LAW CONSTRUCTION OF FINANCIAL INSTITUTIONS BANKRUPTCY IN INDONESIA

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ABSTRACT

Globalization of the financial services sector that is supported by the development of technology has changed the world into an integrated financial system. Prevention and crisis management by the Government carried out within the framework of JPSK. Moreover, OJK also given authority as the only party who can file a bankruptcy petition against the debtor that is a financial institution. The right to file a bankruptcy petition is a general guarantee instrument attached to the legal position in relation to the engagement of debts. OJK as the financial services sector authorities did not have the rights and legal position in engagement as a basis to file a bankruptcy petition. Granting authority to file a bankruptcy petition on financial institutions fully to the OJK confirms repressive legal typology of the provisions of the bankruptcy of financial institutions. Granting authority raises a conflict of interest between the interests of OJK as the authorities file a bankruptcy petition on financial institution with interests OJK as the regulatory and supervisory authority of financial institutions.

Key words: Rights, Law, Power, Bankruptcy, Financial Institutions.

Introduction

John Locke argued that human beings are basically free, equal and independent (Wolf, 2013, p. 54). The situation of human nature raises fears and concerns of the dangers that threaten their natural rights. There is a goad on the individual to establish political institutions as the supreme power through the social contract. John Locke formulate a social contract as the delivery of natural rights of individuals to a political entity that was formed to protect the natural rights and carry out the laws of nature (Simmons, 1992, p. 6). Although this theory was criticized as hypothetical contract (Rawls, 1971, p. 12) or even not contract at all (Dworkin, 1978, p. 151) but nevertheless the state as the latest form of political entities are required to be capable of managing the interests of the various parties that exist in society. In the development of the state function is not only limited to the arrangement in order to avoid conflict of interest, but also carry out development to improve the general welfare.

Indonesian Constitution adheres to the concept of the welfare state as stated in the fourth paragraph of the preamble of *Undang-Undang Dasar Negara Kesatuan Republik Indonesia Tahun* 1945 that specifies, "The State shall protect the entire Indonesian nation and the entire country of Indonesia, promote the general welfare, enlighten life of the nation and social justice...". The concept of the Indonesian state is a material state law or state law with public services dimension (Budiarjo, 1980, p. 74). One area of particular concern is the country's financial services sector.

The increasing of the financial services sector globalization, supported by technological advances led to the financial system becomes increasingly integrated in real time. In addition, the development of a wide range of innovative financial products carries a consequence of the subjects involved in the financial services sector is increasingly numerous and varied, and the higher level of complexity. The crisis of 1998 proved that the stability of the financial system is a very important aspect in establishing and maintaining a sustainable economy.

Government and Bank Indonesia has developed the framework for the Financial Sector Safety Net (JPSK) as a mechanism for securing the financial system from the crisis that includes prevention and crisis management. But until now the JPSK framework, it has not received of political support that is always stuck in the form of *Peraturan Pemerintah Pengganti Undang-Undang* (Government Regulation in Lieu of Law). Besides handling system liquidity and solvency problems that have been running only for banks, while for non-bank financial institutions no special handling system. Efforts to prevent or reduce the risk of possible instability of the financial system as a result of the crisis should be run by the responsible parties in the financial services sector because of the stability of the financial system is a part of public policy (Crocket, 1997).

In addition to build a system and institutions that perform the functions of regulation and supervision of the financial services sector Financial Services Authority (OJK) is also given authority as the only party who can file a bankruptcy petition against the debtor that is a financial institution. A special mechanism is designed to compensate for general bankruptcy mechanism is considered too liberal, so that very harmful financial services sector stability. This restriction is designed to protect the public interest both in terms of public funds managed by financial institutions as well as the interests of maintaining financial stability in order to prevent the crisis in the financial services sector. Provisions like this certainly weaken the institution functions as a mechanism for debt settlement bankruptcy debts. Whereas the inception of bankruptcy institution aims to entitle the creditor and the debtor in resolving debts among them.

This paper will examine critically the bankruptcy provisions prevailing in Indonesia, especially related to the bankruptcy of financial institutions. The study will begin by analyzing the basic concept of bankruptcy, which is then compared with a special construction of financial institution's bankruptcy as stipulated in the legislation to see the fundamental difference between the two. Then construction of financial institution's bankruptcy will be examined critically by law and power relations approach with particular regard to the potential conflict of interest and political legislation used. At the end justice approach as a fundamental value and the objectives to be achieved by the law is used to find a basic sketch for bankruptcy construction equitable financial institutions. The results of the study are expected to be material to the development of a concept of bankruptcy that can be applied in the financial services sector that can protect the rights of creditors of financial institutions without disturbing the stability of the financial system.

Bankruptcy

Bankruptcy is the realization of two fundamental principles in civil law contained in Article 1131 and Article 1132 of the *Kitab Undang-Undang Hukum Perdata* (Civil Code) (Hartono, 1981, p. 3). The formulation in Article 1131 of the Civil Code indicates that any action carried out by someone in the field of wealth will always carry due to its assets, either increase the amount of wealth, and that will reduce the amount of wealth. As for Article 1132 of the Civil Code determines that any party or creditors who are entitled to the fulfillment of the engagement, should get the fulfillment of the engagement of the assets of the debtor on a *pari passu*, which is jointly obtained repayment, without precedence, and a *pro rata* or proportional, which is calculated based on the amount of each creditor receivables compared to their accounts as a whole, of all the assets of the debtor (Muljadi, 2005, p. 164).

Understanding bankruptcy definitively in *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang* (Bankruptcy Act) is common confiscation of all the wealth of failure debtor which the management and settlement conducted by the Curator under the supervision of the Supervisory Judge. Article 2 paragraph (1) of the Bankruptcy Act states that a debtor who has two or more creditors and not pay in full at least one debt due and collectable, declared bankrupt by court decisions, both on the petition itself and at the request of one or more creditors. Bankruptcy provisions that are too loose considered highly endangered the stability of the financial services sector. Bankrupt debtor can easily through the process of trial and evidentiary short without insolvency test.

Financial Institutions Bankruptcy in Indonesia

In a society that is growing today, the role of financial institutions is essential. Financial institutions are part of the financial system in the modern economy that serves the public users of financial services, especially as mediating institutions between the parties that have the funds and in need of funds and provide services that support and facilitate the payment system, financing, and insurance risks. So that the funds available to the financial institutions are the funds coming from various parties.

Financial institutions in the exercise of its function to act as a creditor in relation to the party receiving the funds, and financial institutions on the other hand serves as a debtor when dealing with those who provide the funds. Financial institutions acting as debtors in the engagement of debts with creditors at a certain time might face problems in settling its debts. When a financial institution in the state stopped paying its debts or not pay in full at least one debt that can be billed, and at the same time the financial institution has two or more creditors, then under the provisions of the bankruptcy, the financial institution has met the criteria for bankruptcy. So against the financial institution can be filed a bankruptcy petition, as well as other legal subjects.

When viewed from the provisions of the Bankruptcy Act, only a few provisions that specifically regulate the technical bankruptcy of financial institutions. So, from the general process of bankruptcy of financial institutions are no different from bankruptcy debtors in general. The bankruptcy Act only regulates specifically that a bankruptcy petition against a financial institution may only be submitted by the respective authorities. Since the establishment of OJK as the financial sector authorities the authority to file a bankruptcy petition against the banks, securities companies, stock exchanges, clearing and underwriting institutions, depository and settlement and institutions, insurance companies, reinsurance companies, and pension funds to switch to the OJK. The use of a bankruptcy petition against the authority of the financial institution by the FSA solely based on an assessment of financial

condition and the overall banking condition, therefore it does not need to be accounted for. The same provision also applies in petition for suspension of debt payments to financial institutions.

Two different bankruptcy system is contained in the Bankruptcy Act. A General bankruptcy system that tends to be liberal with giving greater authority to creditors in bankruptcy proceedings. While on the other side of the bankruptcy regime of financial institutions transfer the rights of creditors in a bankruptcy petition submitted to the OJK. Whereas OJK as the financial sector authorities did not have the rights and legal position in engagement as a basis to file a bankruptcy petition. This raises questions about the politics of the Bankruptcy Act in the financial services sector.

Attempts to question the provisions restricting the right to file a bankruptcy petition can be inferred from the remains filing a bankruptcy petition even though its provisions are clear. Since the enactment of provisions restricting the right to apply for a declaration of bankruptcy of the bank and capital markets (which began in 1998) at least two of the bank's bankruptcy petition and three petitions against the company effects. While against the insurance company at least four petition filed since the introduction of restrictions right to file a bankruptcy petition against the insurance and other financial institutions (starting in 2004). All the request was rejected because the applicant is declared not eligible to file a bankruptcy petition against the debtor hat is a financial institution. Attempts to question the provision restricting the right also sought to file a judicial review to the Mahkamah Konstitusi (Constitutional Court). There are at least three judicial review of the provisions restricting the right of the filing of the bankruptcy petition. But unfortunately consideration in its decision the judges not far from consideration lawmakers bankruptcy.

Law and Power Relation

One of the factors that affect the operation of the law in society is the power. Legal relations with the power represented by the Nonet and Selznick (1978) in three typologies of law that *repressive laws*, *autonomous law* and the *responsive law* (p. 10). Repressive law is present when the dominant power in law enforcement (repression) to secure power and won the adherence of the community that is far from the order (p. 57). Law is seen as a tool of power and command of the sovereign with the unlimited power (Salman & Anton, 2004, p. 95). Law became autonomous when legal position as an independent institution that is able to control and maintain its own integrity regardless of power (Salman & Anton, 2004, p. 96). The actions of the government to its citizens is based on the procedures and rules that are impersonal and impartial (Samekto, 2013). While the responsive law as the ideal type of law is achieved when the law functioned as a means of responding to the needs and social aspirations (Salman & Anton, 2004, p. 96). The basic idea responsive law, according Nonet and Selznick is to interpret and reformulate the provisions of law enforcement in accordance with the facts in order to achieve substantive justice (Samekto, 2013).

The emergence of repressive laws is not only motivated societal conditions that have not been laid out well and are still far from the order, but can also be triggered by the interests of the authorities and or certain parties affiliated with the authorities on their behalf. Interests Approach of law, such positioning law only as a convenient tool to improve compliance in order to secure the interests (Nonet and Selznick, 2008, p. 57). Law is seen as a tool of power and command of the sovereign with the unlimited power (Salman & Anton, 2004, p. 95).

A repressive legal character seen in the provisions of the financial services sector bankruptcy. Bankruptcy institution basically a means, particularly for creditors in the resolution of receivables against the debtor completely taken over by OJK as a public institution which has no legal status in the engagement of debts between creditors and debtors. Bankruptcy Act states that the use of authority file a bankruptcy petition against financial institutions by OJK does not need to be accounted for solely based on an assessment of financial condition and the overall banking condition.

Functions and authority of regulation, supervision, inspection, and investigation into the financial services sector is run by OJK. The authority is exercised independently and free from interference by other parties. In addition to building a functioning institutional system regulation and supervision of the financial services sector the OJK is also the only party that has the authority to file a request of bankruptcy against a debtor who is a financial institution. Clearly, it is understood that this authority is given to OJK to limit (read: blocking) rights-based parties as creditors of financial institutions to file for bankruptcy against debtors who is a financial institution, whether it's against the banks, insurance companies, securities companies, and the likes.

Despite the restrictions in bankruptcy of financial institutions only on the parties may file a bankruptcy petition on financial institutions, but the restrictions affect the rights of creditors in the bankruptcy proceedings of financial institutions. Because the filing of a bankruptcy petition is the first step towards bankruptcy process. Enactment of OJK as the only party that has the authority to file a bankruptcy petition to the Commercial Court of financial institutions result in a loss of rights and opportunities of all creditors to get immediate repayment of its receivables that it was time to be paid by the debtor. Here the rights of creditors and debtors sacrificed to maintain the stability of the financial services sector without clear accountability and measurement.

Bankruptcy Act does not provide further guidance as to what, if any party other than OJK (debtors, creditors or the public prosecutor) who has a legal interest to file a bankruptcy petition against a financial institution. Despite the provisions of *Undang-*

Undang Nomor 40 Tahun 2014 tentang Perasuransian allows creditors of Insurance companies to submit a request to OJK to apply for bankruptcy statement to *Pengadilan Niaga* (Commercial Court), but still there is no obligation for OJK to continue the request to the Commercial Court. So the construction of a Bankruptcy Act either against bank financial institutions, insurance, and capital markets are not in accordance with the stages as well as the bankruptcy process itself, which generally provide 'sovereignty' to the creditor as having the rights and interests based on the debts relations in bankruptcy debtors in the Commercial Court. In addition to the 'authority' of the creditors, which transferred to OJK, receivables that they have not used as a basis for the filing of a bankruptcy petition against financial institutions by OJK. It is a form of abuse against the creditor financial institutions as an individual (party) who has the right to precedence (privilege) the basic concept of bankruptcy institute.

Although restrictions on the rights of creditors in filing bankruptcy petition against a financial institution does not eliminate the material right of creditors in civil law and there are alternative legal remedy for creditors to fight for their rights, but it should be understood that the right to file a bankruptcy petition is a general collateral instrument that attached to the legal standing in engagement relationship debts. Without the legal standing then it should not be the legal rights and legal interests for OJK to file a lawsuit. Expertise, data and capacity of OJK as a regulator and supervisor of the financial services industry to adopt policies and appropriate measures are not the right base for OJK to be able to carry the right to file for bankruptcy which is essentially a civil rights. Implementation the task and function of state institutions should not be done by engaging in repressive stages of dispute resolution in the court especially in the sphere of civil justice. The tasks and functions of state institutions in achieving certain objectives in the public interest should use the authority and public mechanisms, such as in the form of policies regarding the establishment of regulations and implementation supervisory function properly.

Conflict of Interest

As applied in other countries, the system of supervision and regulation of the financial services industry in Indonesia is very tight (highly regulated). OJK carry out the functions of regulation and supervision of business activities in the financial services sector, which includes aspects of governance, business conduct, and financial health. Supervision is conducted through the analysis of reports, inspection, and investigation. Thus giving authority to the OJK in the filed of bankruptcy petition against financial institutions led to a conflict of interest between the interests of OJK as an authorized parties applicant filed for bankruptcy on financial institutions with interests OJK as regulatory and supervisory authority of the financial institution.

The submission a bankruptcy petition by both creditors and debtors indicate a problem or even a violation of the provisions of governance, business conduct, and financial soundness of financial institutions. The emergence of the issue or the violation such is due deficiencies in the regulatory and supervisory functions are carried out by OJK and is unable to direct financial institutions to manage its business prudently in accordance with prevailing rules. If there is a bankruptcy petition against financial institutions, then it OJK as a regulator and supervisor of the financial services sector is also responsible parties.

In such a situation can be ascertained OJK as a regulator and supervisor tend not to use its authority to file a bankruptcy petition against financial institutions that means attacking and harming its interests as regulators and supervisors of financial services sector. OJK will choose to use its authority as a public institution in resolving problems through JPSK mechanisms that such the dissolution company legal entity and form a liquidation team. The same choice proved to have been taken by Bank Indonesia, the Capital Market Supervisory Board (BAPEPAM), and the Minister of Finance with not once did using their authority to filed of bankruptcy petition against financial institutions. This option would not be favorable for the creditors and instead invite moral hazard on the owner of a troubled financial institution as a recipient of liquidity. The emergence of Moral hazard in the handling of troubled financial institutions proved in BLBI and Bank Century case burdening Indonesia either economically, socially and politically.

The use of the authority to file a bankruptcy petition which is owned by public institutions was first used by OJK in bankruptcy of PT Asuransi Bumi Asih Jaya in 2015. OJK choise to file a bankruptcy petition is too late considering since suspended its operations in 2009 and repealed its operating license in 2013 until 2015 PT Asuransi Bumi Asih Jaya can only complete 5.1 billion from Rp 85.6 billion in total debt of 10,584 policyholders.[1] Bankruptcy petition filed after voluntary liquidation process is not a wise choice because not only plunges policy holders in unfair negotiations in the liquidation process but also result in reduced value of the company's assets that can be distributed fairly in bankruptcy.

Lex specialist; Politic of Legislation

A critical view of the state power in bankruptcy is not intended to defend liberalism and the cult of individual rights as Nozick's entitlement theory and downgrades state functions in the frame 'minimal state' (Nozick, 1974; Kymlicka, 2011). The need for state functions in organizing common interests still recognized. However, the use of state power in the organizing of common interest should be measurable and accountable, especially when faced with the choice need to deviate principles that generally apply.

[1] Digugat Pailit OJK, Asuransi Bumi Asih Minta Pembayaran Utang Ditunda, http://news.detik.com/read/2015/03/18/140115/2862384/10/, accessed 20/03/2015

The state as a political institution has the authority to establish a set of rules through legislative power. In a specific circumstances and needs the state can also make specific norms (as Lex specialis) which is substantially different from or inconsistent with the principles of law in general. However, specific norms as exceptions in specific circumstances, the level of 'deviation' or differences compared to the norms and principles of law generally should only be limited to meet the needs and special circumstances. Norm as it generally should be re-enacted if the particular circumstances don't occur or is already quite resolved. Thus, circumstances and the particular needs which used as the basis the implementation of the specific norms should be such an obvious thing, objective and measurable. This is to avoid abuse of the norm function solely to the interests of certain parties.

If it can be ascertained that the bankruptcy of financial institutions will disrupt the stability of the financial system systemically it should be the policy is to close or delete the bankruptcy mechanism in the financial services sector. Such policies clearly deviate the principles engagement and Bankruptcy Act. But at least there is no ambiguity in putting the party who has the authority to file a bankruptcy petition against the debtor that is a financial institution and the right base which underlying the authority. The parties that will make engagement with financial institutions have fully realized that there is no general insurance that can be executed through bankruptcy mechanism to protect their rights as creditors. These creditors can formulate efforts and anticipatory mechanisms in the agreement that was made to protect their rights and interests.

With the presence of deposit insurance agency and in the near future will also established policy guarantee agency, which guarantees and protects the interests of customers of financial institutions. Then its concerns about the potential for interference stability of the financial system supposed be reduced.Concerns that the bankruptcy of financial institutions could destabilize the financial system is a hypothesis which tend assumptive and unmeasurable. The uncertainty was also causing problems in the making and implementation of the crisis policy in the financial services sector. Policies related to the crisis in the financial services sector are not accountable will only bring up the moral hazard from parties related to special treatment given liquidity support. The emergence of Moral hazard in the handling of troubled financial institutions proved in BLBI and Bank Century case burdening Indonesia either economically, socially and politically.

The values and purpose of law

The law according to Gustav Radbruch, to carry the value of real justice for human life. Law as carrier values of justice, constantly assess whether fair or unfair legal system in force. The value of justice is also the basis of a rule became law. Thus, the normative nature of Justice as well as constitutive for law (Huijbers, 1982, p. 162). The normative nature of justice lies in the function as an essential prerequisite that underlies all good positive law. He became the moral foundation of law and at the same benchmark system applicable positive law. The positive legal justice stems. The constitutive nature of justice arises because justice needs to be an element essential for the rule of law to be enacted into law (Tanya et al., 2006, p. 107).

In order for a real justice can be perceived, we need to see whether the benefits that could be provided by the justice. To ensure justice and the benefits can be perceived, then it needed a certainty. So for Radbruch, the law has three interrelated aspects, aspects of Justice, aspects of the benefits, and the aspect of certainty (Tanya et all., 2006, p. 107). Aspects of justice refers to the equal rights before the law. Aspects of the benefits pointing to the justice goal is to provide benefits to human life. This aspect that determines the content and become law. Certainty refers to the assurance that the law contains justice aimed to promote the good of human life actually serves as regulations are adhered.

Bankruptcy was born as a last resort to ensure justice in the relationship between legal subjects in their efforts to meet their needs. Fulfilling the needs one of the parties should not harm others. A debtor has to pay back (pay off) the debt. Justice here relating to the protection of the rights of creditors that should be protected and to ensure repayment of its receivables. If the debtor is unable to fulfill its obligations, then the debtor will be pulled into bankruptcy and its assets serve as collateral for the repayment of its debts.

The inclusion of financial institutions, bankruptcy provisions in Bankruptcy Act supposed to be able to provide legal certainty for the protection of the rights of creditors of financial institutions to obtain repayment of its receivables. However, construction of the financial institutions, Bankruptcy Act, which submits an authority to the OJK to file a bankruptcy petition against financial institutions to the Commercial Court has brought the bankruptcy of financial institutions in the area of public policy. This relates to the position of OJK as a financial services authority. Thus the right to file for bankruptcy by creditors, which actually is the individual interest of the creditors to obtain repayment of receivables will constantly ignore by OJK.

Justice and certainty, according to Radbruch, are the parts which have to exist in the law. While the beneficial aspects of the law are the relative element. Because the goal justice (as the legal content) to provide benefits for the good of humanity, more as an ethical value in law (Tanya et al., 2006, p. 108). Radbruch to believe that the justice of the individual human is a cornerstone (principle) for the realization of justice in law. Three aspects the law which are arranged in a structured sequence that starts from

justice, certainty, and benefit. So when the public interest is determined as the law benefits to be achieved, then it should still be subject to justice and the rule of law. This is to avoid arbitrariness against man as an individual.

In line with Radbruch construction built on the theory, then justice and the protection of creditor rights is the major cornerstone for the realization of justice in bankruptcy. So when the public interest to maintain the credibility of financial institutions and financial sector stability that serve as the legal benefits to be achieved, then by law OJK as the only party which is authorized to filed bankruptcy petition on financial institutions supposed use these powers to filed bankruptcy petition against financial institutions which have met the criteria for bankruptcy as a form of protection and assurance the fulfillment of the rights of creditors of financial institutions. Otherwise, the right to filed bankruptcy petition against the financial institutions should be returned to creditors.

Conclusion

Bankruptcy basically a means for creditors and debtors in settlement receivables. Bankruptcy is the realization of two fundamental principles in civil law contained in Article 1131 and Article 1132 of the *Kitab Undang-Undang Hukum Perdata* (Civil Code) which provides that any action carried out by someone in the field of wealth will always carry due to its assets. Any party who entitled to the fulfillment of the engagement as a creditor, must obtain the fulfillment of the engagement of wealth debtor on *pari passu* and *pro rata.*

Granting authority entirely to the OJK in filing a bankruptcy petition against a financial institution that is solely based on an assessment of financial condition and the condition of the overall banking without the need to be accountable confirm typology repressive law. Besides granting such authority to the OJK raises a conflict of interest between the interests of OJK as an authorized party filed for financial institution's bankruptcy with interests OJK as regulatory authorities and supervisory financial institutions. The right to file a bankruptcy petition is a general guarantee instrument attached to the legal position in relation to the engagement of debts. OJK as the financial services sector authorities did not have the rights and legal position in engagement as a basis to apply for it.

Improvement of construction of the bankruptcy law in particular to financial institutions needs to be done by adding the insolvency test, the criteria regarding the number or types of creditors, and the value of the debt as a basis for applying for a declaration of bankruptcy, especially for financial institutions. In addition, the Institute of deposit insurance and the policy needs to be realized to ensure and protect the interests of customers of financial institutions so that concerns over the potential disruption of the financial system stability can be suppressed. So that the function and purpose of the institution of bankruptcy to protect the interests of creditors and debtors can keep running at the same time maintaining the stability of the financial services sector and the public interest.

References

Andrew, C., (1997). '*Why is Financial Stability a Goal of Public Policy*?', Economic Review, 1997, issue Q IV, 5-22 http://www.kc.frb.org/publicat/sympos/1997/ pdf/s97crock.pdf

Budiardjo, M., (1980). Masalah Kenegaraan, Jakarta, Gramedia

Dworkin, R., (1978). *Taking Rights Seriously*, Cambridge , Harvard University Press

Hikmah, M., (2007). *Aspek-Aspek Hukum Perdata Internasional Dalam Perkara-Perkara Kepailitan*, PT Refika Aditama

Huijbers, T., (1982), *Filsafat Hukum Dalam Lintasan Sejarah*, Yogyakarta, Kanisius

Huizink, J. B., (2004). *Insolventie (1st ed.).* Pusat Studi Hukum dan Ekonomi Fakultas Hukum Universitas Indonesia

Kymlicka, W., (2011). *Pengantar Filsafat Politik Kontemporer; Kajian Khusus atas Teori-Teori Keadilan* (A. Wahyudi, Trans.), Yogyakarta, Pustaka Pelajar

Muljadi, K., (2005). *Kreditor Preferen dan Kreditor Separatis Dalam Kepailitan*, Jakarta, Pusat Pengkajian hukum

Nonet, P., Selznick, P.,(2008). *Hukum Responsif* (R. Muttaqien, Trans.), Bandung, Nusa Media (Original work published 1978)

Nozick, R., (1974). *Anarchy, State, and Utopia*, New York, Basic Books

Pardede, M., (2011). *Aspek Hukum Pemisahan Pembinaan Dan Pengawasan Perbankan*, Jakarta, Badan Pembinaan Hukum Nasional

Raws, J., (1971). *A Theory of Justice*, Cambridge , Harvard University Press

Salman, O., Susanto, A. F., (2004). *Beberapa Aspek Sosiologi Hukum*, Bandung, Alumni

Shubhan, M. H., (2008). *Hukum Kepailitan; Prinsip, Norma, dan Praktik di Peradilan*, Jakarta, Kencana

Simmons, A. John, (1992). *The Lockean Theory of Rights*, New Jersey, Princeton University Press

Hartono, S. S., (1981). *Pengantar Hukum Kepailitan dan Penundaan Pembayaran*, Yogyakarta, Liberty

Sunarmi, (2004). *Perbandingan Sistem Hukum Kepailitan Antara Indonesia (Civil Law System) dengan Amerika Serikat (Common Law System)*, Fakultas Hukum Sumatra Utara.

Tanya, B. L., Simanjuntak, Y. N. & Hage, M. Y., (2006). *Teori Hukum; Strategi Tertib Manusia Lintas Ruang dan Generasi*, Jakarta, CV. Kita

Wolf, J., (2013). *Pengantar Filsafat Politik* (P. Setyabudi, Trans.) CV Nusa Media, (Original work published 2009)

Decision of the Constitutional Court in Case No. 071/PUU-II/2004 and Case Number: 00-002/PUU-III/2005 in the petition to Act No. 37 of 2004 on Bankruptcy and Suspension of Payment against Law Constitution of the Republic of Indonesia Year 1945