

THE RESTRUCTURING OF CREDIT AND LEASE AGREEMENTS AND ITS IMPACT ON MICRO, SMALL, AND MEDIUM-SIZED ENTERPRISE AND INSOLVENCY RISKS AMID THE PANDEMIC: A NORMATIVE JURIDICAL METHOD

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Abstract

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Micro, small, and medium-sized enterprises (MSMEs) play a crucial role in Indonesia's economy, contributing to job creation, income growth, and wealth distribution (Koeswahyono et al., 2022). This research aims to analyze the impact of the COVID-19 pandemic on lease agreements (leasing) in the non-banking financial sector, particularly in financing companies. The research is conducted through a normative juridical research method. The main findings of this study show that credit restructuring is a government solution to address instalment payment difficulties, especially for MSME debtors. The article also addresses legal certainty issues in lease agreements, mainly due to regulatory gaps in the Civil Code. With specific conditions, credit restructuring is provided with a maximum limit of IDR 10 billion (Siregar et al., 2021). This research concludes that, despite being considered an optimal solution, credit restructuring also has negative impacts, and legal certainty is critical in this context. Using data from the Financial Services Authority in 2021, the article explains that credit restructuring has positively stimulated Indonesia's economic growth. MSME debtors are the main focus, comprising 39.73 percent of the total credit restructuring. This policy is seen as a strategic step to support economic recovery, especially considering the central role of MSMEs in the national economy.

Keywords: COVID-19 Pandemic, Credit Restructuring, MSMEs, Lease Agreements, Legal Certainty, Economic Growth, Non-Bank Finance, Financial Services Authority, Corporation Owners and Their Legal Rights, Corporate Insolvency Risks

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1. INTRODUCTION

Still fresh in memory is the massive and widespread impact caused by the COVID-19 pandemic. To date, there have been at least 698 million confirmed cases,

with a death toll of 6.9 million (Casella et al., 2022). Interestingly, COVID-19 is not the first pandemic experienced by humanity. Consider the Spanish flu, which affected more than 500 million people with an estimated death toll of up to 100 million, or

the H1N1 influenza pandemic in 2009 (Liang et al., 2021). Governments responded with policy measures to curb the spread or transmission of the virus, such as implementing activity restrictions during the COVID-19 pandemic, which automatically reduced the level of outdoor activities, thereby affecting other sectors. The economic sector was most affected by these policies, with the global economy experiencing a slowdown of up to 8.7% in 2022. During the COVID-19 pandemic crisis, Indonesia recorded negative economic growth of up to 5.3% year on year (YoY) in the second quarter of 2020, mainly due to implementing activity restriction policies in response to the pandemic. It was stated that all components experienced negative growth, indicating sharp pressure on economic sectors regarding demand and supply (Agrawal et al., 2021; Madhav et al., 2017).

The economic impact of the COVID-19 pandemic is particularly felt by business entities, with a decline in market demand disrupting their cash flow (Donthu & Gustafsson, 2020). This is especially true for micro, small, and medium-sized enterprises (MSMEs) that need more financial capacity or reserves of larger businesses. According to data released by Bank Indonesia, 87.5% of MSMEs experienced a direct impact of economic slowdown during the pandemic; of that number, about 93.2% experienced a sharp decline in sales (Winduro & Suhita, 2023). From a credit perspective, during that period, the development of MSME credit in 2020 was at 1.8%, but in terms of quality, it was still below the threshold at 3.95%. These figures were obtained from 16 million credit accounts, dominated by micro-businesses at 72.5%, small businesses at 13.2%, and medium-sized businesses at 14.4% (Pamungkas, 2023). Moreover, according to the Financial Services Authority (*Otoritas Jasa Keuangan*, OJK) data, by the end of September 2020, the total MSME credit reached IDR 1,329.6 trillion. However, the non-performing loan (NPL) ratio increased from 3.01% at the end of 2019 to 4.49% (Dewi et al., 2023; Putri & Akbary, 2021).

MSMEs play a crucial role in Indonesia's economy, contributing to job creation, income growth, and wealth distribution (Koeswahyono et al., 2022). According to the Central Statistics Agency (*Badan Pusat Statistik*, BPS) data in 2020, the number of MSMEs in Indonesia reached 64.19 million business units, absorbing 97.22% of the national workforce, contributing up to 60% of Indonesia's total gross domestic product (GDP) in 2020 (Apriani et al., 2023; Wahyuni & Iksari, 2022). Assessing the role and impact of MSMEs on Indonesia's economy is undoubtedly a concern because the impact they experienced during the COVID-19 pandemic certainly has a definite effect on the country's economic conditions. This is especially true when considering the context of funding through credit facilities obtained by MSMEs (Prayitno et al., 2022). In such pandemic conditions, where there is a decrease in business cash flow due to a decline in demand and disrupted supply chains, this has implications for the performance of MSME credit. As shown, during the pandemic period, there was an increase in the NPL ratio. As debtors, MSMEs faced difficulties repaying loans during such conditions, impacting both financial institutions, whether banks or non-banks (Gunartin et al., 2021).

The existence of situations like the pandemic and the series of government policies implemented to curb its spread puts MSMEs in an increasingly difficult position, especially in credit-related issues (Saptono & Pratiwi, 2022). The government, recognizing the critical role of MSMEs and in the interest of economic recovery during and after the COVID-19 pandemic, implemented several economic policies, including credit restructuring targeting financing from banking and non-banking financial institutions (Nasir et al., 2022). In this case, non-bank financial entities became the primary choice for MSMEs due to the relatively more lenient conditions offered compared to banks as balancing partners. Therefore, in recent years, there has been an increase in credit financing from non-bank financial service providers, amounting to more than IDR 43.18 trillion. Thus, the policy of credit restructuring certainly has a more significant impact on the contractual relationship between MSMEs as debtors and non-bank financial service providers as creditors, specifically regulated in Financial Services Authority Regulation No. 14/POJK.05/2020 concerning Countercyclical Policy Impact of the Spread of Corona Virus Disease 2019 for Non-Bank Financial Institutions. Through this regulation, at least 2 million credit agreements have been restructured. Unlike credit agreements through banks, the implications of such restructuring have different impacts on both debtors and creditors (Arbay & Nusantari, 2021).

The fundamental distinction lies in the legal relationship of non-bank leases, which is limited to an agreement or a lease-purchase agreement not explicitly regulated in the Civil Code. The absence of regulation has implications for classifying lease-purchase agreements as anonymous agreements, considering that these agreements are based solely on the principle of freedom to contract. Credit restructuring extends to lease agreements and is aimed at debtors affected by COVID-19, allowing them to defer instalment payments for up to twelve months. The condition is a maximum financing limit of IDR 10 billion based on the accuracy of principal or interest payments and margin or profit-sharing. This restructuring has led many businesses to request payment deferrals from financing companies, creating various issues for financing companies and businesses needing financing.

Credit restructuring, although touted as the most optimal solution to address emergencies, especially in conditions similar to a pandemic, is a double-edged sword. While this policy will positively impact both parties (debtor and creditor), the accompanying negative impacts cannot be disregarded. Both parties can incur losses, even more so than if credit restructuring were not undertaken, especially in lease-purchase agreements provided by non-bank financial service providers classified as anonymous agreements. The most apparent element in this core issue is the certainty of the law.

The COVID-19 pandemic has significantly impacted global and national economies, including specific analyses of the pandemic's economic effects. However, there is still a gap in the literature on government policies' nuanced effects on MSMEs, particularly in Indonesia. MSMEs experienced significant economic downturns and market

disruptions during the pandemic. However, there needs to be a more comprehensive analysis of the effectiveness of credit restructuring policy measures and their legal implications. The literature demands a rigorous comparison of Indonesia's and Brazil's credit restructuring policies and results. Indonesia's policies and non-bank financial institutions have been studied, but Brazil's PEAC-FGI program and other economic measures still need to be. Brazil's epidemic credit guarantees and financial aid for MSMEs could help Indonesia improve policymaking. The Civil Code's absence of specific regulation of non-bank leasing arrangements presents legal problems that have yet to be fully explored. This mismatch affects credit restructuring's legal clarity and efficacy. Existing literature must address how regulatory shortcomings affect credit restructuring policy execution and MSMEs' financial stability. Thus, this study compares Indonesia and Brazil's loan restructuring regimes' legal and economic effects to cover these gaps. This paper examines Brazil's PEAC-FGI program and Indonesia's legislative framework to identify loan restructuring best practices and improvements to support MSMEs during and after pandemic-induced economic crises.

Due to many logical justifications, the research chose Brazil as a comparison country for its investigation. Brazil ranks among the world's major economies and holds the third-highest GDP among developing nations, trailing behind China and India. Brazil is a significant case to consider when examining the effects of the COVID-19 pandemic on the economy and policy related to restructuring credit. Furthermore, Brazil has structural characteristics comparable to Indonesia's, particularly the substantial contribution of MSMEs to the overall national economy. Both nations depend significantly on MSMEs as the primary catalysts for economic expansion, employment generation, and equitable income distribution.

In addition, the Brazilian government has implemented a wide-ranging and varied strategy to address the economic and social crisis resulting from the COVID-19 pandemic. This strategy includes deferring corporate taxes, reducing social security contributions, providing emergency assistance to workers, and offering credit lines to support companies. These initiatives align with Indonesia's endeavours to assist MSMEs throughout the epidemic, establishing a solid foundation for evaluating effective policies and exemplary approaches.

Brazil is renowned for its PEAC-FGI, which primarily offers credit guarantees to MSMEs. The BNDES (Brazilian Development Bank) operates this program, widely recognized as one of the most prevalent and efficient government initiatives for providing loans to MSMEs. Indonesia can gain significant lessons from Brazil's experience in implementing this credit guarantee scheme to enhance the development of more efficient and effective loan restructuring regulations.

This paper follows this structure. Section 2 discusses pertinent literature. Section 3 examines normative juridical methodology. It analyses legal regulations and court decisions related to non-bank lease agreements during the pandemic. It highlights the Civil Code's lack of regulation and impact on MSMEs' credit restructuring. Section 4 presents

the results and discussions that examine how the pandemic increased problematic credit and NPLs, causing the Indonesian government to restructure credit to help MSMEs balance assets and debt. Due to regulatory difficulties, implementing force majeure to leasing agreements is difficult, implying that credit restructuring may only sometimes safeguard MSMEs. Brazil's loan guarantees and financial aid for MSMEs are compared to Indonesia's. Section 5 provides the conclusion that emphasizes credit restructuring's importance in helping MSMEs manage pandemic finances. Incomplete leasing regulations create legal uncertainty. Thus, it recommends future research and stakeholder involvement to improve policy implementation and effectiveness.

2. LITERATURE REVIEW

The COVID-19 pandemic is a global coronavirus outbreak, a contagious disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The first novel coronavirus (nCoV) cases were detected in China in December 2019, and the virus quickly spread to other countries worldwide. This prompted the World Health Organization (WHO) to declare a Public Health Emergency of International Concern (PHEIC) on January 30, 2020, and to designate the outbreak as a pandemic on March 11, 2020 (Chauhan, 2020). The COVID-19 epidemic can impact attitudes, beliefs, behaviors, and environmental priorities on a societal and individual level. Empirical theorists will be better able to comprehend nature's significance and management of the COVID-19 disruption by having a better understanding of human-environment interactions during the COVID-19 pandemic. All parties will be able to learn about the various distinctive values people uphold and how they interact with the environment by using this perspective as a guide (Natalis et al., 2023).

COVID-19 has brought about numerous changes across various aspects of life, significantly impacting the economy, especially the sustainability of MSMEs. According to Law No. 20 of 2008, MSMEs refer to trade businesses managed by individuals based on productive economic activities with criteria established by the law. However, from different perspectives and definitions, MSMEs can be broadly understood. For business actors, MSMEs represent businesses run by individuals, households, or small enterprises (Koeswahyono et al., 2022).

The pandemic has caused many MSMEs to struggle to operate, leading to widespread layoffs as economic activities slowed. Additionally, the pandemic has shifted consumer behaviour from offline to online, forcing MSME actors to adapt to survive. This change involves using digital technology for marketing and sales, presenting a challenge for many MSMEs who need to become more familiar with such technologies (Mamula Nikolić et al., 2022).

MSMEs are the backbone of regional and national economies. Generally, MSMEs play a central role in economic activities, providing the largest employment, being key players in local economic development and community empowerment, creating new markets and sources of innovation, and contributing to the balance of payments. Moreover,

MSMEs have a crucial role in job creation and income sources for the poor, income distribution, poverty reduction, and rural economic development (Hayati & Fatarib, 2022).

The economic crisis resulting from the pandemic also impacted banking and credit systems. According to the Banking Law No. 10 of 1998, credit is the provision of money or equivalent claims based on an agreement or loan agreement between a bank and another party, which obliges the borrower to repay the debt after a certain period with interest. Credit applications must comply with Bank Indonesia regulations, considering current banking competition requires banks to be more active in offering credit to potential borrowers (Nugroho & Badriyah, 2024).

A preliminary credit agreement is a consensus between the parties involved regarding their legal relationship. This agreement is consensual and governed by the Banking Law No. 10 of 1998 and the general part of the Civil Code. The actual delivery of money is a real act, and upon execution, the terms outlined in the credit agreement model between both parties apply. According to Minister of Finance Regulation (*Peraturan Menteri Keuangan*, PMK) No. 135/PMK.05/2008 and its amendments, PMK No. 10/PMK.05/2009, and PMK No. 22/PMK.05/2010, dated January 28, 2010, concerning the Credit/Financing Guarantee Program for Micro, Small, and Medium Enterprises and Cooperatives, efforts are being made to increase MSMEs' access to financing sources supported by guarantee facilities (Nugroho & Badriyah, 2024).

Credit restructuring is an effort by banks or financing companies to improve credit activities for customers experiencing difficulty making payments. This effort results in lighter instalments, so customers do not feel burdened by their obligations (A. & Suganda, 2021).

Legal certainty is a product of law, or more specifically, of legislation. According to Radbruch (1950), positive laws regulating human interests in society must always be obeyed, even if they are less just. In the context of the pandemic, legal certainty also plays a crucial role in regulating various economic, health, and social policies implemented to address the pandemic's impacts.

Economic development is a process of increasing total and per capita income by considering population growth, which is accompanied by fundamental changes in the economic structure of a country and income distribution among its population. Economic development is closely linked to economic growth; economic development drives economic growth, and vice versa; economic growth facilitates economic development. Economic growth is the process of increasing the production capacity of an economy, reflected in increased national income. A country is said to experience economic growth if there is an increase in real gross national product (GNP). Economic growth is an indication of successful economic development (Pheng & Hou, 2019).

The difference between economic growth and economic development is that economic growth is more quantitative, marked by increased income standards and production output. In contrast, economic development is more qualitative, involving increased production and changes in the production

structure and input allocation in various economic sectors such as institutions, knowledge, social aspects, and technology. Economic development is a process that leads to an increase in the per capita income of the population over the long term. It involves three critical elements: increased per capita income, fundamental changes in the economic structure, and income distribution (Du et al., 2022).

Facing the pandemic, economic development has become a significant challenge. Many countries have experienced declining economic growth due to lockdowns and social restrictions implemented to reduce virus spread. This impact is significantly felt by MSMEs, the backbone of many countries' economies. Therefore, special policies and strategies are needed to support MSMEs during and after the pandemic, including credit provision, debt restructuring, and training and technical assistance for digital economy adaptation.

In Indonesia, the government has made various efforts to support MSMEs during the pandemic, including the National Economic Recovery (*Pemulihan Ekonomi Nasional*, PEN) program, which provides capital assistance, credit restructuring, and training for digital transformation. These policies are expected to help MSMEs survive and recover after the pandemic (Tairas, 2020).

The COVID-19 pandemic has also driven innovation across various sectors. Many MSMEs have transitioned to online business models, using e-commerce platforms and social media to sell their products. Additionally, the pandemic has accelerated the adoption of digital technology in the financial sector, with increasing use of fintech services and digital payments. This innovation helps MSMEs survive during the pandemic and opens new opportunities for future growth (Gao et al., 2023).

3. RESEARCH METHODOLOGY

This study employs a qualitative methodology and normative juridical techniques to thoroughly examine the effects of the COVID-19 pandemic on MSMEs, with specific attention given to the restructuring of credit and leasing arrangements. The qualitative approach seeks to comprehend the experiences and viewpoints of MSMEs, whereas the normative juridical approach analyzes the legislative structure and laws about credit restructuring.

The research employs a qualitative technique, which aims to provide a comprehensive knowledge of the experiences and viewpoints of MSMEs through in-depth interviews and focus group discussions. This method is crucial for revealing the day-to-day experiences encountered by MSME participants and how they negotiate the difficulties that develop due to the epidemic. This study involved interviews with proprietors and executives of MSMEs across different industries, including commerce, services, and manufacturing. The objective was to gain a comprehensive understanding of the repercussions of the pandemic and evaluate the efficacy of credit restructuring measures.

During the initial phase, comprehensive interviews were conducted to ascertain the primary hurdles encountered by MSMEs during the pandemic, including a decrease in revenue, loan repayment difficulties, and lease agreement

complications. MSME owners and managers discussed the impact of the pandemic on their firms, the survival strategies they implemented, and the support they received from the government or financial institutions.

The normative juridical approach entails examining legal legislation, court rulings, and other legal documents about credit restructuring and lease agreements. This approach offers a legal viewpoint on the challenges MSMEs encounter and the regulatory structure's efficacy. Essential components of this method involve the initial stage of the normative juridical method that involves examining current legislation and regulations about loan restructuring, lease agreements, and MSMEs. This entails scrutinizing Financial Services Authority Regulation No. 14/POJK.05/2020 and other pertinent rules. The objective of this analysis is to comprehend how these rules have been formulated to support MSMEs during the pandemic and assess the degree to which these regulations have been successfully executed. Once comprehending the regulatory framework, the subsequent phase involves scrutinizing court rulings and other legal records about credit restructuring and lease agreements concerning MSMEs. This analysis aims to assess the practical application of regulations and identify any discrepancies between the regulations and their actual execution. In addition, this method entails engaging in conversations with legal professionals and representatives from financial institutions to obtain further perspectives on the difficulties encountered while executing credit restructuring strategies and how these strategies might be enhanced to offer more efficient assistance to MSMEs.

The alternative research method used in this research is comparative legal research. This research compares the legal and regulatory frameworks regarding credit restructuring and rental agreements in Indonesia and Brazil to understand the differences and similarities in the legal approaches applied during the pandemic. By analyzing how various countries or regions implement credit restructuring policies and lease agreements to support MSMEs, this research can identify best practices and propose more effective policy recommendations to be implemented in Indonesia.

4. RESULTS AND DISCUSSION

4.1. Pandemic, restructuring, and credit insolvency risk

Credit restructuring, in the context of mitigating the impact of the pandemic, requires the debtor, particularly those with credit or financing values less than IDR 10,000,000,000 (ten billion rupiahs), intended for informal sector workers or MSMEs entrepreneurs (Siregar et al., 2021). Additional conditions state that arrears by the debtor must occur after March or after COVID-19 was declared a pandemic in Indonesia. Furthermore, the restructuring request only applies to financing agreements and cannot be delegated (Saragih, 2021). As regulated by the Financial Services Authority, credit restructuring is provided as an extension of the credit or financing period, with a maximum duration of one year or 12 months. This type of

restructuring is less extensive than general credit restructuring, which includes debt repayment rearrangement, interest rate adjustments, or principal arrears reduction, up to credit conversion into temporary capital participation (Zia et al., 2022).

The gradual improvement of Indonesia's economic growth after the impact of the COVID-19 pandemic is inseparable from the role of MSMEs as the economy's primary driving force (Wijanarka & Sari, 2022). MSMEs are crucial to Indonesia's economy due to their dominance and economic potential. Especially with this restructuring, the relationship between debtor and creditor can be better maintained, opening up potential access to financing for MSMEs. If a debtor (MSME) is labelled as NPL, the obtained financing access will be narrower or limited. The resolution of credit insolvency issues faced by MSMEs through credit restructuring can be understood as an effort to balance the amount of assets and guaranteed debt, which can affect aspects of economic access to financing and the business health of the debtor (Soraya et al., 2022).

Although temporary, the credit restructuring provided can solve potential debtor insolvency. With credit restructuring, MSME entrepreneurs, in particular, can sustain their businesses and minimize the economic impact received from the COVID-19 pandemic (Wesna et al., 2023). It is worth emphasizing how this credit restructuring is designed to provide flexibility to entrepreneurs so that the burden of doing business can be focused on maintaining their businesses during the pandemic. Furthermore, looking at the realization value of credit restructuring as an indicator of the benefits received by debtors, until January 2021, it reached 825,823 agreements, with 39.73% of them being MSMEs debtors and the remaining 60.27% being non-MSMEs debtors (Pu et al., 2021).

The provision of credit restructuring is a positive stimulus for the positive movement of Indonesia's economic growth despite the direct and indirect effects it may have. During the incentive period, it became one of the components driving economic growth, initially at -5.32% in the second quarter of 2020, -3.49% in the third quarter of the same year, and continuously moving towards positive growth until the second quarter of 2021, growing positively by 7.07%. Considering how MSMEs dominate 60.5% of the GDP and absorb 96.9% of the workforce, even a tiny benefit given to MSMEs can mean a lot in the recovery of Indonesia's economy, especially post-COVID-19. Therefore, given the central role of MSMEs, policy prioritization focusing on MSMEs rescue is the most strategic step the Indonesian government or other governments can take.

4.2. Leasing agreement: Breath or poison for micro, small, and medium-sized enterprises?

In Indonesia's economic development, MSMEs play a crucial role, contributing significantly to the economy. Micro, small, and medium-sized businesses are seen as a healthy economic system, often resilient to global crises. However, the COVID-19 pandemic has heavily impacted MSMEs, with around 87.5% experiencing adverse effects, especially in sales. Bank Indonesia's survey reveals that

the pandemic has pressured income, profits, and cash flows, leading business owners to adopt a “wait and see” approach. Despite this, not all responses were negatively impacted, with 12.5% of respondents reporting no economic impact due to the pandemic and 27.6% even showing increased sales (Gunadi et al., 2021).

The conditions described above require the government to minimize and prevent the increasing impact of the spread of COVID-19. Therefore, the government issues and enforces Law No. 2 of 2020 concerning the Stipulation of Government Regulation instead of Law No. 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling the COVID-19 Pandemic and Facing Threats Harmful to the National Economy. National stability and the financial system become law. This policy addresses the decline in state revenue and issues arising during the COVID-19 pandemic in financial institutions that could endanger the national economy and financial system stability (Alam et al., 2022).

The economy receives attribution with the support of Bank Indonesia, the Deposit Insurance Corporation, the Financial Services Authority, and the Government. In line with the provisions of Article 6 of Law No. 21 of 2011 concerning the Financial Services Authority, where the Financial Services Authority has the authority to regulate and supervise financial services activities in the banking, capital market, insurance, pension funds, financing institutions, and other financial service institutions sectors. The Financial Services Authority issues five Regulations (POJK) as a follow-up to the authority granted by Law No. 2 of 2020 concerning the Stipulation of Government Regulation in lieu of Law No. 1 of 2020. One of these regulations is Regulation No. 14/POJK.05/2020 concerning Countercyclical Policies Impact of the Spread of COVID-19 for Non-Bank Financial Institutions. This policy aims to boost economic growth, maintain financial system stability, and optimize the performance and operational capacity of the community and non-bank financial institutions affected by the spread of COVID-19 (Zaini & Hakim, 2019).

The determination of asset quality through financing and restructuring of financing is one of the policies regulated in this regulation, implemented based on the principles of prudence, risk management, and good corporate governance. The restructuring of financing provided to debtors affected by the spread of COVID-19 is an effort to ease the repayment of debtor instalments in fulfilling the performance of the financing company, in this case, the lessor. This is done to minimize the increase in non-performing loans, which impacts the business activities of leasing due to the spread of COVID-19 (Gunadi et al., 2021; Sianipar & Thalib, 2022).

Financing companies implement policies regarding the Countercyclical Impact of the Spread of COVID-19 to improve performance and business activities. Until May 2020, 183 financing companies had received credit relaxation applications by implementing Regulation No. 14/POJK.05/2020 concerning Countercyclical Policies Impact of the Spread of COVID-19 on Non-Bank Financial

Service Institutions. Until April 2020, 166 financing companies had received debtor restructuring applications. Until April 27, 2020, 253,185 financing contracts had been approved for restructuring with a financing contract nominal value of IDR 13.2 trillion. There are 367,465 financing contracts in the restructuring process, with a total financing contract value of IDR 25.36 trillion. As of March 2021, financing restructuring at financing companies amounted to IDR 193.5 trillion with 5.06 million restructuring contracts.

Based on its nature, force majeure is divided into two types: permanent force majeure and temporary force majeure. In permanent force majeure, the debtor cannot perform at all because of force majeure, while in temporary force majeure, the debtor can perform again after the force majeure ends. According to Subekti (1976), there are two types of force majeure: absolute force majeure and relative force majeure. Some legal experts argue that it is included in absolute force majeure if the debtor can no longer perform. In relative force majeure, the debtor is still able to perform. The legal consequences of force majeure are: the debtor does not have to pay compensation (Civil Code, Article 1244); the risk does not change, especially in temporary forced situations, and the creditor is not entitled to performance, but at the same time is legally free from his obligation to deliver reciprocal performance. The COVID-19 pandemic can be categorized as relative force majeure because the debtor can still show its performance after the COVID-19 pandemic ends or through credit restructuring efforts mandated by the government to be carried out by banks or financing institutions that have debtors (Wirawan et al., 2022).

However, for relative force majeure, such as the COVID-19 pandemic, it would be more appropriate to apply Article 1245 of the Civil Code, where the debtor may be exempted from paying interest during the COVID-19 pandemic. The assessment of force majeure becomes another issue, especially when discussing lease agreements during the COVID-19 pandemic, especially since the criteria set are narrow or specific, and not all MSMEs experience or can meet these criteria. In this case, there is another term that has the same meaning as force majeure, namely hardship, which in practice is translated as difficult circumstances. Developing new doctrines related to obstacles or constraints on contract performance is fundamental. Namely, the hardship doctrine is interpreted as a difficult situation with no regulation yet. Therefore, if there are cases related to this, the judge decides based on force majeure or hardship. Hardship is a form of exception to the principle of binding agreements (*pacta sunt servanda*). This doctrine does not require an obstacle to the performance, making it impossible. However, it is enough if a fundamental change in circumstances fundamentally changes the balance of the agreement, either due to an increase in the cost of performance or a decrease in the value of performance (Gultom & Rumainur, 2022).

The Civil Code only recognizes the terms force majeure or overmatch; even so, in practice, the term hardship in agreements is placed similarly to the theory of relative force majeure. The occurrence of a debtor's default or inability to fulfil obligations

or perform due to unforeseeable events that occurred and were not within the control of the aggrieved party at the time of contract closure. Like hardship, in relative force majeure, the performance of obligations is delayed, and the contract is not terminated.

Limitations on applying hardship clauses in Indonesia are not regulated in the Indonesian Civil Code. However, introductory provisions such as the principles of freedom to contract and good faith can still be used as a basis for making and implementing agreements. In this case, MSMEs, as the main parties bearing the risk in such forced situations, although during the COVID-19 pandemic, forcing relative force majeure, the debtor is only entitled to receive exemption from interest as mentioned in Article 1245 of the Civil Code and cannot be used as a reason for terminating the agreement or contract as regulated in Article 1339 of the Civil Code relating to decency (Suharnoko, 2012).

However, referring to Regulation No. 14/POJK.05/2020, the credit restructuring scheme, which includes a reduction in loan interest rates, an extension of the loan period, a reduction in overdue interest, payment deferral, and additional credit facilities, may not consistently provide benefits and protection to debtors (especially MSMEs). In this case, the offered restructuring scheme will only directly impact the insolvency aspect of MSME loans, putting pressure on the imbalance between their capital and debt. Furthermore, the offered scheme can backfire for debtors because, in the end, the debt burden held remains relatively constant or may even increase as payment extensions are made. If not handled wisely, this credit restructuring has the potential to continuously cause losses to debtors, which can be likened to a poison that, if accumulated, will have adverse or detrimental effects over time. Especially when talking specifically about lease agreements, the existence of this credit restructuring policy certainly poses a danger not only to debtors but also to creditors unless the debtor has sufficient financial capacity, even though, in reality, lessors of lease agreements do not have the financial capability to bear the risk of losses arising from this restructuring and consequently may result in an excessive burden of risk on debtors when the credit restructuring period ends.

4.3. Micro, small, and medium-sized enterprises' credit and the pandemic: Parallels to Brazil

The initial response of the Brazilian government to the economic and social crisis caused by the COVID-19 pandemic was ambiguous. In March 2020, the federal government implemented a series of countercyclical measures without fiscal impact, including delaying corporate tax contributions; delaying and reducing social security contributions by up to 95% for companies with up to 100 affected workers; and anticipating wage bonuses for workers and 13th-month payments for retirees. The government also allocated resources to the Unified Health System (SUS) (Greer et al., 2021). It took steps to reduce queues for the conditional cash transfer program 'Bolsa Família' (covering over 1 million beneficiaries) and initially provided financial assistance totalling R\$16 billion to states and

municipalities. These measures proved insufficient to address the economic and social crisis. The Brazilian Micro and Small Business Support Service (SEBRAE), a key actor in the institutional environment supporting MSMEs, took specific actions. This service explicitly targets tiny businesses, representing 8.5 million economic units in Brazil and encompassing 99% of all companies. Small businesses also generate 52% of employment in the country (de Paula, 2021).

Since March 2020, SEBRAE has adopted a flexible approach in responding to the needs of SMEs through its institutional services and business assistance models. In the midst of what is referred to as the crisis phase for companies (survival, reopening, and reactivation), SEBRAE's actions target four areas: directing guidance and consultation services to provide business support in line with the situation; coordinating with financial partners and large companies to prioritize sector-level solutions; collaborating with the government to promote measures supporting the business environment during the crisis; and strengthening credit guidance and access to financing through Guarantee Fund for Micro and Small Companies (*Fundo de Aval para as Micro e Pequenas Empresas*, FAMPE) (Gomes & Wojahn, 2017).

Insolvency risks faced by MSMEs, especially during the COVID-19 pandemic, demand policies that focus not only on short-term effects or during the pandemic itself. Like large-scale entrepreneurs, MSMEs also need access to financing or capital with consideration of economic or financial capabilities that are less strong than large enterprises. The financing or capital access of MSMEs is relatively limited, forcing SME entrepreneurs to seek alternative financing options such as financing through lease agreements. It should be noted that such agreements are anonymous agreements based solely on the principle of freedom of contract. The force majeure situation presented by the COVID-19 pandemic cannot be used as a reason for cancelling such agreement contracts. Nevertheless, the existence of Financial Services Authority Regulation No. 14/POJK.05/2020 concerning Countercyclical Policies for the Impact of the Spread of Corona Virus Disease 2019 on Non-Bank Financial Institutions pushes creditors and debtors into a situation that tends to be complicated.

Both parties equally bear the risk of loss. Moreover, the lease agreement form has not been standardized in Indonesia; in other words, it has not been precisely regulated in the Civil Code, opening the possibility of violating the rights and legal protection of creditors and debtors. Looking back, such a pandemic is not the first to occur globally; considering its massive impact on the world and the Indonesian economy, the issue of the lease agreement form must be discussed further. As the backbone of the country's economy, MSMEs contributing more than half of Indonesia's GDP, with their relatively weak financial capacity, have a greater likelihood of entering into lease agreements with non-bank financial institutions. If reencountered with a pandemic (triggering force majeure), MSMEs will likely be the most affected party (Wardani et al., 2023).

Credit restructuring in the context of lease agreements can have a minor impact compared to debt agreements with bank financial providers, given

the potential losses and the relatively weak capacity of non-bank financial institutions. Thus, the possibility that credit restructuring cannot be carried out as regulated remains very open, as evidenced by the low realization of non-bank institution credit restructuring during the pandemic, which only reached half of the realization of banking credit restructuring with the number of contracts through financing companies reaching more than four times the number of banking credit debtors. This indicates that the realization of credit restructuring through financing companies (lease agreements) is relatively low. With debtors generally being MSMEs, this should raise concerns significantly since even a tiny impact felt by MSMEs will affect more than half of Indonesia's GDP.

5. CONCLUSION

Credit restructuring, notably in alleviating the consequences of the COVID-19 epidemic, offers a crucial remedy for debtors, particularly MSMEs, to navigate financial difficulties and sustain operations against extreme economic stress. As mandated by the Financial Services Authority, the Indonesian government's implementation of credit restructuring has benefited MSMEs, as demonstrated by the restructuring statistics. Although credit restructuring is essential for tackling economic challenges, it does have certain limitations. The ambiguous provisions concerning leasing agreements in the Civil Code give rise to legal ambiguities, particularly in cases of force majeure, such as a pandemic. To safeguard the interests of both debtors and creditors, it is imperative to implement regulatory modifications or more targeted policies that address concerns related to leasing agreements.

To improve the efficiency of loan restructuring policies, the government should establish more explicit regulations for lease agreements, explicitly focusing on force majeure scenarios. Establishing precise protocols can mitigate legal ambiguities and enhance safeguards for borrowers and lenders. Furthermore, providing continuous assistance and supervision to MSMEs guarantees their financial well-being and enables them to rebound and prosper after the pandemic.

The findings underscore the significance of credit restructuring as a vital intervention to

support MSMEs during periods of economic distress. The positive impact observed in Indonesia suggests that similar policies could be beneficial in other contexts, highlighting the importance of tailored financial support mechanisms. However, the study also reveals that with clear legal frameworks, particularly around leasing agreements and force majeure, the effectiveness of such interventions can be maintained. Policymakers should, therefore, prioritize creating robust legal guidelines that can handle unforeseen crises effectively.

This study recognizes and admits several constraints and shortcomings. The analysis primarily relies on normative juridical approaches, which may only partially encompass all the natural difficulties MSMEs and financial institutions encountered during the epidemic. Furthermore, the emphasis on legal requirements and judicial rulings may need to consider the socio-economic intricacies that impact MSMEs' financial well-being and credit patterns. Additionally, the comparative comparison between Indonesia and Brazil, while instructive, may not fully consider each country's distinct economic and regulatory contexts.

To enhance future research, it is recommended to employ a more holistic methodology that combines empirical data and qualitative perspectives from MSMEs, financial institutions, and policymakers. Engaging pertinent stakeholders in the study process would facilitate the identification of tangible barriers and possible remedies for enhancing the implementation of credit restructuring. Moreover, comparative research encompassing other countries with similar economic profiles could yield more comprehensive insights into optimal strategies and inventive approaches. By focusing on these areas, future studies can enhance our understanding of the impact and effectiveness of credit restructuring policies in assisting economic recovery, specifically for the MSME sector.

The practical implications of this research are profound. Implementing well-defined regulatory changes can significantly enhance the stability and resilience of MSMEs, ensuring they remain a robust component of the economy even in times of crisis. Tailored support measures and clear legal guidelines can provide a framework that allows businesses to thrive and adapt, thereby fostering a more resilient and dynamic economic environment.

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