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## LEGAL VACUUMS RELATED TO RESTRUCTURING NON-LEGAL ENTITY COMPANIES IN INDONESIA

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### ABSTRACT

#### KEYWORDS

restructuring, non-legal entity companies, legal vacuum

This study analyzes the legal vacuum in the restructuring process of non-legal entity companies in Indonesia, such as Sole Proprietorships (UD), Limited Partnerships (CV), Firms, and Civil Partnerships (Maatschap). Utilizing a normative juridical method with a conceptual and statutory approach, the research identifies the legal barriers faced by non-legal entity companies in restructuring. The findings reveal that the absence of specific regulations creates legal uncertainty and significant risks for business owners in overcoming financial difficulties. The study recommends the need for clear legal regulations, including partnership models and restructuring mechanisms, to support the sustainability and competitiveness of non-legal entity companies in Indonesia. In conclusion, more comprehensive regulations are required to foster a conducive and sustainable business environment for this sector.

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### INTRODUCTION

Company restructuring is a strategic change process undertaken by a company to improve its financial structure, adapt to market changes, or address internal issues threatening its viability (Kotter, Akhtar, & Gupta, 2021). This process is typically undertaken when a company faces significant challenges, such as liquidity difficulties, significant revenue declines, or a structure and operations that are no longer efficient in meeting business goals (Rashid, 2018). Restructuring is also frequently chosen in response to broader economic environment changes, such as financial crises, regulatory shifts, or technological developments that render old business models irrelevant. The primary goal of restructuring is to improve the financial performance of the company. This can be achieved by reducing debt burdens, adjusting working capital, or streamlining operations to increase profitability. For instance, a company burdened with large debts may restructure its obligations by renegotiating with creditors for interest relief, extended payment terms, or even partial debt forgiveness. Additionally, restructuring aims to address liquidity issues—namely, the company's ability to meet its short-term obligations (Damijan, 2018). When cash flows are pressured, a company may need to sell non-essential assets, streamline operations, or seek fresh capital injections to keep operations running. Thus, restructuring focuses not only on short-term rescue but also on creating a more solid foundation for long-term sustainability.

In addition to financial aspects, corporate restructuring can also involve changes in ownership or organizational structure (Ndege & Ogollah, 2020). In some instances, companies may pursue mergers or acquisitions as part of restructuring to capitalize on business synergies or market expansion (DePamphilis, 2019). Changes in ownership or management are also often made to bring new perspectives to address existing problems. Meanwhile, restructuring in the form of changes in capital structure is typically undertaken to achieve a more optimal composition of debt and equity for the company, aimed at reducing financial risks and enhancing flexibility in capital management. Essentially, restructuring seeks to ensure that a company possesses the proper capital structure to support business growth and face external challenges. Restructuring plays a crucial role in the survival of

companies, whether they are legal or non-legal entities (Paterson, 2020). In legal entities, such as limited liability companies (PT), the restructuring process may be more formal due to stringent regulations, including protection for creditors and shareholders. On the other hand, non-legal entity companies such as partnerships, CV, or sole proprietorships, although not bound by the same regulations, also require restructuring to maintain operations, especially in difficult situations. Non-legal entity companies are often more vulnerable to financial problems due to their smaller nature and the unlimited liability of their owners (Weidemaier, 2020).

The rapid development of the business world has driven the creation of various product innovations, both in goods and services, offered through conventional and digital platforms (Frank, Mendes, Ayala, & Ghezzi, 2019; Veile, Schmidt, & Voigt, 2022). These innovations emerge as a result of efforts to enhance creativity and new ideas, aimed at delivering quality products capable of competing in an increasingly competitive market (Ferreira, Coelho, & Moutinho, 2020). This development is reflected in the emergence of various types of businesses, ranging from small-scale ventures like Micro, Small, and Medium Enterprises (UMKM) to large enterprises that dominate the market. To engage in business activities, entrepreneurs typically establish business entities or companies expected to generate economic benefits. These business entities play a crucial role in meeting daily needs, both directly and indirectly. Generally, companies can be classified into two major groups: legal entities and non-legal entities. Legal entities, such as Limited Liability Companies (PT), possess legal personality distinct from their owners. In contrast, non-legal entity companies, such as Usaha Dagang (UD), Persekutuan Komanditer (CV), Firma, and Persekutuan Perdata (Maatschap), lack separate legal personality and often involve the personal liability of their owners.

Establishing and operating a company requires legal requirements that must be met by each type of business entity. Legal entities, such as PT, are required to have business licenses documented in an Establishment Deed made in the presence of a Notary. Meanwhile, non-legal entities, such as CV and Firma, also need to be officially registered, although not as formally as PT. However, for sole proprietorships like UD, the establishment process is simpler as it does not require an establishment deed; registration can be done through the relevant government agencies. Regardless of these legal differences, managing a company, both legal and non-legal entities, still requires good strategies and management for the business to operate smoothly.

In running business operations, companies often encounter challenges, especially when there is a decline in profits or the likelihood of operational success decreases. To address such situations, legal entities like PT have the option to undertake restructuring. Restructuring is the process of reorganizing the scale and structure of a company to improve its business condition, enhance efficiency, or expand operations. This process can be executed to sharpen business focus and ensure the company remains competitive in the market. One form of restructuring involves making structural changes through mergers, consolidations, acquisitions, and company splits (collectively known as MKAPP).

Mergers, consolidations, acquisitions, and company splits are strategies that can be employed to rescue businesses from difficulties or optimize growth opportunities (DePamphilis, 2019; Ray, 2022). A merger occurs when two companies combine into a new entity to strengthen their market position. Consolidation is similar to a merger, but in

consolidation, the merging companies form a brand-new entity with a new structure and identity. An acquisition involves one company taking control of another, either wholly or partially, to expand market share or enter new business segments. A company split involves separating part of a business from the parent company into a standalone entity, usually to focus resources on a more profitable segment or to reduce risk.

However, non-legal entity companies often lack access to formal procedures like Debt Payment Obligation Postponement (PKPU) or bankruptcy that apply to legal entities (Tan, Amboro, & Syarief, 2023). Therefore, it is essential to pay special attention to the restructuring needs of non-legal entity companies so that they can adapt and survive amid competition and economic challenges. Without proper restructuring in terms of finance, operations, and strategy, companies, especially non-legal entities, risk facing greater losses and even failing to survive in the market.

In Indonesian law, legal entities such as Limited Liability Companies (PT) have clear regulations concerning restructuring, particularly through Law Number 40 of 2007 on Limited Companies (UUPT) and Government Regulation Number 27 of 1998 governing mergers, consolidations, and acquisitions of companies. The mechanisms of restructuring are detailed, including requirements for holding General Meetings of Shareholders (GMS) and creating minutes of GMS decisions that must be attended and documented by a notary through a Notarial Deed. This process provides legal certainty for legal entities when they experience performance declines or changes in business strategies that require restructuring. However, the legal vacuum becomes apparent when discussing non-legal entity companies, including small businesses like Micro, Small, and Medium Enterprises (UMKM), which lack specific rules regarding restructuring.

Non-legal entity companies, such as CV, firms, or civil partnerships, do not have regulations equivalent to PT regarding restructuring. Despite these non-legal entities often facing similar challenges—such as profit declines or liquidity crises—they do not have access to formal mechanisms regulated by law. This presents a significant legal vacuum, as these companies cannot formally undertake restructuring or obtain adequate legal certainty when trying to change their business structure. The absence of clear legal regulations for non-legal entities, particularly in situations where these companies wish to change their form or adjust their operational scale, results in a lack of protection and clarity for the owners and relevant parties.

This legal vacuum becomes more critical when associated with the role of notaries. In legal entities like PT, notaries play an important role in formalizing restructuring decisions through the creation of Notarial Deeds that provide legal certainty regarding the decisions made in GMS. However, for non-legal entities, there are no formal rules providing a legal basis for notaries to perform similar functions (Utarid, 2023). Consequently, when non-legal entities attempt to restructure or make significant changes in their business, they lack an integrated mechanism to ensure the legality of such decisions. This creates gaps in legal protection, which ultimately can complicate non-legal entities in resolving disputes or obtaining legal recognition for the restructuring they undertake. This legal vacuum also raises questions about legal certainty for UMKM, which form a large part of non-legal entities in Indonesia. In the absence of law or regulation specifically governing the restructuring of non-legal entity companies, UMKM lack clear guidance on the steps to take if they want to

change their business structure. Yet, UMKM often face rapidly changing market conditions and require flexibility to adjust the scale or focus of their businesses (Mahy, 2013).

## **METHOD RESEARCH**

The normative juridical research method is the approach used in legal studies that focuses on the study of documents and legal norms. This method aims to analyze applicable legal rules and how these rules are applied or interpreted in specific contexts. In normative legal research, the main sources used are statutory regulations, court decisions, and other legal literature. This approach is highly relevant in researching legal issues that are theoretical and conceptual in nature, such as legal vacuums in the restructuring of non-legal entity companies, as it allows the researcher to delve into various norms related to the issues at hand.

One approach employed in this method is the statutory approach and the conceptual approach. The statutory approach involves examining and analyzing various rules governing specific issues, such as the Limited Companies Law (UUPT) and regulations related to corporate restructuring. Through this approach, the researcher can assess whether existing regulations are adequate or if there are legal vacuums. Meanwhile, the conceptual approach is undertaken by understanding the underlying legal concepts of the discussed topic, such as the concept of corporate restructuring and the role of notaries in the legal system.

## **RESULT AND DISCUSSION**

### **1. Legal Vacuums Related to Restructuring Non-Legal Entity Companies in Indonesia**

Non-legal entity companies in Indonesia refer to business forms established by one or several individuals without legal personality separate from their founders. This means that the owners of non-legal entity companies remain personally liable for all the obligations and legal responsibilities of the company. This contrasts with legal entities, which possess a legal entity separate from their founders, like Limited Liability Companies (PT). In Indonesia, types of non-legal entity companies include Usaha Dagang (UD), Persekutuan Komanditer (CV), firms, and Civil Partnerships (Maatschap). Each form of business has different characteristics regarding management structure, legal liability, and mechanisms for establishment and operation.

Usaha Dagang (UD) is a form of sole proprietorship where the owner acts as the sole manager and responsible party for the entire business operation. UD does not have to prepare a charter or hold meetings as required in legal entities. The owner of UD has full control over the business but also bears personal responsibility for all debts and liabilities of the enterprise. This means that if the UD fails or has debts, the owner's personal assets can be used to settle those obligations.

Persekutuan Komanditer (CV) is a form of partnership consisting of two types of partners: general partners and limited partners. General partners have full responsibility for managing the company and have unlimited liability for the company's debts, while limited partners act only as investors and are liable only up to the amount of capital they invest. CV is often chosen by entrepreneurs wishing to raise capital without giving management control to all parties involved.

A firm is a partnership consisting of two or more persons working together to run a business. In a firm, each partner has full responsibility for managing the enterprise, and all partners are jointly liable for the company's obligations. In this context, each partner is able to make managerial decisions and act on behalf of the company. However, because it does not have a separate legal personality, each partner can also be held personally accountable for the debts or legal issues faced by the firm.

Civil Partnerships (*Maatschap*) are governed by Article 1618 of the Civil Code and involve agreements between two or more individuals agreeing to combine efforts, skills, or assets to achieve a common goal. In this context, there are two types of civil partnerships: general and special. General civil partnerships involve assets contributed by the partners, while special civil partnerships involve specific assets or labor.

Overall, non-legal entity companies differ from legal entities such as PT in several respects. In terms of legal liability, non-legal entities do not possess a separate legal entity from their founders. Therefore, the founders are fully responsible for all company obligations, including debts and legal claims faced by the company. In contrast, a PT possesses a separate legal entity, so the liability of shareholders is limited only to the amount of capital they invest, and their personal assets are protected from company obligations.

In terms of management structure, non-legal entity companies tend to be simpler. For example, in UD, the owner operates the business without needing formal meetings or approval from other parties. In CV, business control usually lies with general partners, while the limited partners only act as capital providers. Firms and civil partnerships are also directly managed by partners without strict formal procedures. In contrast, PT is regulated with a more complex management structure, such as having a General Meeting of Shareholders (GMS), board of directors, and board of commissioners with clear responsibilities and functions as stipulated in Law Number 40 of 2007 on Limited Companies (UUPT).

Regarding legal personality, legal entities such as PT are recognized as separate entities by the law, meaning that companies can sign contracts, own assets, and be parties in lawsuits independently. Non-legal entity companies, in contrast, do not have separate status, meaning that the owners or partners bear direct responsibility for the legal actions taken by the company.

Debt restructuring for companies involves several methods, including Hair Cut, which means the cancellation of some or all debts; Debt Rescheduling, which is the rescheduling of debt payments; Debt to Asset Swap, which is the transfer of assets to creditors; and Debt to Equity Swap, which is the conversion of debt into shares. Meanwhile, company restructuring can be carried out through mergers, consolidations, acquisitions, splits, liquidations, bankruptcies, asset revaluation, reorganizations, and recapitalizations. According to the Explanation of Article 43 paragraph (3) of the UUPT, corporate restructuring includes MKAPP (Mergers, Consolidations, Acquisitions, Splits).

In mergers, the merging company dissolves, while its assets and liabilities transfer to the receiving merger company, according to Article 128 of the UUPT. Consolidation involves the merging of two or more PTs into a new PT. Acquisitions transfer control

through the takeover of a company's shares, as regulated in Articles 125 and 128 of the UUPT. A company split can be purely in nature, where the parent company dissolves after asset transfers, or non-pure, where the parent company remains after a portion of its assets is transferred.

Non-legal entity companies in Indonesia do not have specific regulations, so their governance refers to the Civil Code (KUHPERDATA) and the Commercial Code (KUHD). Usaha Dagang (UD) is a sole proprietorship run by an entrepreneur with personal funds. Although not specifically regulated by law, the existence of UD is accepted in practice as a business actor. UD is managed using personal funds, meaning the company's assets are wholly owned by that individual, who is also responsible for all debts incurred by the company. To establish a UD, no notarial deed is required, only registration with the relevant government agency as regulated in Article 6 of Law Number 3 of 1982 on Mandatory Company Registration.

Firms, governed from Articles 16 to 35 of the KUHD, are forms of civil partnerships established for conducting business under a common name. Business activities in a firm involve joint liability, where each partner bears responsibility for all legal acts conducted by other partners. The establishment of a firm must be conducted in the form of an authentic deed in the presence of a notary and subsequently registered at the Clerkship of the District Court, in accordance with the provisions of Articles 22 and 23 of the KUHD. Meanwhile, Persekutuan Komanditer (CV) lacks clear regulation in the KUHPERDATA or KUHD but is regulated in Articles 19 to 21 of the KUHD, which outlines the presence of passive (komanditer) and active (komplementer) partners.

CV is a combination of PT and a firm, with different responsibilities for the limited partners and general partners. Like firms, establishing a CV requires an authentic deed and registration at the Clerkship of the District Court.

Civil Partnerships (Maatschap) are regulated under Article 1618 of the Civil Code and involve agreements between two or more individuals agreeing to contribute to a partnership to share profits. In this context, there are general and special civil partnerships. General civil partnerships involve assets contributed by the partners, while special civil partnerships involve specific items or labor. Given that non-legal entities like UD, CV, firms, and civil partnerships have no specific regulations on restructuring, this creates a legal vacuum when they seek to reorganize through MKAPP (Merger, Consolidation, Acquisition, Split).

Even though there is no specific regulation, the UMKM Law and the Job Creation Law provide alternatives for UMKM, including UD, CV, and firms, to adopt partnership patterns in business development, such as core-plasma patterns, subcontracts, and franchises. These partnership patterns are regulated in Article 26 of the UMKM Law and Article 26 of the Job Creation Law, aiming to provide support in financing, production, marketing, and technology enhancement. Partnership agreements must be documented in writing, which can take the form of either registered deeds or authentic acts before a notary.

Regarding the restructuring of non-legal entity companies, although no specific regulations currently exist, these companies can undertake MKAPP with other non-legal

entities. Changes in ownership or the status of non-legal business entities can be processed through the Department of Trade and Industry, without requiring approval from the Ministry of Law and Human Rights. However, the potential for legal uncertainty arises from regulatory vacuums that may result in overlaps between the UMKM Law and the Job Creation Law. According to Gustav Radbruch, legal certainty consists of two aspects: the certainty provided by the law and certainty within the law. This legal vacuum creates uncertainty regarding legal actions that the public can take, highlighting the necessity for clearer regulations to meet the legal needs of the public.

## 2. Legal Reconstruction of Regulations on Restructuring Non-Legal Entity Companies in Indonesia

The legal vacuum concerning the regulation of non-legal entity companies' restructuring in Indonesia is significant. Companies like Usaha Dagang (UD), Persekutuan Komanditer (CV), firms, and civil partnerships (Maatschap) lack specific regulations governing their restructuring processes. This absence means that they cannot adhere to structured and standardized restructuring procedures, leading to confusion and legal uncertainty. For example, the ambiguity surrounding restructuring mechanisms like mergers, acquisitions, or dissolutions in the context of non-legal entity companies can inhibit business actors from making strategic decisions to save their enterprises from crises.

The challenges faced by non-legal entity companies in restructuring without clear regulations include a lack of understanding of their rights and obligations. In many cases, non-legal entity owners may not realize that they have options for restructuring, and when they attempt to do so, they often encounter administrative and legal hurdles. Without clear regulations, they risk becoming entangled in processes that are inappropriate or even illegal, ultimately harming everyone involved, including employees, creditors, and business partners. This legal vacuum can also lead to injustice, where non-legal entity companies do not receive the same legal protections as legal entities, resulting in a clear disparity within the business ecosystem.

In restructuring, there are fundamental differences between the regulations applicable to legal entities, such as Limited Liability Companies (PT), and non-legal entities. For PTs, there are clear and detailed regulations, including the Limited Companies Law (UUPT) and related government regulations. These regulations outline the procedures that must be followed for restructuring, including provisions concerning mergers, acquisitions, and liquidation. The strict governance of these procedures includes the requirement to obtain approval from the General Meeting of Shareholders (GMS), notarial deeds, and ratification by the Ministry of Law and Human Rights. Thus, PTs have a more guaranteed and secure legal path for undertaking restructuring.

In contrast, non-legal entity companies lack a similar legal framework, making restructuring processes far more complicated. For example, concerning legal liability, the owners of UD or CV are personally responsible for all debts of the company. In restructuring situations, this means they face potentially greater personal risk than PT owners, who are only liable for the capital contributed. Furthermore, the procedures for restructuring in non-legal entities often lack formality and standardization, resulting in greater legal risk. These differences underscore the importance of having clear and

specific regulations for non-legal entities to effectively undertake restructuring while ensuring adequate legal protection.

To address the existing legal vacuum concerning the restructuring of non-legal entity companies in Indonesia, there is a need to develop regulations that are more specific. These regulations could take the form of laws or government regulations that provide clear guidance on the restructuring procedures available to non-legal entity companies, such as Usaha Dagang (UD), Persekutuan Komanditer (CV), firms, and civil partnerships (Maatschap). Such proposals aim to create the legal clarity desperately required to assist business owners in understanding the options available to them in challenging situations. In this regulation, various restructuring mechanisms, including debt haircuts, debt rescheduling, and partnership models, should be established. With these regulations in place, non-legal entity companies can operate within a more secure legal framework and gain better access to legal protections and their rights.

Regulations in the form of laws or government regulations could also specify the procedures that must be followed in restructuring, including registration requirements, reporting to relevant authorities, and creditor protection. For instance, the application procedures for obtaining restructuring authorization could be clarified to ensure that all interested parties are protected. Additionally, it is crucial to elucidate the responsibilities and rights of stakeholders during the restructuring process so that the risk of conflicts can be reduced, and legal certainty can be enhanced. Such policies will not only provide legal assurances for non-legal entity companies but may also boost their competitiveness in the market, given that they will have a clear legal framework to operate under.

In efforts to conduct restructuring, non-legal entity companies can adopt various models and partnership patterns in line with the provisions established by the Micro, Small, and Medium Enterprises Law (UU UMKM) and the Job Creation Law. One partnership model that can be applied is the core-plasma pattern, where non-legal entity companies can collaborate with larger companies to access resources, markets, and technology. Through this model, smaller companies can focus on production while receiving support from larger firms in terms of funding and marketing. The subcontracting model can also be applied, where non-legal entity companies act as subcontractors for larger projects, providing them with opportunities to continue operating and generating revenue without managing the entire business process independently.

The benefits of these partnership models are significant for both non-legal entity companies and their partners (Armour & Sako, 2020; Baranovska, Zavertneva-Yaroshenko, Dryshliuk, Leshanych, & Huk, 2022; Sultoni, Suryandari, & Susilowati, 2024). First, partnership models allow non-legal entity companies to alleviate the risks faced during restructuring by sharing burdens and resources. Secondly, such partnerships can enhance production capacity and operational efficiency, enabling non-legal entity companies to better adapt to market dynamics. Thirdly, through strategic partnerships, non-legal entity companies can gain access to broader markets and new clients, thereby increasing growth opportunities in the future. With clear regulations regarding partnership models in restructuring, it is hoped that non-legal entity companies will be encouraged to take more proactive measures in restructuring their businesses, thereby

enhancing their resilience to the challenges faced in an increasingly competitive business environment.

Legal reconstruction regarding the regulation of restructuring non-legal entity companies in Indonesia is a vital step to address the challenges encountered by business actors in this sector. Given that non-legal entities like Usaha Dagang (UD), Persekutuan Komanditer (CV), firms, and Civil Partnerships (Maatschap) lack specific regulations governing restructuring, creating a legal framework that provides clarity and certainty is essential. One step in legal reconstruction that should be taken is the formulation of a new law explicitly governing restructuring procedures and mechanisms for non-legal entity companies. Such a law is expected to clarify various restructuring options, such as debt transfers, asset reorganizations, and partnership models that non-legal entity companies can adopt.

Moreover, legal reconstruction must also encompass the clarification of the rights and obligations of stakeholders, including business owners, creditors, and other parties involved in the restructuring process (Odetola, 2018). With clear regulations, business actors will be able to understand the necessary steps to take in challenging situations without fear of unforeseen legal consequences. Additionally, such regulations can protect creditors to ensure they have clear rights in the restructuring process, thus fostering a more conducive business climate. Legal reconstruction also includes aligning existing regulations, such as the UMKM Law and the Job Creation Law, to avoid overlaps that may cause confusion and legal uncertainty. Through the harmonization of these regulations, a comprehensive legal system supporting the development of non-legal entity companies, particularly regarding restructuring, is anticipated. This is crucial since the micro and small business sectors are the backbone of the national economy, and providing adequate support for them during the restructuring process will positively impact overall economic stability.

## CONCLUSION

In the restructuring of non-legal entity companies in Indonesia, it is evident that the existing legal vacuum poses various challenges for business actors such as Usaha Dagang (UD), Persekutuan Komanditer (CV), firms, and Civil Partnerships (Maatschap). In the absence of clear regulations, the restructuring process becomes complex and risky, hindering companies' ability to adapt to changing market conditions and manage financial difficulties. Therefore, systematic legal reconstruction is needed to create a legal framework that provides clarity on procedures and mechanisms for restructuring.

Recommendations for the development of more specific regulations concerning the restructuring of non-legal entity companies are crucial, both in the form of new laws and government regulations. This move will provide legal certainty and protect the rights of all stakeholders, including business owners and creditors. Additionally, regulating models and partnership patterns consistent with the UMKM Law and the Job Creation Law can serve as effective alternatives in the restructuring process, thereby enhancing the competitiveness of non-legal entity companies in Indonesia. Through these efforts, it is hoped that non-legal entity companies can optimally contribute to national economic growth and achieve business sustainability amidst the ongoing global challenges.

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