

**PERLINDUNGAN HUKUM BAGI UMKM YANG MENGALAMI PAILIT
BERDASARKAN PASAL 170 AYAT (3) UU NO. 37 TAHUN 2004
TENTANG KEPAILITAN DAN PENUNDAAN KEWAJIBAN
PEMBAYARAN UTANG**

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ABSTRAK

Usaha Mikro, Kecil, dan Menengah (UMKM) merupakan pilar utama perekonomian Indonesia. Namun, regulasi kepailitan saat ini melalui UU No. 37 Tahun 2004 masih menerapkan pendekatan kaku “*one size fits all*” yang menyamaratakan pelaku usaha kecil dengan korporasi besar. Penelitian ini bertujuan untuk menganalisis mekanisme pemenuhan kewajiban debitor UMKM pasca pembatalan perdamaian berdasarkan Pasal 170 ayat (3) UU Kepailitan dan PKPU, serta merumuskan bentuk perlindungan hukum yang ideal bagi UMKM yang mengalami kepailitan, termasuk kaitannya dengan eksistensi Perseroan Perorangan. Hasil penelitian menunjukkan bahwa mekanisme pemenuhan kewajiban dalam Pasal 170 ayat (3) UU Kepailitan dan PKPU bersifat sangat kaku dan formalistik karena mengharuskan debitor UMKM seketika melunasi seluruh utang semula tanpa adanya masa transisi (*grace period*). Hal ini berakibat pada eksekusi dan likuidasi instan terhadap aset produktif UMKM oleh kurator. Bagi Perseroan Perorangan, keterbatasan literasi manajerial sering kali memicu pencampuran harta yang berujung pada mudahnya penerapan doktrin *piercing the corporate veil*, sehingga mengancam aset pribadi pemilik. Bentuk perlindungan hukum yang dibutuhkan meliputi penerapan asas kelangsungan usaha (*going concern*) sebagai perlindungan preventif melalui uji kelayakan ekonomi, pembatasan biaya imbalan jasa kurator, adopsi skema pengampunan utang parsial (*debt forgiveness*), serta urgensi pembentukan rezim kepailitan khusus atau program insolvensi sederhana (*simplified insolvency programme*) sebagaimana yang telah diterapkan di Singapura.

Kata Kunci: Perlindungan Hukum, UMKM, Kepailitan, Pembatalan Perdamaian, *Going Concern*.

***LEGAL PROTECTION FOR MSMEs EXPERIENCING BANKRUPTCY
BASED ON ARTICLE 170 PARAGRAPH (3) OF LAW NO. 37 OF 2004
CONCERNING BANKRUPTCY AND SUSPENSION OF DEBT PAYMENT
OBLIGATIONS***

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ABSTRACT

Micro, Small, and Medium Enterprises (MSMEs) are the main pillars of the Indonesian economy. However, the current bankruptcy regulation under Law No. 37 of 2004 still applies a rigid "one size fits all" approach that equates small business actors with large corporations. This study aims to analyze the mechanism for fulfilling the obligations of MSME debtors after the annulment of a settlement agreement based on Article 170 paragraph (3) of the Bankruptcy and PKPU Law, and to formulate the ideal form of legal protection for bankrupt MSMEs, including its correlation with the existence of Individual Companies. The results indicate that the mechanism for fulfilling obligations under Article 170 paragraph (3) of the Bankruptcy and PKPU Law is highly rigid and formalistic, as it requires MSME debtors to immediately settle all original debts without any grace period. This leads to instant execution and liquidation of MSMEs' productive assets by curators. For Individual Companies, limited managerial literacy often triggers the commingling of assets, leading to the easily applied doctrine of piercing the corporate veil, which threatens the owner's personal assets. The required legal protections include the application of the going concern principle as a preventive measure through economic viability tests, limiting curator fees, adopting partial debt forgiveness schemes, and the urgent establishment of a special bankruptcy regime or a simplified insolvency programme, similar to the framework implemented in Singapore.

Keywords: Legal Protection, MSMEs, Bankruptcy, Annulment of Settlement, Going Concern.