights and obligations of each party, forms of development, time periods, and dispute resolution. Furthermore, if the investor is a legal entity, which in this case includes a large business, the Large Business is prohibited from owning and/or controlling Micro,

Small, and/or Medium Enterprises as its business partners in the implementation of partnership relationships as referred to in Article 26. Furthermore, Medium Enterprises are prohibited from owning and/or controlling Micro and/or Small Enterprises as its business partners.

If this rule is prohibited, the investor, which in this case is a large business, will be penalized. Article 39 states as follows:

“(1) Large Enterprises that violate the provisions of Article 35 Paragraph (1) shall be subject to administrative sanctions in the form of revocation of business license and/or a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah) by the competent authority. (2) Medium-sized Enterprises that violate the provisions of Article 35 Paragraph (2) shall be subject to administrative sanctions in the form of revocation of business license and/or a fine of up to IDR 5,000,000,000.00 (five billion rupiah) by the competent authority. (3) Further provisions regarding the procedures for imposing administrative sanctions as referred to in Paragraphs (1) and (2) shall be regulated by Government Regulation.”

2. Basic Penalties

The rules regarding punishment are provided in Article 40, that every person who benefits themselves or others by claiming or using the name of MSME so as to obtain facilities for obtaining funds, business premises, fields and activities, or procurement of goods and services for the government intended for MSME shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of IDR 10,000,000,000 (ten billion rupiahs).

In addition to the legal protection described above, if there is a dispute between the investor and the business actor in the event of bankruptcy of MSMEs due to force majeure where the investor demands his rights in the form of compensation from the business actor, there are two paths that can be used, which are litigation and non-litigation.

According to Article 32 of Law No. 25/2007 on Capital Investment regulates dispute resolution as follows:

- (1) If a dispute occurs in the investment sector between the Government and an investor, the parties shall first resolve the dispute through deliberation and consensus.
- (2) Where dispute settlement as referred to in Paragraph (1) is not achieved, such dispute settlement may be conducted through arbitration or alternative dispute resolution or court in accordance with the laws and regulations.
- (3) Where there is a dispute in the field of investment between the Government and a domestic investor, the parties may settle the dispute

through arbitration based on the agreement of the parties, and if the settlement of the dispute through arbitration is not agreed upon, the settlement of the dispute shall be conducted in court.

- (4) Where there is a dispute in the field of investment among the Government and a local investor, both parties may resolve the dispute by means of arbitration pursuant to the agreement between the parties, whereas if the resolution of the dispute using arbitration fails to be mutually agreed upon, the dispute shall be settled in court.

The intended dispute settlement is the settlement of investment disputes between the Government and Domestic Investors and the settlement of investment disputes between the Government and Foreign Investors, Dispute settlement between the government and foreign investors can be conducted either through deliberation, consensus or International Arbitration. Dispute settlement in the investment sector with the following:

1. Deliberation and Consensus
An agreement was achieved between the two parties to the dispute.
2. Negotiated settlement
Every industrial relations dispute that occurs must first be resolved through bipartite negotiations in a deliberative manner to reach consensus (Article 3 of Law No. 2/2004). This settlement is also called negotiation, which is an effort to resolve disputes by the parties without involving other parties with the aim of seeking mutual agreement on the basis of harmonious and creative cooperation.
3. Settlement through mediation is conducted through one or more mediators called mediators.
A mediator is an intervention into a dispute by an acceptable, impartial and neutral third party and helps the disputing parties reach a voluntary agreement on the parties' disputed issues.¹⁹ In mediation, this third party is called a mediator. The mediator is an employee of the government agency responsible for labor who qualifies as a mediator determined by the Minister of Manpower and Transmigration with a mandatory duty to provide written recommendations to the disputing parties.²⁰
4. Conciliation is a process of resolving interest disputes, layoffs, and labor union disputes within an authoritative manner through mediation by neutral parties. The conciliator is not an employee of the manpower agency, but a party who has been registered at the district/city manpower agency.

¹⁹ Lalu Husni, *Pengantar Hukum Ketenagakerjaan Edisi Revisi* (Depok: Raja Grafindo Persada, 2019).

²⁰ I Nyoman Putu Budiarta, *Kompilasi Bahan Kuliah Metode Penelitian Dan Penulisan Hukum* (Fakultas Hukum Universitas Warmadewa, 2014).

5. Arbitration

The method of dispute resolution in the field of investment through arbitration is a more practical, fast, and cheap arbitration institution. The arbitration clause is a clause in the agreement between the parties that includes an agreement to resolve disputes between them through the arbitration process. In particular, disputes between foreign investors and the Government of Indonesia are resolved through International Arbitration ICSID (International Convention on the Settlement of Dispute) or ICC (International Chamber of Commerce), in order to reach an agreement between the two parties in dispute.

CONCLUSION AND SUGGESTION

Conclusion

Legal protection to investors and business actors if MSMEs experience bankruptcy due to force majeure could be categorized into two forms, which are preventive and repressive legal protection. The purpose of preventive protection is to prevent violations of the investors rights and business actors before they occur. Investors receive preventive legal protection through regulations or legislation that demand supervision, assistance, and information from the supervisory exchange authority. Preventive actions can also be implemented such as conducting socialization and education to the public regarding the characteristics of fund-raising and investment management activities, granting business licenses by the authority to parties that collect public funds, optimizing the function of Integrated Financial Customer Care (IFCC) and increasing public financial literacy.

In addition, preventive legal protection that can be made to protect business actors and investors in the bankruptcy due to force majeure is for the government to make a regulation on force majeure in the MSME and Investment Law so that there is no norm vacuum. Repressive protection is protection provided after a violation of the rights of investors and the rights of business actors, usually of sanctions. Furthermore, repressive legal protection when investors and business actors experience disputes due to bankruptcy caused by force majeure is by filing a lawsuit in court. Settlement of disputes between business actors and investors can be through litigation or non-litigation channels such as through arbitration, conciliation, and mediation.

Suggestion

Based on previous descriptions of the problems in this research, suggestions can be provided and need to be considered by the government and further researchers, such as (1) for the government, the regulation of responsibility and legal protection for investors and business actors when MSME businesses are bankrupt due to force majeure is not perfect, especially for the type of unexpected

events such as force majeure, which is still unclear in the Investment Law. Therefore, it is important to improve and study more deeply the existing laws and regulations. In addition, it is expected that the attention of both central and regional governments for investors and MSME business actors, especially those who still have not made investment agreements; (2) for MSME Business Actors, they are required to be aware of the importance of accepting investments from investors. In addition, investment agreements between business actors and investors must be written, including provisions in an undesirable event such as force majeure to obtain legal certainty and appropriate legal protection; (3) for investors, it is expected that they can be more cautious when they want to invest capital or invest in business actors, especially MSME business actors, that when making an investment agreement, it must include unexpected events or force majeure to anticipate the third undesirable thing, the arrangements have been included in the agreement so that investors get legal certainty and legal protection.

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