

# CHAPTER I

## INTRODUCTION

### 1.1 Background

Business is the activity of making one's living or making money by producing or buying and selling products such as goods and services.<sup>1</sup> It is any activity or enterprise entered into for profit. It does not mean it is a company, a corporation, partnership, or have any such formal organization, but it can range from a street peddler to General Motors.<sup>2</sup> Whether in shape of small or have a very big scope, business will always be related with the business actors. Indonesian Trade Law define Business Actors as individual Indonesian citizens or business entities that form a legal entity or not a legal entity established and domiciled in the jurisdiction of the Unitary State of the Republic of Indonesia conducting business activities in the field of Trade.<sup>3</sup>

Business entity in any form will have the process of establishment or introduction when the product is launched, sales grow slowly as people are not aware of the product and due to that, informative advertising is in need. The second process is growth, where the sales starts to grow rapidly, persuasive advertising could be used and prices may be reduced as new competitors enter the market and the profits start coming in this phase. The third process is maturity where the sales

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<sup>1</sup> Longman, *Longman Business English Dictionary*, (London: Pearson ESL, 2000)

<sup>2</sup> William Burton, *Burton's Legal Thesaurus*, 4<sup>th</sup> Edition, (New York: Mc-Graw Hill Professional, 2007)

<sup>3</sup> Article 1(14) of Law no.7 of 2014 on Trade

increase slowly, intense competition in market arises, competitive promotion and budgeting are getting important such as advertising expenditure to sustain growth and the profits may soon start to fail as the product enters the saturation stage. And lastly the decline phase where sales will fall, product loses its appeal, stiff competition in the market and advertising is reduced since it getting costly and will be sacrificed for the business' economic system to flow and the production may be stopped in the future.<sup>4</sup>

In any part of its life cycle, business will always have a point of focus in capital and funding to do their business activities. Business entity will check whether the capital and funds are enough to conduct several company actions that leads toward its goals. Capital funding could be done by several ways, but one of the most popular ways is funding through debts or loans.

Business entities that use funding through debt will provide 3 important impacts, namely first, by raising capital through debt, shareholders can control the company with a limited amount of equity investment. Second, creditors see equity or funds given by the owner as a safety limit. So, the higher the proportion of total capital provided by shareholders, the smaller the risks faced by creditors. Third, if the results obtained from the company's assets are higher than the interest rates paid, the use of debt will increase.<sup>5</sup>

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<sup>4</sup> Lindananty, "Sumber Modal Pada Setiap Siklus Hidup Perusahaan", <<http://blog.stie-mce.ac.id/lindananty/2011/07/11/sumber-modal-pada-setiap-siklus-hidup-perusahaan/>>, accessed on 10 July 2019

<sup>5</sup> Eugene F. Brigham and Michael Erhardt. *Financial Management: Theory & Practice*, (Mason: Chengage Learning, 2007) pg. 378

The risk of debt management in a business entity is really important as if the business entity fails to pay the debt, then the company might undergo with proceedings from the creditor to claim for the debt. One of the legal procedures that could be faced by the business entities that cannot pay for their obligation is through bankruptcy law proceeding. Although bankruptcy law has a clear regulation on how a business entity could be liable in the scope of bankruptcy law, business actors are really afraid of getting into the scope of bankruptcy law. One of the reasons why the business actors are scared of bankruptcy law is because of the additional financial burden, bankrupt companies will bear very high legal and accounting burdens and force them to liquidate their assets immediately. Problems related to bankruptcy are likely to rise along with the miscalculation of debt management that a company has in its capital structure.<sup>6</sup> Business entity that use debts to fund their capital therefore needs to calculate and form their capital structure in order to save them from suffering of debts that could brought them to bankrupt. Common people also scared by the name of bankrupt or “*pailit*” in Indonesia, as the term culturally acknowledged to have a relation to criminal acts that make a business entity needed to be declared bankrupt. Bankruptcy is not a mean to relegate business actor’s level as a social human being, but when he tried to get credit, the burden of his status as a declared-bankrupt man will be felt.<sup>7</sup>

Law always left one step behind the problem occurred. Bankruptcy law existed due to the rapid increase of trade and economic activities that carries tons

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<sup>6</sup> Eugene F. Brigham and Michael Erhardt. *Financial Management: Theory & Practice*, (Mason: Chengage Learning, 2007) pg. 379

<sup>7</sup> Kartono. *Kepailitan dan Pengunduran Pembayaran*, (Jakarta: Pradnya Paramita, 1982) pg.42

of debts obligation problems. During the monetary crisis in Indonesia back in 1997 to 1998, the monetary fluctuation brought negative impact for the national economy, back in 1990s, 1 Dollars equal to 2,000 IDR and repeatedly increased to 4,000 IDR by the early of 1998 and to the peak of 16,650 by June 1998.<sup>8</sup> The effect for the debtors were horrible where their debts got multiplied by times, unabling the debtors to restructure and continue the business. Even though Indonesia did have a Bankruptcy law under the name of *FaillissementsVervordening*, but the law was established in 1905, which is almost a century years old when the monetary crisis happened and the law must be revoked due to the adjustment of the current situation back in that time. A proceeding that is fast, open and effective were needed at that time to create a fair debt settlement for both creditors and debtors. This is why the Government Regulation in Lieu of Law number 1 of 1998 which later ratified as the law number 4 of 1998 on Bankruptcy existed. In 2004, the Bankruptcy law got amended into a newer law, which is Law number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligation (PKPU). The new law has a broader scope as a response to the development of bankruptcy procedures in Indonesia and specifically improving the law by determining clear definition of debt and payable.<sup>9</sup>

Bankruptcy law does not automatically apply for any company under debt, but there is a set of conditions regulated by the law on when a company could be

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<sup>8</sup> Eduardo Simorangkir, "Dollar AS Sekarang Rp 14.825, Waktu Krismon 1998 Berapa?", <<https://finance.detik.com/bursa-dan-valas/d-4195716/dolar-as-sekarang-rp-14825-waktu-krismon-1998-berapa/>>, accessed on 12 September 2019

<sup>9</sup> Bayu Wicaksono, "Sejarah Hukum Kepailitan Indonesia: Warisan Kolonial dan Krismon", <<http://abpadvocates.com/sejarah-hukum-kepailitan-indonesia/>>, accessed on 12 September 2019

liable before the bankruptcy law, and the law will only be applied to a company after a lawsuit against it, bankruptcy law existed to help the proceedings of debt collection settlement therefore the law only applies when the parties in dispute are having a trouble in the debt collection settlement and file a lawsuit through the court. Bankruptcy lawsuit according to the bankruptcy law in Indonesia could be conducted if the debtor has 2 or more creditors and have a debt that is due and payable.<sup>10</sup>

In collecting debts that reached the due date and the debtor tries to escape from his obligation, creditor can go through civil court proceeding for breach of contract. Sadly, many debtor will try to extend the time of the debt collection in any ways possible. This seems like the debtor is not respecting the contract made by both parties. Because of these circumstances happen all over the place, many of the creditors use the bankruptcy law proceedings, as business actors tend to think that saving their business entity and the business itself is the highest priority, then they will think on settling their debt obligation rather than to face the judgement that their business entities declared as bankrupt and cannot continue their business as mentioned above.

In facing bankruptcy case, there is a proceeding named suspension of debt payment obligation, which later be referred as suspension of payment, where debtors that face bankruptcy petition could ask for the extension period of time for them to pay the debts back to the creditors. This proceeding existed to help the

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<sup>10</sup> Article 2(1) of Law no.37 of 2004 on Bankruptcy, hereinafter referred to as Bankruptcy Law

businesses who face the possibility of bankruptcy to have the time to restructure the business and to pay for the obligation that should have been paid to the creditors. In 2018, there are 411 cases submitted to the commercial court in Indonesia. 297 of them are suspension of payment lawsuit and 194 lawsuits are bankruptcy petition.<sup>11</sup> The figure increased from 2017 which had 353 cases submitted to the commercial court, which is actually a good thing that more business actors started to believe in court proceedings to enforce their rights. Surprisingly according to the Head of Indonesian Curators and Management Association (AKPI), many of the suspension of payment lawsuit that usually filed in order to restructure the business of debtors, were filed by the creditors. This tendency of creditors could be the sign of the realization of business actors that the procedures in bankruptcy and suspension of payment law is more effective than going through the civil court proceeding. Even more, the proceeding that are currently a trend for creditors to claim for the debts from the debtors is through the commercial court by filing suspension of payment. Logically, it is normal for a business actor to go through the suspension of payment proceeding as the procedures are faster, simpler, and certain.

Suspension of payment is a procedure given by the law for the debtors who have difficulties in paying the debt that reached the due date. This procedure is basically intended to help the debtors to restructure the business so the debt that reached the due date could be paid. By extending the due date, the court guarantees the protection of the debtor during that period, not to be forced to pay the debts.

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<sup>11</sup> Angga Septiadi, "Sepanjang 2018, Jumlah Perkara Kepailitan Melonjak", <<https://nasional.kontan.co.id/news/sepanjang-2018-jumlah-perkara-kepailitan-melonjak?page=1>>, accessed on 15 July 2019

This means that the debtors could save their businesses from getting liquidized from the creditors that asked for their rights to be fulfilled, again, not to escape from the obligation but received an extension of time to pay for the obligation. The suspension of payment is a procedure based on consent, where the creditors that have right to claim for the debt payment must be included in the meeting to decide whether the reconciliation in suspension of payment should be granted or no, if the creditors disagree to give an opportunity for the debtor to restructure then the debtor will be declared as bankrupt by the court and all of the company's assets will be liquidized to fulfil the rights of the creditors. If the creditors agree to give time for the debtor to restructure the company then it is clear that the debtor needs to follow the procedure, however the problem for the debtor is if the creditors disagree then the debtor is ruled bankrupt, the company will suffer many expenses as mentioned before.

One of the main problems that occurred in suspension of payment procedure is the intention. The suspension of payment has a goal to avoid bankruptcy of the debtor in the interest of the debtor and even the creditors to reach the agreement of the debt settlement. The suspension shall be conducted both in the interest of the debtor and the creditors, that is the reason why the procedure is based on consent, which is agreed by the parties involved. When the debtor is currently having a problem with debts, either party should have the intention to file a suspension of payment lawsuit if in fact the debtor still have the potential to pay for the debt, the procedure is quick in order to ensure the status of the debtor in the given period of time, debtors cannot be forced to pay for the debts, all the act for the execution of



the claiming of the debt must be postponed.<sup>12</sup> This is why the filing of the suspension of payment shall be conducted in good faith by the two parties to enforce their rights and obligations correctly.

However, the suspension of payment procedure could be used in each party's own interest. Debtor in facing debts and realizing that they are liable before the bankruptcy law even though they have the obligation to pay for the debts, could surrender and do not even try to restructure and pay the debts. Some of them tried to save the business although they are not possible to do so, but just to lengthen the period of time for the company to actually pay for the debts. These kinds of possibilities make the creditors aware on trying to give the chance for the debtor to restructure. In the other side, the creditors use the suspension of payment procedure to liquidize the debtor assets since the proceeding is faster than filing a bankruptcy petition. Suspension of Payment proceeding must be decided by the judge in 20 days at the maximum, and if the creditors vote for denial of the suspension of payment proposal from the debtors, then the court must decide that the debtors are bankrupt<sup>13</sup>, and also regarding the court decision of the suspension of payment, no legal effort can be submitted against it.<sup>14</sup> The pure intention of creditors to help the debtor restructure is polluted by the numbers of bad creditors that wanted the debtor to quickly be liquidized.

This issue took my interest to be researched because of my dream that wanted to see legal proceedings in business conducted in good manner, effectively

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<sup>12</sup> Article 242(1) of Bankruptcy Law

<sup>13</sup> Article 225(3) of Bankruptcy Law

<sup>14</sup> Article 235(1) of Bankruptcy Law



and specifically in good faith by all the parties involved. I personally think that so many bad things whether in law or business could be avoided if the parties involved just start to believe and respect the other parties that are related into each other. Suspension of payment procedure were meant to help for the debtor from bankruptcy due to its simple requirement system in Indonesia and administration requirement to provide a legal procedure to help the debtor to restructure from his miscalculation of debt management in order to settle the debt obligation. That is the reason to make this research paper, which is to avoid the possibility of creditors who tend to think about how they could claim for their rights faster using a procedure that supposedly were not meant to be used for that purpose.

This issue also raised questions on the law implementation. Is this misconduct of the creditors considered lawful? If the philosophy of the suspension of payment is fairness in accordance with Pancasila and the 1945 Constitution, why the implementation does not seems so fair? These questions are the real foundation on this research paper title “THE IMPLEMENTATION OF FILING SUSPENSION OF PAYMENT BY CREDITOR IN ACCORDANCE WITH BANKRUPTCY LAW”

## **1.2 Formulation of Issues**

The core of the issues that would be formulated in this research are:

1.2.1 How the law regulates on Suspension of Payment submission by the creditor?

1.2.2 How is the implementation of Suspension of Payment submission by the creditor in commercial court case number 107/Pdt.Sus-PKPU/2019/PN.Niaga.Jkt.Pst.?

### **1.3 Research Purpose**

The purposes of writing this research paper are:

#### **1.3.1 Process of misconduct**

To search, found and also to analyse how the suspension of payment misconduct by the creditors as a force to speed up liquidation of the debtor is conducted and to prevent it.

#### **1.3.2 Certainty in execution**

To search, found and also to analyse the possible means to ensure the main goal of suspension of payment which is to help debtor to fulfil the obligation and not to face bankruptcy, to be executed practically.

### **1.4 Research Benefits**

#### **1.4.1 Theoretical benefits**

This research is expected to give a new perspective for another student who tried to expand the knowledge on the scope of bankruptcy law especially for suspension of payment both the principles and the procedures, and hopefully to give lawmakers and legislative bodies the current possible misuse of the suspension of payment procedure.

#### 1.4.2 Practical benefits

1. As a basic information for official entity or legal practitioner related to take the right actions or even fix the issues regarding suspension of payment procedures.
2. As a reference and optional opinion to be included in the next researches by the others in the relation to bankruptcy law scope especially for suspension of payment.

### 1.5 Framework of Writing

These are the basic framework that will be used for this research paper:

#### 1. Chapter 1:

In this chapter, the writing will be focused on why the author choose to have this matter as the research topic, mentioning some backgrounds that are real events that happened through the time before this research topic is going to be formed.

Author continue to explain about the specific problem that will be researched and also a problem that needs the problem-solving method and defines the ultimate goal on why this research paper is necessary to be made, not because of mere curiosity but because of the necessity of the problem solving in this issue and also, the hope that is embeds in the research paper by the author for the reader of this research paper.

#### 2. Chapter 2: Literature review

Author will focus on Basic Theories regarding the issue discussed in this research paper from the broad sense, narrowing to the specific issue that is being focused on, the form of the violation or the issue, and moving on to Conceptional Theories where the author will focus on legal basis for the issue broad up to this research paper.

### 3. Chapter 3: Research Method

Author will discuss on what research method will be used for this research paper. This chapter will consist of type of research, type of data, research analysing technique and research approach.

### 4. Chapter 4: Research Result and Analysis

In this chapter, author will discuss on how the law existed to protect the debtor on their certainty of the suspension of payment but in the reality, the law is being used as a force to make debtors to be ruled bankrupt quicker.

### 5. Chapter 5: Conclusion and Suggestion

This final chapter is where the author makes the conclusion from all the discussion compiled and compared with the research data and analysis done in the other chapters before, and also the suggestion that are submitted by author after doing the full analysis of the data comprehensively.