Saving the unfortunate Indonesian palm oil farmers as sustainable agriculture actor

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Abstract. Since early 2019, global palm oil price keeps on decreasing. Such condition makes it challenging to apply sustainable agriculture in Indonesia, especially in the palm oil sector. This paper will examine two research questions: first, the comparison between Chapter 12 USBC and Indonesian bankruptcy law, especially in protecting the palm oil farmer. Second, how the Indonesian bankruptcy law ought to preserve the unfortunate palm oil farmers in the future. The research methodology applied in this paper is normative legal research. Chapter 12 USBC has provided sufficient protection for the unfortunate farmer debtors. Indonesian bankruptcy law does not recognize a specific type of debtor, especially farmer debtors. It will be challenging to handle the unfortunate Indonesian palm oil farmer with current bankruptcy law. This research shows that Indonesian bankruptcy law doesn’t provide sufficient protection for the palm oil farmers. It’s recommended that the Indonesian government amends the bankruptcy law. Therefore, the farmers will be able to fulfil their role as one of the actors who apply sustainable agriculture in the palm oil sector.

1. Introduction
According to the data that were released by the Ministry of Agriculture, Indonesia’s palm oil export reached 34 million tons by 2018 [1]. Such a condition placed Indonesia as the largest palm oil exporter in the world, followed by Malaysia. Both countries satisfy almost 90% of the global demand for palm oil [2]. Inspected by the category of producers, the largest palm oil producer in Indonesia is Private Plantation (Perkebunan Swasta) reaching 57.70% from total national production. The second place is Smallholders (Perkebunan Rakyat) reaching 36.90%, followed by State-owned Plantation (Perkebunan Negara) which only produced 5.40% from the entire national palm oil production per 2017 [3].

Abundant palm oil production and export are not constantly advantageous for Indonesia. The decrease in palm oil prices becomes a terrifying situation for Indonesian palm oil farmers, especially the Smallholders. There are 2 factors that prompt the decrease of Indonesia’s palm oil export price, which are internal and external factors. The internal factors include the export tax from the government [4], the obligation for ISPO (Indonesia Sustainable Palm Oil) certification for farmers [5], and palm oil mills that are likely to purchase from the brokers, instead of farmers [6]. The external factors, consist of, the boycott of Indonesian palm oil by the European Union [7], the effect of the trade war between the United States of America and the People’s Republic of China [8] and the rise of import tax for Indonesian palm oil products by the Indian government [9]. Therefore, The Indonesian palm oil farmers are facing the harsh reality of nearly bankrupt [10].
The maintenance of palm oil plantations requires plenty of cost and time [11]. Farmers who are not able to cover production costs will be forced into debts. If farmers have excessive debts, they will not be able to persevere their role as actors in sustainable agriculture, or even worse, these farmers are facing the threat of bankruptcy [12]. Therefore, the bankruptcy law will be one of the instruments to resolve financial distress [13].

Louis E. Levinthal stated that bankruptcy law has at least three general objectives. First, to ensure fair property distribution of a bankrupt among his or her creditors, second, to protect the creditors from the mischievous acts from the debtor, third, to prevent bad faith creditors from harassing an honest yet unfortunate debtor [14]. The next question is whether the Indonesian Bankruptcy Law has provided adequate protection for palm oil farmers.

In order to seek the answer to the question, a comparative study between Chapter 12 of the United States Bankruptcy Code and the Indonesian Bankruptcy Law shall be conducted. By guaranteeing that farmers are being protected by good bankruptcy law, the palm oil farmers should be able to preserve their role as one of the actors in sustainable agriculture. This research was conducted to respond to the following questions: first, how is the comparison between Chapter 12 of USBC and the Indonesian Bankruptcy Law? Second, how is the ideal model of bankruptcy law that Indonesia ought to have in order to protect the interest of palm oil farmers?

2. Methods
This study was conducted based on normative legal research, including comparative legal approach. The data were collected through library research which will be investigated to present the solution for the problems.

3. Results and discussion

3.1 Chapter 12 of US bankruptcy code
Basically, debtors in the United States of America are provided with 2 types of bankruptcy procedures. First, the most elementary model is liquidation bankruptcy which is governed under Chapter 7 of the US Bankruptcy Code. In liquidation bankruptcy, all of the debtor’s assets become a part of the bankruptcy estate that shall be liquidated to be distributed to the creditors for resolving the debtor’s financial obligations [15]. The second bankruptcy model is when the debtor’s assets are not necessarily liquidated. This model of bankruptcy usually refers to reorganization or rehabilitation bankruptcy and is governed under Chapter 11 [16], Chapter 12 [17] and Chapter 13 [18] of Bankruptcy Code.

Historically speaking, in 1986 The US Congress supplemented Chapter 12 in Bankruptcy Code to provide a form of rehabilitation for the farmer debtors [19]. This specific provision has never been governed in the Code before. In essence, Chapter 12 comprises a similar character with Chapter 11 and Chapter 13 procedures. The unique character that Chapter 12 carries is that it was intended only to be employed by farmers who are currently in financial distress. These financially distressed farmers will lose their employment and farms to manage if the law does not provide any protection. By utilizing Chapter 12 protection, the farmer debtors may reorganize their debts while maintaining the control of their farm, farming machines, and any kind of tools that is necessary for their farming activities [20]. Chapter 12 enables the debtors to offer a repayment scheme to the creditors. The duration of the scheme is usually around three to five years long. Usually, the repayment plans are no longer than three years. However, under specific situations, the court may permit an extended period for the repayment plan. [21].

There is a specific condition that may deny a debtor's right to seek protection under Chapter 12. The condition is if 180 days before the filing date, the debtor’s previous Chapter 12 petition has been dismissed due to his mistake. The mistake before-mentioned is such as the debtor fails to attend the proceedings in court, or the debtor fails to comply with the court's instructions. Another variety of mistake that may cause a debtor to lose his ticket to Chapter 12 process is the debtor tried to retrieve an asset under lien which he holds. Another requirement that the debtors must satisfy before they are authorized to file for Chapter 12 protection is to receive credit counselling. The counselling must be
received from an approved agency by the government, either the debtor came alone or in a group with other debtors who shares the equivalent miserable luck [22].

The term farmer debtor, or usually referred to as "family farmer" is specified in the Bankruptcy Code. The term "family farmer" is defined as a person or person and spouse who does farming activities for a living while does not possess aggregate debts more than $4.153.150 and minimal 80 per cent of the aggregate debt is non-contingent, liquidated debts [23]. Uniquely, the Code does not restrict the term "farmer family" only as a "person" but also as a "corporation" or "partnership". A single-family must be the shareholder of the corporation or partnership. The relatives of the family, as mentioned earlier, are also permitted to hold the share. The family and the relatives also have to maintain the farming activities. The corporate or partnership required to assure that at least 80 per cent of its assets consist of objects that are needed for farming activities. It also has to assure that it does not possess more than $4.153.150 aggregate debts and at least 80 per cent of its aggregate debts are non-contingent, liquidated debts [25].

In addition, the Bankruptcy Code does define the term of farming activities. The term is defined as any actions related to farming, such as farming itself, ploughing the soil for crops, raising livestock such as cows, sheep, lambs, chickens, pigs, or any other animals that are usual in a farm, production of crops, and any products which originated from the objects mentioned above in unmanufactured condition [26]. Family farmers are exempted from involuntary Chapter 7 or 11 of bankruptcy cases [27]. There has been a various quantity of debates in courts regarding a debtor's legal standing in a Chapter 12 process. The Code requires the debtor to be actively involved in farming activities in order to be eligible for seeking Chapter 12 protection. If a debtor owns a farming land, but the farm is managed by someone else (by renting the land from him), then the debtor is undoubtedly not eligible for Chapter 12 protection [28].

The repayment plan is the core of Chapter 12 reorganization. In the plan the insolvent debtor (farmer) can list his debts to the value of assets (net of exemption), discharging loan deficiencies [29]. The purpose of Chapter 12 is quite similar to Chapter 13, which is the confirmation of a reorganization plan. Chapter 12 places a wall (automatic stay) that protects a debtor from his creditors to collect debts, for example repossession of collateral, replevin, garnishment and foreclosure [30].

A Chapter 12 reorganization commences since the date of the court admitted the petition from the debtor. In its petition, the debtor must include some paperwork, which covers the asset dan debts statements, income statements, a list of outstanding legal agreements and on-going leases, and finally the statement of the financial affairs [31]. If the debtor success to repay all of his obligations according to the plan, then he may be awarded debt discharge [32]. However, not every debt is dischargeable in the process [33]. These non-dischargeable debts include debts that arose from child support, debts that were obtained by fraudulent acts, debts inflicted by tortious acts such as injuring or killing an individual, theft and any other means of unlawful actions that were committed by the debtor that induced financial obligations upon him.

In a specific state, such as the debtor failed to fulfil his obligations as declared in the repayment plan, the debtor might still be forgiven. The forgiveness comes in the form of "hardship discharge" which is granted by the court. [34]. A hardship discharge is a form of forgiveness that is awarded to a debtor who failed to complete his Chapter 12 plan; while the failure is not a mistake of his. The cause of the failure was beyond the debtor's awareness and control. For instance, a natural disaster such as flood or storm that induced injury to the debtor, so the debtor cannot fulfil his plan may be a legitimate reason receiving the discharge.

It could be inferred that Chapter 12 has provided adequate protection for the farmers who is currently in a financial distress. Chapter 12 is also in harmony with one of the goals of bankruptcy law, which is protecting the honest debtor from his creditors.

3.2 Indonesian bankruptcy law

Indonesian Bankruptcy Law under Law No. 37 of 2004 does not distinguish the types of debtors as governed in United States Bankruptcy Code. Law No.37 of 2004 defines debtor as the subject who possesses debts because of agreements or law which payment could be requested in a court [36]. Every
legal subject, whether an individual, farmer, entrepreneur, public officer, legal entity, corporation, is being considered equal as debtor in the Indonesian Bankruptcy Law [37].

Indonesia Bankruptcy Law grants an exception to certain types of debtors that will affect which creditor has the right to file the bankruptcy petition for these particular debtors. For instance, if the debtor is a financial institution that collects funds from the public such as banks, securities companies, stock exchange, insurance companies, reinsurance companies, and pension funds can only be filed for bankruptcy by the Financial Services Authority. While the right to file a bankruptcy petition for debtors in the form of state-owned enterprises is exclusive to the Minister of Finance [38].

Indonesian Bankruptcy Law only acknowledges the liquidation system. The law does not recognize the reorganization system. Every debtor who has satisfied the requirements for a bankruptcy petition, specifically having at least two creditors and at least one debt that is overdue and collectable, is eligible to be declared bankrupt by the court [39]. A system that resembles reorganization in the Indonesian Bankruptcy Law is referred to as “Penundaan Kewajiban Pembayaran Utang (PKPU)” or “Suspension of Debt Payment Obligations”.

"Suspension of Debt Payment Obligations” is simply an instrument for suspending debtors' obligations to fulfil all of their financial obligations to their creditors. The suspension of payment is applied in the form of reconciliation proposal that must be submitted and approved by the creditors within a maximum period of 45 + 270 days [40]. If during this period, there is no compromise between the debtor and his creditors, the debtor shall be declared bankrupt by the court [41]. Another problem in the Indonesian Bankruptcy Law is that the hasty time frame in bankruptcy proceedings. Article 8 paragraph (5) Law No. 37 of 2004 states that the court must decide every bankruptcy case within a maximum of 60 days from the filing date.

The time frame provided by the bankruptcy law is relatively brief, whereas the process of bankruptcy proceedings sometimes could be complicated. If there is a reconciliation between the debtor and the creditors, it mostly happens only because of the benevolence from the creditors, not because by law. In other words, the protection provided by Law No. 37 of 2004 for Indonesian palm oil farmers is inadequate.

If the government seeks to revise the Indonesian Bankruptcy Law, these are the rules that should be amended as follows: first, a strict distinction must be made between debtors who are farmers and not. This distinction must be made to ensure the bankruptcy proceedings with the farmers as the debtor shall be performed differently.

Second, the maximum limit amount of debts that can be processed in court must be determined. This determination is vital to restrict the protection that is granted by the law. It is the individual palm oil farmers that are supposed to be protected, not corporations that engaged in palm oil plantations.

Third, the judges should be active in bankruptcy or reorganization proceedings filed by a farmer debtor. If the petition has satisfied the requirements, the court must protect the farmer debtor by granting adequate time to the debtor to pay off his debts without liquidating his assets. By doing so, the farmer debtor can be saved without depending on the generosity of his creditors or caught up in the rigid formal requirements of the bankruptcy law.

Fourth, the insolvency test and cash flow test must be implemented in order to determine which palm oil farmer debtor is worthy of being saved or not. Besides, the tests are also beneficial to prevent abuse of bankruptcy law by the bad faith farmers.

It could be inferred that the Indonesian Bankruptcy Law does not provide sufficient protection for the farmers. Therefore, the government must amend the law in order to protect the farmers as one of the actors in sustainable agriculture.

4. Conclusions
The findings show: first, Chapter 12 has provided adequate protection for the farmers. Second, it turns out that the Indonesian Bankruptcy Law has not provided sufficient protection to palm oil farmers. The problem lies in the fact that the Indonesian Bankruptcy Law does not distinguish farmer debtors and
non-farmer debtors. Moreover, in the case of bankruptcy proceedings, the time frame is brief, and the court is passive.

There are two recommendations provided for this study. First, the Indonesian government could learn from Chapter 12 on how to protect the palm oil farmers. Second, the Indonesian government must amend the bankruptcy law. By having an ideal bankruptcy law to provide adequate protection for palm oil farmers, hopefully, the palm oil farmers are able to maintain their role as one of the actors in sustainable agriculture.

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