

VERDICTS ON BANKRUPTCY CASES STUDY CASE ON JUDGES' LEGAL BEHAVIOUR

Rr. Ani Wijayati¹,
Setiono²,
Soehartono³

ABSTRACT

Objective of this thesis is to reveal, conceive and analyze: 1) appraisal on simple verification to bankrupt verdicts by judges, 2) the significance of indebtedness by judges and any implications over its verification and 3) new constructions of legal behavior on judges in order to realize fair and just laws in accordance with verification of bankruptcy based on progressive laws.

In order to reach the objective, doctrinal and non-doctrinal legal studies are applied. Doctrinal legal study is to review any developed and conceptualized laws on doctrines. Objective of doctrinal legal study is to provide secondary data that procured from legislation inventory, verdicts of judges, to review related literatures with its certain issues, and after those are gathered and collected, analysis on deductive method is conducted. Moreover, non-doctrinal legal study is to review any developed laws that based on valid, customized and developed in the public. Non-doctrinal legal study is conducted by procuring primary data from observation method, profoundly interviews, and those data are analyzed with interactive inductive method. In order to promote the two approaches, researcher used several theories: theory on behavior legal studies, theory on legal hermeneutics and theory on progressive laws.

This study has showed that : 1) simple verification is an absolute requisition that restricts judge's competence in the Commercial Court in order to verify whether a debtor who is requesting bankrupt evidently proven to pay all his due debts and its debts are collectable and whether a debtor is able to pay all his due debts and collectable or not. Judges on the Commercial Court has a tendency and assessment to make verdict on bankruptcy as soon as possible and immediately implemented as specified on Article 8 paragraph (4) Bankruptcy Lawsof 2204,2) There is a tendency of correlation between judges' comprehension on indebtedness and its verdicts. There are two debt comprehensions, which are a narrow comprehension refers to textual interpretation and extensive comprehension refers to contextual interpretation, 3) Progressive laws are relatively relevant to make as a base and reference on judges' legal behavior reconstruction in carrying out the bankrupt statement application. This is based on old legal culture values under positive legal paradigm which experienced some difficulties to present ideal, humanist and responsive laws as well as to protect the public. Legal culture values of judges shall be renewed in order to adjust with needs and development of legal sciences as well as economy growth, which is reconstructions on way of thinking, interpretation and ethics.

Keywords: Judge verdict, bankruptcy case, legal behavior.

1. Doctoral Program Student of Legal Sciences, University of Sebelas Maret, Surakarta, Indonesia
2. Lecturer on Doctoral Program of Legal Sciences, University of Sebelas Maret, Surakarta, Indonesia
3. Lecturer on Doctoral Program of Legal Sciences, University of Universitas Sebelas Maret, Surakarta, Indonesia

A. Introduction

1. Background

To give debt by creditor to debtor has been practiced for centuries in social community. It is not likely nowadays to find businessmen or companies that have no debts.¹ Debt has been an inseparable factor in business industry. To have debt is a common thing as long as he/she is still able to pay, it is not a wrongdoing. It shall become a problem if a debtor cannot be able to pay any of its debts.

A company that cannot be able to pay any of its indebtedness shall be charged a bankrupt verdict^{2,3} by the Commercial Court, whether it is by request of creditor or debtor or other third parties as specified on Act Number 37/2004 pertaining to Bankruptcy⁴ and Postponement to Pay its Debt (hereinafter refers to Bankruptcy Lawsof 2004).

¹ Sutan Remy Sjahdeni. *Hak Jaminan dan Kepailitan*. Jurnal Hukum Bisnis. Volume 17, January 2002, page 46.

² Used terminology of bankruptcy in Indonesia is translated from *faiissement* (Netherlands). In legal systems of Great Britain or United States and several countries with common laws are known as *bankruptcy*. Bankruptcy is something that relate with bankrupt events. Bankrupt itself is to stop pay its dents. Furthermore, examines periksa Ridwan Khairandy, *Pengantar Hukum Dagang*, Fakultas Hukum UII, Yogyakarta, 2006, page 153.

⁴ As a Special Court in the Public Court, the Commercial Court is not a novel court as a supplement for existing courts specified in Articles 18 and 25 Act Number 48/2009 pertaining to Judiciary Power, namely Public Courts, Religious Courts, Military Courts and State's Administrative Courts, and by a Constitutional Court. Moreover,

In essence, bankruptcy is a general seizure⁵ with conservator⁶ on all debtor's assets and properties that stated as bankrupt. Any bankrupt individuals shall forfeit its properties, and to be submitted to curator and in its job is assisted by Supervisory Judge that appointed by Judge in the Commercial Court.⁷ Bankruptcy is to confiscate and execute for all debtor's properties to pay debtor's debts⁸ to its creditor⁹ in *pari passu*¹⁰ or its equivalent, except there is a creditor with privilege to take precedence.¹¹ Bankruptcy is conducted to debtor (both in individual, mutual business, or legal body) that unable to pay any of its debts to creditor.

Bankruptcy process to debtor is a measure to settle and solve any indebtedness of its business in fair and¹² effective way.¹³ Bankruptcy is an application to the Commercial Court and its objective is to obtain constitutive bankrupt statement.¹⁴ Objective of bankruptcy is to avoid unilateral seizure/control of debtor's properties, if in the same time, there are certain creditors to collect its debts to debtor, in this case, bankruptcy is used to assure equal distribution of debtor's properties to its creditors. Objective of bankruptcy is also to prevent any creditors that have material security rights to claim its rights by selling debtor's properties with no regards to debtor's interests or other creditors. In addition, objective of bankruptcy is also to prevent debtor to make any adverse actions to its creditors.¹⁵

One of faced issues in bankruptcy is implementation of simple verification principles.¹⁶ This is due to no clear comprehension or limitation for simple verification principles implementation in 2004 Bankruptcy Laws. 2004

explanation of Article 27 paragraph (1) Act Number 48/2009 specified that terms of "Special Court" in this condition is Child Court, Commercial Court, Human Rights Court, Corruption Court, Industrial Relationship Court and Fishery Affairs Court in scope of Public Court and Tax Affairs Court in scope of State Administrative Court. In addition, Act Number 49/2009 pertaining to Public Court (UUPU), is a juridical primary to establish Commercial Court. Furthermore, examines Victorianus M.H. Randu Puang, Penerapan Asas Pembuktian Sederhana dalam penjatuhan Putusan Pailit, Sarana Tutorial Nurani Sejahtera, Bandung, 2011, page 7. and Adi Sulistyono & Isharyanto, *Sistem Peradilan di Indonesia dalam Teori dan Praktik*, Kencana, Jakarta, 2018, page 396.

⁵ It can be said general seizure due to includes all of debtor's properties and to be done for all creditor's interests. Act Bankruptcy Laws Number 22/2004 provides exclusion properties from seizure. Furthermore, examines Sudikno Mertokusumo, *Hukum Acara Perdata, Indonesia*, Liberty, Yogyakarta, 1982, page 58.

⁶ Security seizure on debtor's properties. This seizure is a preparation act from a claimant in an application to the Head of District Court to have assurance to make penal verdict by cashing or sell any seized debtor's properties in order to fulfill claimant's charge. To make seizure on a property means any of its properties shall be confiscated and non-transferrable. This security seizure is to assure the enforcement of a verdict in future on respondent's properties (*conservation beslag*). Furthermore, examines Remowulan Sutantio and Iskandar Oeripkartawinata, *Hukum Acara Perdata dalam Teori dan Praktek*, Mandar Maju, Bandung, 1995, page 99.

⁷ Examines Article 1 in relation with Articles 16 and 21 on 2004 Bankruptcy Laws.

⁸ Examines Article 1 letter 3 on 2004 Bankruptcy Laws

⁹ Examines Article 1 letter 2 on 2004 Bankruptcy Laws

¹⁰ Principles of *pari passu pro rata parte* means the properties as collective collateral for creditor and the proceeds shall be proportionally distributed among (creditors) unless if there is a precedence among those creditors according to laws and regulations to have its claim payments. This principle emphasizes on debtor's property distribution to pay all of its debts to creditors in fair way according to its portions (*pond-pond gewijs*) and not in *pari passu*. Furthermore, examines M. Hadi Shubhan, *Hukum Kepailitan : Prinsip, Norma dan Praktik di Peradilan*, Kencana Prenada, Jakarta, 2008. Page 29.

¹¹ Bagus Irawan, *Aspek-aspek Hukum Kepailitan Perusahaan dan Asuransi*, Alumni, Bandung-2007, page 19.

¹² Justice principles wish laws to provide proportional fair justice to each party. In concepts of laws, justice and any related parties in bankruptcy shall be regulated proportionally and fair. Furthermore, examines Bernard Nainggolan, *Perlindungan Hukum Seimbang Debitor, Kreditor dan Pihak-pihak Berkepentingan dalam Kepailitan*, Alumni, 2011, Bandung, page 124.

¹³ Effective principle : litigant procedures and mechanism in the Commercial Court is relatively effective. The timetable is predictable from first degree case to cessation, therefore litigants may have its advantageous. Any bankrupt decrees and PKPU cases that made in open public hearing shall have a precedence and even the relevant verdict has submitted to legal measures. Furthermore, examines Syamsudin M. Sinaga, *Hukum Kepailitan Indonesia*, Tatanusa, Jakarta, 2012, page. 329.

¹⁴ Constitutive verdict shall has a novel legal situation or to nullify a legal situation. Retnowulan Sutantio *Op.cit.*, page 109.

¹⁵ Gunawan Widjaja, *Kepailitan Perusahaan Asuransi*,", Pusat Pengkajian Hukum, *Newsletter*, No. 60, March 2005, page 12.

¹⁶ There are many writings and studies about this matters, namely : a. Ridwan Khairandy in his writing "Beberapa Kelemahan Mendasar UU Kepailitan", *Jurnal Magister Hukum* Volume 2 No. 1 February 2000; b. Siti Anisah's Thesis "Masalah-masalah dan pemikiran Terhadap Pelaksanaan Undang-undang Nomor 4 Tahun 1998 tentang Kepailitan", Post-graduate on Laws Master Program of UII. Page 22; c. Dissertation of Hotman Paris

Bankruptcy Laws is only regulated in Article 8 paragraph (4) that bankrupt claim shall be granted in the event that there is a fact or proven condition in simple way that any requirements to claim a bankrupt as specified in Article 2 paragraph (1) has been met. Due to provision in Article 8 paragraph (4) above, it can be seen that in order to understand the relevant article is closely related with provisions in Article 2 paragraph (1) on 2004 Bankruptcy Laws.

Meant requirements based in Article 2 paragraph (1) on 2004 Bankruptcy Laws is that debtor with more than 2 creditors and cannot be able to pay at least one of its collectable and due debts, declared bankrupt by court verdict either by its own request or request from more than one of its creditors, and in fact that more than two creditors and fact of its due and unpaid debts.¹⁷ The difference on size of postulated debts by bankrupt claimant and respondent shall not prevent the requirement to issue bankrupt verdict.

Based on comprehension of explained simple verification principles, it is clearly so obvious and easy to maintained. However, in reality, it is not necessarily that way, because in bankruptcy cases of PT. Asuransi Jiwa Manulife Indonesia (AJMI)¹⁸ and PT. Cipta Televisi Pendidikan Indonesia,¹⁹ PT. Telkomsel²⁰, the Commercial Court has made its verdicts (*Judex facti*) whereas, "it is simply proven", however, after it brought to the Supreme Court (*Judex Juris*), evidently, those verdicts were invalidated and stated that there are no simple evidences or vice versa, on occasion, a fact or condition of debt shall not be able to give simple evidence on verdict in first level. In addition, there are various extraordinary views of the panel of judges, for example issues on verification on quantity of debts. These reality and phenomenon have made certain controversies in public and it is very appealing to make deepen reviews on any empirical realities or the phenomenon on those facts. Arisen questions are why did dissimilar outputs occurred between any verdicts from the Commercial Courts and the Supreme Court for a specific case, is there any factors that causing output differences from those two institutions, what does the perspective from the Commercial Court's judges tend to give bankrupt verdict, meanwhile, the Supreme Court gives non-bankrupt verdict, how do judges interpret debt and whether bankruptcy cases due to unpaid debt can be proven simple or not.

In order to respond its reality and phenomenon, there are 2 (two) perspectives, which are internal perspective and external perspective.²¹ From internal perspective, there does not appear to be any matters that are important to be disputed over the empirical reality of a judge's decision, meaning that the judge is legitimate and there is no prohibition to declare bankruptcy or not bankrupt due to it is proven or not proven in a simple way. This is judge competence to examine and give verdicts. Judge shall not be mistaken provided that it is in accordance with the formal and procedural rules that have been determined in the laws and regulations. While in an external perspective, the operation of the law is not only limited to the fulfillment of formal procedures. The work of judges is firstly determined and limited by formal rules in the formulation of various laws, but this is far from enough to be able to explain the behavior of the actors involved by excluding other elements such as politics, economics and culture.²² Every law enforcement activity is involved with values, ideas, attitudes and behaviors that related to the laws.

By reviewing the decisions of judges in the Commercial Court and the Supreme Court, the values of ideas, beliefs, patterns of behavior of judges will be explored and revealed in constructing bankruptcy decisions.²³

The choice of the judge's paradigm in deciding bankruptcy cases as the focus of the study in this study is based on reasons, first the judges occupy a central position and determine in the process of bankruptcy proceedings in Indonesian courts. Every judge's decision making process is a process that requires deep thought and consideration. This is an interesting thing to study because mistakes in decision making will have an impact on people's distrust of bankruptcy law institutions in Indonesia. Secondly, besides making decisions that have not been carried out with mechanical

Hutapea "Kepailitan berdasarkan Obligasi Dijamin, d. even one of interviews on the selection for supreme judge candidates on July 23, 2012 was about simple verification on bankruptcy.

¹⁷ Explanation of Article 8 paragraph (4) on 2004 Bankruptcy Laws and Article 2 paragraph (1) on 2004 Bankruptcy Laws explained that means of creditor in this paragraph is either congruent, separative or preference credits. Particularly for separative and preference creditors, they can make bankrupt statement request without losing its collateral rights over the material they have for the debtor's assets and their right to take precedence.

¹⁸ Verdit with Number 10/Pailit/2002/PN. Niaga Jkt. Pst. awarded on June 13, 2002 in relation with Cessation verdict with number : 021K/N/2002. awarded on July 5, 2002.

¹⁹ Cessation verdict with number : 834 K//Pdt.Sus/2009 awarded on September 19, 2009.

²⁰ Verdict with number : 48/Pailit/2012 PN. Niaga Jkt Pst awarded on September 14, 2012 in relation with Cessation verdict with number 704/K/Pdt.sus/2012, awarded on November 22, 2012.

²¹ Brian Z. Tamanaha, *A Social Legal Approach to the Internal External Distinction; Jurisprudential and Legal Ethics Implications*, University Press ,Cambridge, p 161.

²² Lawrence M.Friedman, *The legal System A Social Science Perspective*, Russel Safe Foundation New York, 1975, hlm. 15, Legal culture is human attitude to the law and legal system-beliefs, values, thoughts, and expectations. So legal culture is the thoughts of social and social strengths that determines how law is used, avoided, or misused.

²³ According to William James in the life of the judge, there is power that they do not recognize and cannot afford to give a certain name as the total push and pressure of cosmos, which shall decides what option shall be made, in Achmad All & Wiewie Heryani, *Sosiologi Hukum Kajian Empiris terhadap Pengadilan, op.cit*, page 6.

equipment, as long as human factors, namely the judge, still need to be studied in various ins and outs. Making a judge's decision is a complex and difficult process that requires training, experience, and wisdom. Judges are expected to have the ability to translate the values of justice through their decisions. Therefore, a judge in carrying out his duties to seek truth and legal justice is not enough to only use a juridical approach but uses other holistic approaches using philosophical, sociological, anthropological, economic and so on. This holistic stression is very important considering the mandate of Article 5 paragraph (1) of Law Number 48 of 2009 concerning the power of the Judiciary that the judge must explore, follow and understand the legal values that live in society. Likewise, in considering bankrupt or non-bankrupt decisions, the judge must also pay attention to the debtor's good faith in paying their obligations. The three methods of thinking of the judge in drafting the decision are based on a deductive method in which this method is not appropriate, especially for judges in the Commercial Court as the first court to examine *judex factie*. A more appropriate method of examining *judex factie* is based on inductive methods and not deductive.

2. Problem Formulation

Based on descriptions on background above mentioned, study issues are as follows :

- a. Why is the discrepancy on application of simple verification by the panel of judges in the Commercial Court and the Supreme Court occurred?
- b. How is the panel of judges in the Commercial Court and the Supreme Court interpreting the debt and what are the implications for the implementation of evidences?
- c. How to build a new construction of judges' behavior in the implementation of simple evidence in progressive law-based bankruptcy decisions to realize a good bankruptcy decision, namely the achievement of legal certainty, the fulfillment of a sense of justice and the existence of benefits for debtors, creditors and economic development?

B. Study Methods

There are three issue formulations that needs an accurate study method in this study. Studied object in this study is laws that are conceptualized as judges' decisions and laws are conceptualized as symbolic meanings as manifested and observed in and from the actions and interactions of citizens of the law conceptualized as meaningful reality that is in the subjectivity of the subject.²⁴

In order to answer the first issue formulation, the comprehended third legal concept is the legal concept as decisions that are created by judges *in concreto* in judicial processes as part of legal remedies to resolve cases or cases and have a possible precedent on the next case or cases.²⁵

For formulation of second and third issues, the used fifth legal concept is that the law sought is a manifestation of the symbolic meanings of social actors as seen in interactions between them or studies that bases or conceptualizes the law as attitudes or behaviors.²⁶

In a study that examines the legal behavior of judges, the study uses secondary data as the beginning of the study in the form of legislation and decisions of the Commercial Court in the form of bankruptcy as normative legal material. The approach used in normative legal research is intended as material for conducting analysis.

The study on judicial legal behavior is empirical legal research with a socio legal approach.²⁷ The object being studied is a law conceptualized as a meaningful symbol as a result of mental constructs on individuals (judges) that are subjective and diverse which manifest in the form of a judge's decision about bankruptcy.

Based on the type of study conducted, the data needed in this study are primary data and secondary data. Primary data is data obtained directly from the source or obtained directly from the community. This type of data provides information or information directly primarily related to the object of research. Judges' thoughts and ideas in resolving disputes are set forth in the judgment of judges who present reasons and constitute legal reasoning as the basis of their decisions. Secondary data sourced from library materials or written documents include primary, secondary and tertiary laws.

In accordance with the data used in the study and the type of approach taken, the data analysis technique is qualitative descriptive. Descriptive because this research tells and interprets existing data by comparing similarities and differences in certain phenomena and then takes the form of comparative studies or classifies or holds judgments, sets standards, establishes correlations and positions (status) of elements with others. This study reveals the legal behavior of judges in carrying out their duties and responsibilities at the trial to be observed and analyzed.²⁸

²⁴ Sutandyo Wignjosoebroto, *Konsep Hukum, Tipe kajian dan Metode Penelitiannya*, Kertas Kerja, BPHN, Jakarta, 1995, page 5.

²⁵ Sutandyo Wignjosoebroto, *Konsep dan Metode*, Setara Press, Jakarta, 2013, page 25.

²⁶ Ibid, page 40.

²⁷ Faisal, *Menerobos Positivisme Hukum*, Gramafa Publishing, Jakarta, 2012, page 20.

²⁸ Researcher tries to understand and express the behavior of people (judges), their relevant motives and behavior. In literature of the descriptive method terminology is equated with normative methods, survey

In accordance with the approach method used, this study uses data analysis through two stages:²⁹

1. The first stage to analyze the data in the first problem formulation is based on the doctrinal approach, analysis is carried out by using normative analysis methods. At this stage the researcher conducts a legal inventory of various legal norms. In this study, researchers understood and described the law using the method of deductive logic.
2. The second stage is to analyze the data in the formulation of the second and third problems that are based on a non-doctrinal (empirical) approach, the analysis carried out using qualitative analysis conducted using an interactive analysis model.

C. Study Results

The provisions of the law cannot be applied directly to the event. To be able to apply the general and abstract provisions of the law, in a concrete and specific event, the provisions of this law must be given meaning, explained or interpreted and directed or adapted to the event to then be applied to the event. Legal events must sought first from the concrete event then the law is interpreted to be applied. Every legal rule is abstract and passive. In other words, the judge's verdict is actually the law in the real sense of the concrete case examined by the judge. Laws, habits and so on are only guidelines and inspirations for judges to form their own laws. Judges in interpreting a rule of law applied in real conditions practice their policies and decisions themselves and not merely declare certain legal rules but judges make laws. Judges' decisions are legal.

This research is focused on revealing and analyzing the legal behavior of judges in the Commercial Court and the Supreme Court. The concept of behavior here is limited to the actual behavior of judges in the judicial process. These behaviors are learned in their interactions and interactions between the people involved in the stages of making decisions with each other. The main focus in the behavioral law approach is behavior in the judicial process especially in the application of simple proof and meaning of debt. The attitude and thought of the judge greatly determines his behavior or actions or decisions.

1. The Practices of Simple Verification by Judges at the Commercial Courts and the Supreme Court

a. Urgency of Verification

Reviewed from practical, normative and theoretical perspectives on all stages of civil case trials, and verification is a specific and decisive stage. It is said to be specific because at this stage of verification the parties are given the opportunity to show the truth of certain legal facts that become the subject of the dispute. Whereas it is referred to as the determining stage because the judge in the process of adjudicating and deciding the case depends on the verification of the parties in the trial

In settling any civil cases, one of the duties of a judge is to investigate legal correlation that is the basis of the claim really exists or not.³⁰This legal correlation must be proven by the claimant in the event that the claimant wants victory in a case. Failure of the claimant to prove the arguments on which the claim is based will result in the lawsuit being rejected by the Judge examining and adjudicating the case.³¹

The judge must know the truth of the event in question objectively through verification. Thus the evidence is intended to obtain the truth of an event and aims to establish a legal relationship between the two parties and determine the decision based on the results of verification.

In proving the civil case that the law wants to seek is formal truth, which means that the judge is bound to the information or evidence presented by the parties. The judge is bound to a recognized or disputed event. The judge's opinion is sufficiently convincing verification.³²

In legal sciences, verification is not an absolute as to natural sciences, however, it is a social verification. There is containing certain uncertainty elements even for just a little bit. Therefore, legal verification on the truth is relative and not to obtain absolute truth besides that it is also likely that the occurrence of differences in the assessment of

methods, case studies. Furthermore, examines: Morton Deutsch dan Stuart W. Cook, *Research Method in Social*, Dryden Press, New York, 2004, page 48.

²⁹Heribertus Soetopo, *Pengantar Penelitian Pengantar Penelitian Kualitatif, dasar-dasar Teoritis dan Praktis*, Pusat Penelitian UNS, Surakarta, 1988, page 34.

³⁰Retnowulan Sutantio dan Iskandar Oeripkartawinata, *op.cit*, page 58.

³¹ Ibid

Yahya Harahap in Abdul Manan defines evidences in the broadest sense as the ability of the Claimant and/or Respondent to use argumentative laws to support and justify the legal relationship and events that are transferred (by the Claimant) or denied by (by the Respondent) in the legal relationship that is being prosecuted. In a narrow sense, evidence is only needed as long as the things that are disputed or things that are still disputed or only as long as it becomes a dispute between related parties. Furthermore, examines M. Natzir Asnawi, *Hukum Pembuktian Perkara Perdata di Indonesia*, UII Press, Yogyakarta, 2013, page 2.

³²Yurisprudensi Mahkamah Agung 1974, *Dalam Rangkuman Yurisprudensi Mahkamah Agung II, Hukum Perdata dan Hukum Acara Perdata*, 1977, page 210.

the results of verification among judges. It is of course understood on non-absolute truth of legal verification, due to characters of all human knowledge include judges are relative, that based on experiences, visions, ideas that not constantly true, valid and genuine.

If the absolute truth is required to decide on a case, then surely a judge cannot be able to carry it out, therefore the value of certainty is always relative. In juridical verification, the certainty is a medium to decide the truth of an event as a base to award any verdicts or decisions.³³

The court has a social function, therefore, certainty in judicial shall not more significant than any certainties that decide on social measures. Charles Samford claimed that judicial shall not an intact structure with rational, logical regularity as have been specified on normative laws and regulations, the truth is that interested public wants to see that the court is just like that. Internal condition in the court when maintaining their roles to settle any dispute shall truly a Mirror Society of the relevant court located.³⁴

b. Essence of Simple Verification on Bankruptcy Laws

There is something unique and different things, especially regarding evidence of bankruptcy applications compared to civil cases in general, which is simple proof. The background of the implementation of simple verification in bankruptcy cases is basically parallel with the purpose of the establishment of Act Number 4/1998 and Act Number 37/2004, namely to try to solve the problem of indebtedness between debtors and their creditors in fair, swift, open and effective ways.

The implementation of simple verification in bankruptcy case examinations is logical due to basically the case of a bankruptcy statement is a case of an application and not a claim and there is a time limit for the panel of judge to settle the case for the bankruptcy application.

Validity period of Simple verification in bankruptcy *Faillissement V erordenen* (FV) has been evidently regulated in Article 6 paragraph (5) of FV. This simple verification has, in practice, caused significant losses for creditors. Any bad debtors shall easily claim bankruptcy on itself, as long as the relevant debtor is qualified as a bankrupt debtor that failed to pay its debts. Nevertheless, if its creditors applied bankrupt application due to provisions in Article 5 paragraph (5) of FV, bankrupt application shall be fulfilled, in the event that creditor(s) is able to verify its collecting rights in simple and brief ways. Based on verdicts of *Hoge Raad* (HR) dated on November 30, 1911, September 19, 1919 and June 28, 1935 "a brief claim is verified means that verification shall not be needed anymore for common verification (Book IV of Penal Codes).

The principle of simple verification is also regulated in Article 6 paragraph (3) of Act Number 4/1998 (Bankruptcy Laws) which states that: "Requests for bankruptcy statements must be granted if there are facts or circumstances which are simply proven that the requirements for bankruptcy are referred to in Article 1 paragraph (1) has been fulfilled.

The judge in deciding a bankruptcy application is only limited to simple verification in Article 1 paragraph (1) of Bankruptcy Laws, namely the debtor has two or more creditors and does not pay at least one debt that has fallen due and can be billed. According to Jerry Hoff, the standard for being declared bankrupt which is regulated in the Law is easier than the one stipulated in FV (the debtor is in a state of having stopped paying his debts).

The Bankruptcy Laws does not find a more detailed explanation of how simple verification is carried out in examining bankruptcy applications, except to say in the Explanation in Article 6 paragraph (3) of the Law that simple verification is commonly referred to as summarizing evidence. There are no definitions and clear boundaries or indicators that can be a guide to what is meant by simple verification. The extent to which the judge determines can be proven simple or not if there is a rebuttal to the application that makes the case considered complex.

However, This shall open a wide discussion for the judges in interpreting the notion of simple verification in resolving bankruptcy applications. With a narrow time frame to decide whether or not a bankruptcy application is granted, often the rejection of the application by the panel of judges on the grounds that the case cannot be proven briefly.³⁵

³³Sudikno Mertokusumo, *Bunga Rampai Ilmu Hukum*, Liberty, Yogyakarta, 1984, page 86

³⁴Achmad Ali, *Menguak Teori Hukum dan Teori Peradilan*, Kencana Prenada Media Group, Jakarta, 2012, page 261.

³⁵Aria Sujudi, Eryanto Nugroho dan Herni Sri Nurbayanti, *Analisa Hukum Kepailitan Indonesia di Negeri Pailit*, Pusat Studi Hukum dan Kebijakan Indonesia, Jakarta, No. 4, 2004, page 148.

Sudargo Gautama argues that if you pay attention to the simple verification adopted in Article 6 paragraph (3) of this Law, it is very easy to obtain a bankrupt statement, even this bankruptcy claim must be granted and cannot be rejected, if the provisions in Article 6 paragraph (3) are seen literally (*letterlijk*).³⁶

Example of simple verification in the Commercial Court during the validity period of the Law can be found in the case of PT Palace Palace Dharmala Sakti Sejahtera Vs PT. Manulife Indonesia Life Insurance, Number 10 / Pailit / 2002 / PN.Niaga / Jkt / Pst. This verdict raises a reaction that monkeys not only from within the country also from the international world, because PT. AJMI is a company whose financial condition is still solvent.³⁷The Judges of the Commercial Court in their legal considerations argued that the bankruptcy conditions as specified in Article 1 paragraph (1) of Bankruptcy Laws, namely the debtor has more than a creditor, at least one debt that is not paid, the debt has fallen due and can be billed

The Supreme Court Judges stated that the issue of dividend payments and the evidentiary on share ownership dispute was not simple, so the examination of these cases must be carried out through a civil suit to the District Court, not through the Commercial Court

In the event that the issue on insolvency is linked to the provision of evidence briefly, classification of bankruptcy cases in brief that require simple proof is illogical, due to bankruptcy cases that occurred today involved large companies, procured large assets and a large number of employees, In addition, bankruptcy cases are currently related to quite complex problems related to company laws, stock market laws, laws regarding mortgage rights so that it cannot be categorized as a simple matter.

Subject to simple verification has also regulated in Article 8 paragraph (4) of 2004 Bankruptcy Laws that states: Requests for bankruptcy statements must be granted if there are facts or circumstances that are simply proven that the requirements for bankruptcy as referred to in Article 2 paragraph (1) have been fulfilled.

On explanation part of Article 8 paragraph (4) of 2004 Bankruptcy Laws stated that: Simple facts or conditions that are meant to be defined are the fact that there are two or more creditors and the fact that debts have fallen due and are not paid, while the difference in the amount of debt debated by bankrupt claimant and bankrupt respondent does not prevent the bankruptcy decision from being aware.

A more detailed explanation regarding the simple verification adopted in the Bankruptcy Laws of compared to FV and Bankruptcy Laws still bears other weaknesses, namely not providing parameters that must be considered by the judge in applying this simple verification both from the FV period to the 2004 Bankruptcy Laws period, especially the problems regarding the ease of obtaining bankruptcy status still hasn't got a good solution.³⁸

One of the bankruptcy cases based on 2004 Bankruptcy Laws was the bankruptcy case of PT. Cipta Televisi Pendidikan Indonesia (TPI) proposed by Crown Capital Global Limited (Crown Capital). In the Commercial Court, the Panel of Judges considered Crown Capital's bankruptcy application fulfilled the simple verification requirements as stipulated in Article 8 paragraph (4) Bankruptcy Laws 2004, because it was proven that Crown Capital had debts that were due and could be collected, TPI also had other creditors. Nevertheless, the conditions for bankruptcy under Article 2 paragraph (1) of the 2004 Bankruptcy Laws are also fulfilled, but the argument of the panel of judges of the Commercial Court was finally annulled through the cassation decision number 834K/Pdt.Sus/2009 in a conflict because of the existence The debt is still being sued at the Central Jakarta District Court (Number 376/Pdt.G /2009/PN.Jkt.Pst) and through the criminal process over which the original letter of the bond letter is still possessed by Crown Capital was a series of facts or circumstances revealed at the trial which shows that the existence of debt in this case was complex and not simple, quite complicated and difficult to prove which requires accuracy and proof that is not too simple, so that it is not feasible to be examined in the Commercial Court but should be examined through ordinary civil litigation in the District Court. Due to requirements for being declared bankrupt as referred to in Article 8 paragraph (4) in relation with Article 2 paragraph (1) of 2004 Bankruptcy Laws cannot be fulfilled so that the Panel of Judges of Cassation rejected the petition for bankruptcy.

Based on the analysis described above, the rejection carried out by the Panel of Judges is one of the absence of clear parameters of simple verification in 2004 Bankruptcy Laws, so that it tends to give rise to multiple interpretations among judges in examining and adjudicating a bankrupt case against him. In addition, the absence of bankruptcy philosophy in Bankruptcy Laws also resulted in this bankrupt institution becoming ineffective and in its implementation tending to not be suitable for its purpose. In practice, many debtors are still solvent but

³⁶Sudargo Gautama, *Komentar atas Peraturan Baru untuk Indonesia*, Citra Aditya Bakti, Bandung, 1998, page 31.

³⁷Report of PT. Asuransi Jiwa Manulife Indonesia (PT. AJMI) on March 1, 2002.

³⁸Sunarmi, Dedi Herianto dan Devi Azwar, *Konsep Utang dalam Hukum Kepailitan Dikaitkan dengan Pembuktian Sederhana*, USU Law Journal Volume 4 No. 4 (October 2016).

bankrupt and conversely the debtors who are insolvent are still not bankrupt due to the obligation to implement the simple verification itself. Such a situation is contrary to the purpose and philosophy of bankruptcy law itself.

The judge is too rigid in applying laws on a concrete case, such as in the form of a bankruptcy application. Judges still tend to have positivistic views³⁹ and prioritizing aspects of legal certainty in examining and adjudicating cases of bankruptcy petition, it is likely that the aspects of justice and benefit of the law will be neglected, even though justice is the ultimate goal of the law itself which should still be prioritized over aspects of certainty and expediency.

As explained by Immanuel Kanto that quoted by Van Apeldoorn⁴⁰ that if the law is carried out as it is said, justice will be pushed forward (*summum ius summa iniuria*) on the contrary if the law is carried out in certain circumstances, it is felt that more and more negates uncertainty.

2. Comprehension on Debts and Its Implications to the Implementation of Simple Verification

a. Philosophy of Bankruptcy Laws

The most fundamental philosophy of bankruptcy law is to overcome the problem if all the debtor's assets are not enough to pay all of his debts to all of his creditors. The essence objective of bankruptcy is a process that relates to the distribution of debtor's assets and properties to its creditors. Bankruptcy is a way out for the process of distributing debtors' assets which will be a sure and fair bankrupt estate. Bankruptcy is an exit from financial distress which is a way out of problems that are financially entangled and cannot be resolved.⁴¹

Objective of bankruptcy is to divide between the creditors on the assets and properties of the debtor by curator, or bankruptcy intended to avoid a separate confiscation or separate execution by the creditor and replace it by holding a joint confiscation so that the debtor's assets and properties can be shared with all creditors according to their respective rights.⁴²

Bankruptcy is not merely a measure to facilitate a business whether it is owned individually or in the form of a corporation to become bankrupt but bankruptcy is one of the efforts to overcome the bankruptcy of a business.⁴³

The bankruptcy act in Indonesia contains the principle of a *pari passu pro rate parte*, which means that each party has the right to fulfill the obligations of the debtor on a *pari passu* basis, namely to jointly repay without prioritizing, namely proportionally calculated based on the amount of the individual receivables compared to their overall receivables, to the debtor's assets

b. Significance of Debts in Bankruptcy Laws according to Judges' Interpretation

In the bankruptcy process, the concept of debt is very decisive, because without debt, it is not possible that bankruptcy cases will be examined. In the absence of these debts, the essence of bankruptcy becomes non-existent because bankruptcy is a legal regulation to liquidate debtors' assets to pay their debts to creditors. Therefore, debt is *raison d'être* of a bankruptcy.

Faillissement Verordening did not regulate the definition on FV debt, it determined the decision of bankruptcy statements imposed on each debtor who is unable to pay his debt, who is in a state to stop paying off its debts. Due to there is no regulation of debts, there are several translations and interpretations. Although FV did not determine the meaning of debt, the judge does interpret what is meant of debt.

Debtor's debt is not merely showed from money loan, however, debtor's debt is due to other legal correlation. For example, verdict with number 01/Pailit/1997/PN.Jkt.Utama (July 25, 1997).

In the case it is known that to verify the state of being unable to pay, the judge only checks the evidence submitted by the parties in the court without looking at the assets and liabilities of the company through the accounting of the company. The judge's decision was taken by quoting several jurisprudences as a reference and then drawing conclusions about the state of stopping paying. This proves that accounting examination by judges are rarely carried out.

³⁹In positivism view, in principle the judge's duty is only to establish concrete events and then apply the laws to its concrete events. The judge in completing a case only applies the law in fact or the event that was submitted to him because based on the idea the judge is only a part of medium of the law (*la bouche de la loi*).

⁴⁰L. Van Apeldoorn, *Pengantar Ilmu Hukum*, Translated from MN. Oetarid Sadino, Pradnya Panamita, Jakarta, page 13.

⁴¹Sunarmi, *Hukum Kepailitan*, PT. Softmedia, Medan, 2010, page 19

⁴²Andriani Nurdin, *Kepailitan BUMN Persero*, Alumni, Bandung, 20012, page 133.

⁴³*ibid*

Similarly with FV, Act Number 4/1998 also does not regulate the meaning of debt. Act Number 4/1998 stipulates that debtors can be declared bankrupt if "they do not pay, at least, one debt that has fallen due and can be billed to creditors", this act only determines debts which can not be paid by the debtor is its principal or interest. This means that the application for a bankruptcy statement against the debtor can be done if it is in a state to stop paying off debt or when it does not pay interest only.⁴⁴

In the practice of enforcing the Act, the lack of comprehension of debt has led to several different views, firstly the notion of debt is only in the form of the obligation to pay a number of debts arising from a loan and loan agreement. The second debt is the obligation to pay a sum of money but not fulfilling this obligation can cause a loss of money to the party to whom the obligation must be fulfilled. The verdict of the Commercial Court which argues that debt does not originate from the construction of legal lending and borrowing, but in the form of fulfilling an achievement provision.

Based on Article 1 letter 6 of 2004 Bankruptcy Laws, it can be seen that 2004 Bankruptcy Laws as a positive laws on bankruptcy in Indonesia adheres the notion of debt in broadest sense. In fact, the definition of debt in broadest sense turns out to cause certain problems in its practices if it is associated with simple verification.

3. Reconstruction on Judge's Legal Behavior in Accordance to Progressive Laws

Reconstruction of legal behavior based on progressive law is the process of rebuilding the legal behavior of judges in handling a case (bankruptcy) based on assumptions, concepts and principles of progressive law. Judicial law behavior is intended as a set of knowledge, maintenance and beliefs of judges manifested in decisions made as a result of the process and culture of judges in realizing legal values.

The results of the study realized that legal positivism still being mainstream comprehension among judges in handling bankruptcy cases in applying simple verification and meaning of debt. This paradigm has made positivistic ways of thinking among judges in handling cases and rarely found non positivists. From the results of the study analysis of judges' decisions in the Court of Justice and the Supreme Court, two typologies were identified in the judge's way of dealing with bankruptcy cases, namely the types of judges who were positivist and non-positivist. The first style strongly emphasizes the formal measures of rule text (centric rules) in understanding legal truth, while the second style elaborates the legal rule text with the socio-cultural context that surrounds it (debt comprehension)

a. Be a Good Judge

Judges in carrying out their functions to apply legal substance in addition to underlying their abilities in the epistemology field as well as their willingness on professional ethics with high moral integrity, so that the judges in giving decisions in bankruptcy cases are not only correct in terms of epistemology aspects, but also in terms of morality aspects also.⁴⁵

Judges in implementing the law shall see three basic references in each legal system that work at the same time, namely juridical, philosophical, and sociological aspects, so that the justice to be achieved, realized and considered in the judge's decision is justice oriented to the law (legal justice), moral justice as well as social justice.⁴⁶

In reference to the law as a verdict of a judicial institution, the judge has the authority to find arguments that have historically been a true desire that really happened in the past, at the time of the formation of related regulations as positive law.⁴⁷

When the Commercial Court was established in 1998 until now, from a number of court decisions, it could describe certain controversial decisions which only put forward legal certainty regardless of aspects of justice and its benefits to the community. The principle of legal certainty of justice and expediency is not applied professionally in the decisions of the first court. Commercial judgment as a first-level court only emphasizes legal certainty without regard to justice and expediency. Judges' considerations only prioritize the fulfillment of bankruptcy requirements as stipulated in Article paragraph (2) of 2004 Bankruptcy Laws. Whereas to decide, the Supreme Court of the Republic of Indonesia is considered the proportional application of the principle of legal certainty, justice and benefit by harmonizing/balancing the three elements in law enforcement

Judges in deciding any cases must also be professional, judges not only have the ability in legal epistemology aspects, but also have moral integrity, which has the quality of being honesty and morality.⁴⁸

⁴⁴Explanation of Article 1 paragraph (1) Act Number 4/1998.

⁴⁵K. Berten, *Sejarah Filsafat*, Kanisius, 23rd Edition, Yogyakarta, 2001, page 59-63.

⁴⁶The Supreme Court of the Republic of Indonesia, *Guidance for Judges' Behaviors, Code Of Conduct for Judges and Related Papers*, the Center of Research and Training/Pusdiklat of The Supreme Court of the Republic of Indonesia, page 2.

⁴⁷Arbijoto, *Tinjauan Kritis Terhadap Hukum Kepailitan*, Legal Journal of Prioris, Volume 2, Nomor 3, September 2009, page 136.

b. Ideal Consideration to Award a Verdict of Bankruptcy Dispute

Act Number 37/2004 concerning established KPKPU was driven by the need of the business community for a set of laws in resolving the problem of accounts receivable debt that is fair, open and fast. However, since it was promulgated on November 18, 2004, settlement through bankruptcy and postponement of debt repayment obligations are still experiencing problems in its implementation. This can be seen from the number of bankruptcy and PKPU requests handled by the Jakarta and Surabaya Commercial Courts. The data submitted by the Academic Script Compilation Team shows the existence of problems in the implementation of the 2004 Bankruptcy Laws. The 2004 Bankruptcy Laws Law is still far from the expectations of its formation, to help economic recovery and strengthen legal institutions in debt settlement in Indonesia and internationally.⁴⁹The 2004 Bankruptcy Laws was deemed not in accordance with the development of the community, among others, concerning bankruptcy requirement is in the form of no limit on the amount of debt, besides the fact and debt criteria were deemed too concise, causing different interpretations by judges in deciding bankruptcy cases. This condition raises the view that the 2004 Bankruptcy Laws does not provide guidance on bankruptcy settlement that can provide legal certainty. Therefore, amendment in the 2004 Bankruptcy Laws should meet the public's needs for a fast, fair bankruptcy settlement.

1) A Verdict on Bankrupt Statement shall be based on Majority Creditors' Consent

Even though the 2004 Bankruptcy Laws allowed a bankruptcy petition to be filed by one of its creditors, but for the benefit of other creditors should not be possible for the 2004 Bankruptcy Lawsto open up the possibility on obtaining a decision on bankruptcy without other creditors' consent. The 2004 Bankruptcy Lawsshould determine that a court ruling on a bankruptcy application submitted by a creditor must be based on the approval of other creditors through a meeting of creditors. Therefore, the principle adopted in the Bankruptcy Lawsof 2204 is that bankruptcy is basically a joint agreement between the debtor and the majority of its creditors. Courts that authorized to decide on bankruptcy statements will only issue verdicts that are affirmative, but if an agreement between the debtor and creditor is not reached then the court's decision is not merely an affirmation but it is a decisive decision

Nevertheless, the requirement for bankruptcy shall be the debtor not only pays his debts to one or two creditors but does not pay systemically to majority of creditors. It is not impossible even if the debtor does not pay to one or two creditors, but the debtor is solvent, because it is likely that the debtor is still able to repay his debts to majority of creditors. The debtor does not pay the debt of one or two creditors, not because he is unable to pay his debt to the creditor, but for certain reasons related to the creditor that makes the debtor may not just only unable to pay its debts (no willing to repay his debt) but the financial condition of the situation has indeed been unable to pay its debts.

The debtor's financial situation must be determined objectively and independently based on financial audit and financial due diligence carried out by independent public accountants.⁵⁰

2) Insolvency Test As a Requisite to Apply Bankrupt Statement

The 2004 Bankruptcy Laws states that bankruptcy statements are based on requests in accordance with elements in Article 2 paragraph (1) of 2004 Bankruptcy Laws and debtor bankruptcy statements must fulfill the requirements as stipulated in Article 2 Paragraph (1) of 2004 Bankruptcy Laws. Bankruptcy Laws in Indonesia are too easy to make company bankrupt, due to there are only two creditors and one debt is not paid at the deadline, it can be bankrupt. The conditions are too simple and the judge must decide that it must be decided in a short period of time. In parallel with this opinion, Sutan Remy Sjahdeini stated that if the conditions determined by the law were very loose, a debtor who should not have been able to pay his debts was declared bankrupt by the court so that the country's economic and business system would be vulnerable to destruction.⁵¹

Bankruptcy requirements as referred to in 2004 Bankruptcy Laws also received attention by the Constitutional Court in several decisions, namely in Verdicts with Number 071 / PUU-II / 2004 and Number 001-002 / PUU-III / 2005 which stated the legislator's negligence in formulating Article 2 paragraph (1) in the absence of the requirement of not being able to pay, the creditor can easily submit a bankruptcy application without having to verify that the company is in a state of inability.

Regarding the bankruptcy requirements, some of the problems that occurred in the application of the bankruptcy conditions as stipulated in Article 2 paragraph (1) of the 2004 Bankruptcy Laws.

⁴⁸ As. Hornby, *Oxford Advance Learner's Dictionary*, Oxford University Press, Oxford, 1994, page 625

⁴⁹ Academic Document Preparation Team, *Academic Document Draft Law on Amendments to Law Number 37/2004 concerning Bankruptcy and Delaying Obligations of Debt Payments*, Jakarta, 2017

⁵⁰ Gregory J. Churchil, *Prinsip-Prinsip Hukum Kepailitan Suatu Perbandingan Hukum Kepailitan di Amerika Serikat dengan Hukum Kepailitan Indonesia*. Education of Bankruptcy Laws Department, Advanced Legal Sciences Education Program of Laws Faculty of University of Indonesia, Jakarta August 3-19, 1998, page 14

⁵¹ Sutan Remy Sjahdeini, *Op. Cit.* page 127.

- a) A debtor can be declared bankrupt with 1 (one) debt due as long as it can be proven the existence of a second creditor even though the second creditor's claim has not yet matured. As a result, the entire debtor's assets and properties shall be made general seizure for repayment debt as its logical consequences:⁵²
 - (1) With only one creditor as the applicant is contrary to the essence and objective of the 2004 Bankruptcy Laws for certain creditors.
 - (2) The creditor is not a bankrupt applicant, the majority of creditors, whose claims have matured or have not yet due without not necessarily intending to take legal action to make debtor bankrupt, but the debtor has been declared bankrupt by only one bankruptcy application and consequently all creditors are forced to apply collectively as bankrupt creditors.
 - (3) Even there are 100 (one hundred) creditors as bankrupt applicants, it only needs 1 (one) creditor as a bankrupt applicant.
This article implied that the 2004 Bankruptcy Laws did not prohibit the submission of bankruptcy statements by creditors even though the size of the claims of the applicant's creditors was a very small portion that its total debts of the debtor.
- b) There is no creditors' minimum debt limit that can be applied for bankruptcy. This causes creditors with very small claims to submit bankruptcy applications, and this can disrupt the debtor's business activities and other creditors' liquidity.
- c) The phrase "not paying off debt" causes the debtor to be declared bankrupt without regard to the financial health of the debtor and the reasons behind whether it is due to the debtor is truly unable to pay or because the debtor is simply not paying. In other words, the 2004 Bankruptcy Law simply states the application of debt conditions in terms of bankruptcy in the presumption to insolvent condition, the debt condition is not questioned whether the debtor is in a condition unable or unwilling to pay.

Future Bankruptcy Laws in Indonesia require an insolvency test. This is at least for a number of reasons, firstly to prevent debtors have more assets than their debts declared bankrupt by the court. Someone is considered solvent if only the person can pay off its debts that are due and can be billed, the debtor is also considered solvent if the asset debtor does not exceed its debt. In general, there are three financial tests to determine innovation, namely balance sheet test, cash flow test and transactional analysis.⁵³ The two broad terms of debt in the 2004 Bankruptcy Laws require non-simple verification. In the practice of simple verification in the 2004 Bankruptcy Laws, it was used as an excuse to reject the application for a bankruptcy statement by the Commercial Court's judge on the grounds that the application for a bankrupt statement was not as simple as evidence. Requests for bankruptcy statements that require debt in a broad sense cannot be resolved through a simple verification mechanism.

Insolvency test is a method that is carried out to determine the level of a debtor's business, which will later be used as a measure of whether the debtor is eligible to be bankrupt or not. This procedure has been carried out in several countries such as the United States, Thailand, Great Britain. The insolvency test process is carried out before a bankruptcy application is submitted. However, if the insolvency test fails, the insolvency test will still be carried out in the judicial process. This insolvency test will help the judge determine the standard financial condition of the debtor to be bankrupt

D. Closing

1. Conclusion

- a. The difference on application of simple verification in the Commercial Court and the Supreme Court can be seen from three cultural processes, namely as input, output and culture process, cultural in the two institutions are vary, resulting different outputs. At the Commercial Court, case input originates from an application for bankruptcy statement by an advocate for the interests of a bankrupt applicant. On the other hand, in the Supreme Court, the case input came from the verdict of the Commercial Court which was submitted by the applicant for the appeal due to an objection to the decision. The Commercial Court has the authority to assess the issue of facts and law (*judex factie* and *judix juris*), while at the cessation level only has whether *judex factie* has applied the law appropriately and correctly.

Simple proof is an absolute requirement that limits the authority of a judge in the Commercial Court in an effort to prove whether a debtor who has been filed for bankruptcy has proven to have two or more creditors, one debt that has matured and can be billed and the debtor cannot repay the debt. Judges in the Commercial Court have a tendency to think and bankruptcy applications are terminated as soon as possible and can be immediately implemented as stipulated in Article 8 paragraph (4) UUK 2004. Regardless of obligations or debt born, the debt must be simple and convincing debt can be proven the debt has fallen and can be billed. It is only by means of simple proof or proof that is not complicated that a bankrupt application can be decided to be accepted or rejected. The article does not give judges a broad judgment like other civil cases.

⁵² Hotman Paris Hutapea, *Identifikasi Permasalahan Hukum dalam Teori dan Praktik di Pengadilan Niaga*, Pusat Pengkajian Hukum, Pusat Pengkajian Hukum (PPH), Jakarta, 2004, page 144.

⁵³ Siti Anisah, *Perlindungan Kepentingan Kreditor dan Debitor dalam Hukum Kepailitan di Indonesia*, Total Media, Jakarta, page 421.

b. There is a tendency for correlation between the style of meaning of the judge regarding the debt and the verdict that was awarded. There are two qualifications of the judge's meaning about debt, namely narrow meaning and broad meaning. Narrow meaning refers to textual interpretation, namely interpretation which is based solely on the actual text of the law, while broad meaning refers to broad or contextual interpretation, i.e. interpretation that underlying on the text of the law shall also considers the situation surrounding the occurred event. Because there are no restrictions on the nominal amount of debt in filing for bankruptcy, the nature of bankruptcy from bankruptcy occurs as a rapid liquidation institution against the financial condition of debtors who are unable to pay their debts to bankruptcy as a collection and retaliation.

c. Judges as actors in the trial process have the ability to make better choices as expected by the public. Actors want to achieve goals in situations where norms or variables influence each other in choosing alternative ways and tools to achieve more goals or bring benefit options. The option is determined by the ability of the actor or judge. Judge is not easy to make a choice, so that the ability and quality of judges are more qualified in carrying out their duties.

2. Suggestion

- a. The Commercial Court Judge as a central figure in creating quality decisions needs to improve its intellectual abilities, attend technical education and training as well as always sharpen his sense to procure a good attitude and behavior.
- b. Judges as law enforcers and justice are expected or required to be active, creative and have forward visionary insight in examining and making decisions. The existence of insolvency tests does not cause different interpretation in the decisions of judges which ultimately lead to legal uncertainty. The Commercial Court needs to follow the Supreme Court's ruling on judicial review of Bankruptcy Laws in 2005 which suggested the need for an insolvency test. An insolvency test is a test to determine whether assets are greater than its cash and money.

3. Implications

- a. The phenomenon of justice in Indonesia is still very dependent on individual individual judges, if the judge is smart and intelligent, the quality of the decision reflects that logic (logic power), if the judge has moral integrity and is honest then the decision reflects honesty. This explains that the law in Indonesia is indeed not institutionalized rationally, objectively and impersonally. The law is still strongly influenced by the irrationality of perceptions and the pattern of subjective behavior of individual legal subjects involved in it. This study further strengthens and confirms the assumption that law is for humans and not vice versa. Progressive law as a law of behavior can be used as a basis for criticizing theories, principles and legal methods that are under the auspices of positive law which has proven to have many failures in solving legal problems, especially economic problems.
- b. The difference in interpretation of simple evidence and the meaning of debt among judges in the Commercial and Supreme Court gave birth to unpredictable decisions. The decision of the Commercial Court does not provide legal certainty for business people which ultimately affects public confidence in the effectiveness of Indonesian bankruptcy law.

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Rr. Ani Wijayati¹,
Email : aniwijayati@yahoo.co.id

Setiono²,

Soehartono³