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Implementation of Integration Principle of Debtor's Bankruptcy in Sharia Economic Transactions as Legal Means to Solve Debt Problems Fairly, Quickly, Transparently, and Effectively

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ABSTRACT

Integration principle in Bankruptcy law system embraced in Law Number 37 of 2007 about Bankruptcy and suspension of debt payment obligation implies that there should be integration of other laws and civil procedural laws related to seizure and control which are known as philosophical basis of bankruptcy law of public seizure (*GerechtelijkBeslag)* of bankrupt debtor wealth, giving strong basis for the Court of commercial affair (extraordinary court with legal status, power, and capacity to accept, investigate, and make decision related to debtor's bankruptcy in sharia economic transaction. Absolute competence of court for religion affair in Islamic personalization causes the court as the one who is responsible of handling the sharia economic dispute, but the court for religion affair does not have legal capacity to manage the bankruptcy petition since legally the settlement method to solve the problem is by proposing bankruptcy petition to the commercial court which manages commercial affair and solving the debt through extraordinary court.

Keywords: Bankruptcy, Integration Principles, Debtor Of Sharia Economic Transaction

I. Introduction

The development of national laws basically is done in order to actualize fair and prosperous society based on Pancasila and Constitution 1945 which are directed to create the system of national law[1]; one ofthe examples is by creating new laws, especially those law products which are needed to support national economic establishment. The national law product will guarantee the implementation, order, reinforcement, and protection of law based on the fairness and truth which is expected to be able to support the growth and development of national economy, and to secure and support the result of national establishment[2]. Especially, in globalization era, economy and trades need law and policy which have power to support the strength of powerful economic aspects.

Another law and policy device to secure the endurance and stability of living aspects of national economy, the government take an action of making a policy of bankruptcy law since April 22th, 1998 establish substitution of Law number 1 of 1998 about the change of the previous bankruptcy law, then the new bankruptcy law known as Law number 4, which is the completion of *FaillissementVerordening*Staatsblad 1905-217 JunctoStaatsblad 1906-348. In addition, the last bankruptcy law regulation device in Indonesia is regulated in Law number 37 of 2004 about bankruptcy and suspension of payment debt obligation, which furthermore is known as Law of bankruptcy.

The important aspect of regulation bankruptcy law completion is the decisive confirmation of integration principles in the general explanation of the bankruptcy law number 37 of 37 about bankruptcy and suspension of payment debt obligation which gives basis that the formal and material law is unity part of civil law system and

[1]Based on Moh. Mahfud MD about the system of national policy in *Membangun Politik Hukum Menegakkan Konstitusi,* Rajawali Pers, Jakarta, 2011, Page 21, defined as a law system in Indonesia covering all aspects of law such as content, structure, culture, regulation devices, and all sub aspect, which are connected one to others based on the opening of UUD 45
[2] The national law establishment is directed to be able to support the growth and development of national economy system as what has been stated in general application of Law number 37 of 2007 about bankruptcy and suspension of debt payment obligation (additional state paper number 4443)

national procedural civil law. The unity of debt problem solving is done through law process of Indonesian bankruptcy law system as legal means to find solutions of debt problem fairly, quickly, transparently, and effectively; also, it gives the protection warranty and law certainty for debtor and creditor and for the doer of domestic or even international economic business and economic transaction.

Integration principle in academic script of bankruptcy law and regulation is explained further that integration principle is defined into two definition of integration principle, namely: (1) integration with the other laws, (2) integration of civil procedural law. The definition of integration principle above is explored deeper as subsystem of national civil law; thus, bankruptcy law and regulation and other laws and regulation related to subsystem of national civil law is a whole holistic unity. Moreover, integration principle related to procedural civil law means that the bankruptcy law is a law of seizure and execution that must be in line and holistic based on the regulations of seizure and execution in procedural civil law[1].

Ideally, the unity of bankruptcy law system especially in realizing integration principle in the bankruptcy law system, according to RahayuHartini, can be mirrored from the authority of the commercial court which is Extra Ordinary Court dengan Legal Status, Legal Power and Legal Capacity[2], which are competence to accept, investigate, and decide the solutions of bankruptcy proposal including all civil conflicts related to bankruptcy decision. By actualizing the integration principle, that will guarantee the discipline of bankruptcy law system and especially giving warranty, protection, and law certainty which is fair for both debtor and creditor and the citizens in general. Also, it also gives warranty and law certainty for business and economic transaction doer in Indonesia and even overseas, so every debt problem can be solved fairly, quickly, transparently, and effectively.

The implementation of integration principle in the establishment of bankruptcy law number 37 of 2004 can be seen from the setting of the scope of concept in bankruptcy law as public seizure (*GerechtelijkBeslag / Public Attachment*) of every wealth hold by the bankrupt debtor in which the arrangement and management of those wealth are done by curator under the supervision of advisor judge, with the requirement of giving status of bankrupt decision if the debtor has two or more creditor and cannot pay off at least one debt which already reaches the debt maturity and can be billed[3].The establishment of integration principle materially can also be seen in the regulations about the legal consequences of bankrupt decision as what has been regulated in Paragraph 21 Bankruptcy law covering all wealth of the debtor when the bankrupt decision is given and every wealth gotten when the debtor is said to be bankrupt. Therefore, the Indonesian bankruptcy law embraces universality principle in which the decision of bankrupt statement covers every wealth of the bankrupt debtor wherever the debtor is in Indonesia and even overseas, without considering the country territorial limits.

The establishment of integration principle can also be realized from the regulations which regulate that a lawsuit in a court that is directed to debtor as long as done in order to fulfill the responsibility related to bankrupt wealth (*Boedel Pailit*) and the cases which is being investigated will be stopped for the law that is already states that the debtor is bankrupt, as what has been stated in Paragraph 29 bankruptcy law. The establishment of integration principle is also can be realized from the regulation that every court decision concerning about the wealth of debtor which is gotten starting before the decision of being bankrupt should be stopped and since that particular time, there is no decision that can be executed and every seizure is deleted and canceled. Those things are based on Paragraph 31 line 1 and 2 bankruptcy law.

The authority of the commercial court about bankrupt proposal in the bankruptcy law causing conflict of norm by the establishment of Law number 3 of 2006 about the changes of Law number 7 of 1989 about the court of religion affair which has been changed and added in Law number 50 of2009 which furthermore is called as law of religion court, in which one of the authority of the religion court in Paragraph 49 is to investigate, decide, and solve level 1 legal problems among Islamic people in Islamic based economy (Sharia Economy). The

[1] Frederick B.G. Tumbuan, *Naskah Akademik Peraturan Perundang-undangan Tentang Kepailitan,* The Board of Advisor of National Law Department of Law RI, Year 1993/1994, page 14

[2]Rahayu Hartini,*Penyelesaian Sengketa Kepailitan Di Indonesia (Dualisme Kewenangan Pengadilan Niaga Dan Lembaga Arbitrase)*, Kencana, Jakarta, 2009, page 228.

[3] Based on the provisions, as stipulated in Article 1 paragraph 1 and Article 2 (1) of Law Number 37 of 2004 on Bankruptcy and Suspension of Payment, the following explanation reason in which Article 1 Point 1 mentions Bankruptcy is common to all the wealth confiscation Bankrupt Debtor that the maintenance and settlement conducted by the Receiver under the supervision of the Supervisory Judge as stipulated in this Law. Furthermore, Article 2 (1) of Law No. 37 of 2004 which mentions the debtor having two or more creditors and did not pay off at least one debt wherewith maturity and could be charged, is declared bankrupt by the Court's decision, either because of the petition of one own or requests of one creditor or more creditors.

explanation of paragraph 49 states that Sharia economy is business and economic activities done by Islamic based principles (sharia principles), namely: sharia banking, sharia microfinance institutions, sharia insurance, sharia reinsurance, sharia mutual fund, sharia bonds and securities, sharia payment, sharia mortgage, sharia institutions' pension fund, and sharia business. Moreover, in the Compilation of Sharia Economic Law (KHES) which is established in regulation of Supreme Court of RInumber 02 of 2008, paragraph 1 line 1 sharia economy is economical activities done by individuals, groups, or business entity which is legal cooperated or incorporated in order to fulfill commercial or non-commercial needs based on sharia principles.

Law of religion court and KHES along with fatwa of National Sharia council (DSN) of Indonesian Islamic Theologian Council do not mention and do not regulate the bankruptcy of debtor in sharia economic transaction, and whether the Request Bankruptcy in sharia economic transactionis the jurisdiction of religion court or remain under the authority of the Commercial Court. Thus, it is necessary to developa law containing the unification concept of Indonesian pluralism by giving further clarification of the provisions of laws about the authority to adjudicate the bankruptcy debtor in sharia economic transactions.

In the practice of Sharia banking to the debtor who has debt in sharia economic transaction, the bank as the creditor always choose to propose bankruptcy to commercial court instead of the religion court, such as the bankruptcy proposal of PT. Lintas SaranaKomunikasi and the warrantors (*borgtocht*) of CIMB Niaga Bank, Tbk as pleader in commercial court in State Court of Jakarta Pusat which is registered in register case number: 07/Pailit/2011/ PN.NIAGA. JKT.PST. Although the economic transactions is sharia economic transaction in the form of agreement deliberation, the bankruptcy proposal is proposed through the commercial court.

Ideally because of the unitary system of Bankruptcy Law, especially in the form of implementation of Integration principle of Bankruptcy Law under the competence of the Commercial Court, according to RahayuHartini, the authority to adjudicate had by the Commercial Court is caused by its status as an Extra Ordinary Court which has Legal Status, Legal Power And Legal Capacity[1] authorizing to receive, examine and decide the settlement of bankruptcy petition including all disputes related to the civil case related to Bankrupt settlement. By implementing the principle of integration, it can guarantee an orderly system Bankruptcy Law and specifically providing of legal certainty for debtors and creditors and society in general, as well as providing certainty and legal protection for businesses and financial transactions doer, both domestically and internationally, in order to solve the debt problem fairly, quickly, transparently, and effectively.

The importance of the implementation of principle of integration in System of Bankruptcy National Law is in order to provide certainty and legal equality[2] to obtain fulfill the rights of the bankrupt debtor's wealth and in order to holistically solve all civil disputes related to Decision of Bankruptcy; this is in line with the principles of the Constitution 1945, paragraph 28D article (1) which states: "Everyone has the right of recognition, security, protection, and legal certainty and equal treatment in front of the law". Philosophical foundation of Indonesia as a State of Law (rechtsstaat)is that there are two terms namelysupreme of law and equality before the law. Supreme concept of law is one of which requiring the establishment of the rule of law, as well as legal certainty; it is also the same with the concept of *rechtsstaat*as legal certaintyin the State of Law, as regulated in Article 1 paragraph (3) of the Constitution 1945. Understanding of the meaning and functions of the establishment ofintegration principle should be more assertive, clear and complete in the Bankruptcy Law; it is expected to bring justice through the Integrated justice System (Integrated judiciary System) in order to fulfill the rights of wealth of the bankrupt debtor (Boedel bankrupt), as well as realizing the implementation of the judicial Power "justice is done with a simple, fast and inexpensive way" as regulated in Article 2 paragraph (4) of Law Number 48 Year 2009 on Judicial Power.

Based on those problems stated in the background which has been explained above, some legal problems are going to be answered in this paper. Here are the research questions: "How is the position of Sharia Economic Transactions in the Bankruptcy Law System? And, can the implementation of integration principle in Bankruptcy Law System solve debt of bankrupt debtor who is tied to agreement of sharia economic transaction fairly, quickly, transparently, and effectively?"

[1]Rahayu Hartini, *Penyelesaian Sengketa Kepailitan Di Indoensia (Dualisme Kewenangan Pengadilan Niaga Dan Lembaga Arbitrase)*, Kencana, Jakarta, 2009, page 228.
[2] The concept of legal certainty and legal state as mentioned further in the consideration of law of the Constitutional Court number 93/PUU-X/2012 date 29 Agustus 2013.

II. Discussion

To answer the problems that has been stated above, furthermore it would be examined deeper how far the legal aspects of implementation of integration principle in the national bankruptcy law system in solving the debt of bankrupt debtor who is tied to agreement of sharia economic transactions as legal means to solve the debt problems fairly, quickly, transparently, and effectively.

II.1. General Principles and the Concept of Debt Settlement in Sharia Economic Transaction in Indonesia

General Principles of Debt Settlement in Sharia Economic Transaction is based on the Qur'an and Hadith as mentioned in section considering the Fatwa of National Sharia Council of Indonesian Islamic Theologian Number: 47 / DSN-MUI / II / 2005 on Murabahah Debt Settlement of banking clients who cannot pay the debt, namely: QS. Al-Baqarah (2): 280"And if someone is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you, if you only knew". In addition, there is also QS. An-Nisaa' (4): 29 "O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful."[1]

Hadith basis of the Fatwa of National Sharia Council of Indonesian Islamic Theologian Number: 47 / DSN-MUI / II / 2005 is: hadith by Al-Thabrani in Al-Kabir and Al-Hakim in Al-Mustadrak states that Prophet SAW, while he ask to drive BaniNadhir away, then some of them come to him and say: "O Prophet of Allah, verily you have been ordered to evict us while we have debt on those which have not been matured". Then, Rasulullah SAW says: "Give relief and ask the debt faster". Furthermore, there is a Prophet Hadith said by Muslim: "Those who release a Muslim of his troubles in the world, God will release their troubles in the Day of Judgment, and God always helps people as long as they (like) to help their brother/sister". It is also related to a Hadith told by Al-Baihaqi and IbnuMajah and it is already said as Shahih by IbnuHaddin from Abu Sa'id Al-Khudri that Rasulullah SAW says, "Indeed, buying and selling should only be done with the willingness of both parties".[2]

The principles taught in Islamic ways in Islamic Economic Law as expressed by Abd. Shomad and Trisadini P. Usanti that Islamic Banking Law is part of the Islamic Economic Law. Islamic Economic Law is part of Islamic law; thus, principles of Islamic Law apply to Islamic Economic Law. Principles of Islamic Law applies in Sharia Banking Law; Principles of the agreement in Akad in Islamic Banking namely: principle Aqidah, Tasri'iyah Principles, Kaffah Principles, Akhlaq Principles, Principles of prohibition for dubious transactions, principles of prohibited harmful transactions, principles of priority to social need, principles of Maslahat, Principles of consensualism, principles of agreement of both parties, mutual willingly, An-taradhin, Ridha'iyyah principles, principle of mutual benefit, Principles of Equality of Law, Principles benefit, Ta'awun Principles, Principles of Justice, Principles of Al-Kifayah (Sufficiency), Principles of balance, Principles of freedom of contract, Independence Principles, Written principles, principle of prohibited transactions containingusury.[3]

The principles in Islam also resolve the disputes that arise and teaches that the parties who are involved in the disputes have to make peace; in Surah Al-Nisa: 128, it is implicitly established that peace is the best way to solve the problem, as stated by Ahmad Mujahidin[4] that Islam orders to complete each disagreement through the approach of reconciliation (peace), because no matter how fair a decision is made, it would have been fairer result to solve the disputes through peace. The fairest decision that handed Judge will be considered as unfair by those who feel defeated.

Completion of receivables inSharia economic transactions in Indonesia cannot be separated from the role of MUI (Indonesian Islamic Theologian Council). Although it is not established by law, MUI role in developing and running Sharia economy in Indonesia is very significant. MUI's Fatwa through the Commission of Fatwa relating to the implementation of Sharia economyshows the linkages between individual business doer or/andSharia business entity with MUI. Therefore, a number of institutions are formed by MUI in order to carry out economy based on Islamic principles (Sharia). MUI creates a council known as the National Sharia Council (DSN). DSN has set many fatwas related to its role in coordinating Islamic theologian in responding to issues

[1]Zainuddin Ali, *Hukum Ekonomi Syariah* ,Sinar Grafika, Jakarta, 2009,hal. 201-202.
[2]*Ibid*.
[3]Abd. Shomad dan Trisadini P. Usanti, *Asas-AsasPerikatan Islam Dalam Akad Pembiayaan*, dalamYuridika Volume 24 Number 3 September-December 2009, page 216.
[4]Ahmad Mujahidin, *Op.Cit.*, page 34.

related to economic problems and Sharia Finance. None of fatwas established by Indonesian National Sharia Council provides guidance in the form of a fatwa to solve problems related tosettlement of Sharia Economytransactions dispute through the Religious Courts, including the bankruptcy debtor in the transaction of Sharia Economy, besides to emphasize the settlement of dispute inSharia Economy transactions through reconciliation and if the solution cannot be reached, the dispute should be settled through National Sharia Arbitration Institution(Basyarnas).

Receivables dispute settlement in transactions of Sharia Economy through the Religious Courts must be understood and realized in the process of completion; there must not be violence of sharia principles. It is based on the definition of Sharia Economy in Compilation of Sharia Economy Law (KHES) as what has been set in forth in the Supreme Court Regulation No. 02 of 2008 dated 10 September 2008, Article 1 paragraph 1 stated that: Sharia Economy is a business or activity carried out by individuals, groups and entities which are legally corporate orincorporate in order to meet commercial and noncommercial needs based on Sharia.

Confirmation of absolute competence related to debt dispute settlement in the transactions of Sharia Economy through the Religious Court as what has also been stated by CikBasir mentioning that disputes related to those sharia business activities is clearly impossible to be resolved in a manner that is precisely contradictive to Sharia principles; It is because the formal law and possibly even some of the material laws used in resolving economic disputes and Sharia Banking in the Religious Court,at first they were not made in order to enforce and protect the Islamic-based material law. Therefore, despite the provisions of the law in general is not toocontradictive with Islamic law, but it is not impossible that there are parts of the provisions which, if they are implemented, they will be precisely contradictive to Sharia principles or will be considered as irrelevant to the Sharia principles which become the basis of Sharia Banking in running all of its activities, so that it might arise new problems.[1]

The implementation of transactions of Sharia Economy particularly Islamic Banking stated by **Sutan Remy Sjahdeini**[2] mentions that Sharia principle is the principle of sharing profits and losses (profit and loss sharing principle or PLS principle) in which its activities are not based on the interest (interest free) ; surprisingly those principles get a lot of criticism. Here are the statements:

"…Islamic banks in carrying out Sharia banking transactions, in fact, have been implemented precisely contradiction to the concept of sharia. In other words, the principles run by the Islamic banks are contradictive to the words and spirit of the provisions of Sharia. Implementation of business activities of those Islamic banks has caused the problem of morality. It is questionable whether the implementation of such business activities that should be intended to avoid gaining interest and intention, so the parties can prevent the risk together; it has been held based on this purpose, however in practice, the real implementation has turned out to be just a mere replacement of the particular term…"[3]

The growth and spirit of the development of Sharia Economy in Indonesia needs to be supported by all components of the Indonesian; however, the management and implementation as well as settlement of disputes arisen should not be contradictive to the Sharia principles by applying the whole concept and the devices of Conventional Economic Law particularly in settling debt disputes in transactions of Sharia Economythrough the Institute of Bankruptcy, without assessing whether the concept of the Institute of Bankruptcy has been supported by Sharia principles as established by the National Sharia Council (DSN) and the principle of division of Gain and Loss (Profit and Loss Sharing principle or PLS principle) whose business activities are not based on the principle of interest income (interest Free).

II.2. The Implementation Of Integration Principles to Solve Debt Problems in Sharia Economy Transactions

The substance of Bankrupt Decision contains Principles of Debt Collection and Principles of Debt Pooling which basically are further elaboration of the provisions of Article 1131 BW and Article 1132 BW, that bankruptcy is a forcibly means of power that can be used by creditors to obtain payment of all debts of debtors through General Bankruptcy Confiscated(GerechtelijkBeslag / Public Attachment) and also set the sharing of Revenues

[1]Cik Basir,*Op.Cit.*,page149.
[2]Sutan Remy Sjahdeini, *Perbankan Islam Dan Kedudukannya Dalam Tata Hukum Perbankan Indonesia*, Pustaka Utama Graviti, Jakarta, 1999, page 1
[3]*Ibid*, page 117.

Confiscated based on Principles of PariPassu Prorated Parte emphasized on the division of auction the assets of the debtor which are balanced according to the size of the individual receivable, unless if among the creditors there are legal reasons based on the law to take precedence which is mentioned by M. HadiShubhan[1] as unusual billing (oneigenlijkeincassoprocedure). Moreover, in the Petition odBankruptcy, there is no calculation on how the ability of debtors to pay the defendant bankrupt debtor. In fact, according to M. HadiShubhan, bankruptcy law system in Indonesia do not know the principles of Debt Forgiveness, so there is no relief of debt for the bankrupt debtor; the bankruptcy law system in Indonesia is more emphasis on the principles of retaliation against the debtor.[2]

The principles and the nature of the substance of bankruptcy is concept of conventional debts dispute resolution and unexpectedly to be contradictive to General Principles of the completion of Receivables in Sharia Economy Transactions that are based on the Qur'an and Hadith as defined in section considering the Fatwa of National Sharia Council of Indonesian Islamic Theologian Council number 47 / DSN-MUI / II / 2005, which essentially outline if owe people are in trouble, then give a respite to give more time, and relief some part of the debt or all of the debt (which is better); besides, we are also ordered not to take wealth of your brother/sister through bad ways, except throughcommercial activities done voluntary among you, as well as what has been mandated that the Sale and purchase should only be done with the willingness of both parties. This is consistent with Sharia principles proposed by Sutan Remy Sjahdeini that Sharia is the principle of sharing profits and losses (profit and loss sharing principle or PLS principle) in which its activities are not based on the interest (interest free)[3] which is basically an agreement to balance the risks and benefits together between creditors and debtors.

The substance of Bankrupt Decision as a forcibly means of power that can be used by creditors to obtain payment of any debtor's debt through General Bankruptcy Confiscated (GerechtelijkBeslag), in which the legal system of bankruptcy in Indonesia do not know the principle of Debt Forgiveness, so there is no forgiveness of debt to the bankrupt debtor. Even Indonesia bankruptcy law system is based on the principle of retaliation against the debtor. Thus, the Legal System of Bankruptcy in Indonesia do not pay attention to voluntary aspects basis as what is done in Sharia principles, especially if the Bankrupt petition submitted by the creditor, it can be understood to force the fulfillment of the debts of debtor through public confiscation auctions; it is clearly contradictory to the Sharia principle in which the principle of profit sharing and loss (profit and loss sharing principle) is implemented, except in the case of voluntary agreement filled by debtors and creditors proposing Bankrupt petition to resolve the debt payments through the bankruptcy process as defined in the Bankruptcy Act.

Similarly, related to aspects of the substance, the concept of sanctions for the debtor in transactions of sharia economy as stated in the Fatwa of National Sharia Board Indonesia Islamic Theologian Council Number 17 / DSN-MUI / IX / 2000 about sanctions for Clients who actually have capability to pay but procrastinate the payments, according to Maftukhatusolikhah and M . Rusdi, the legal validity is still controversial among Islamic theologian until now; on the one hand there are some of Islamic theologians who are against giving sanction in the form of money payment due to delay of the debt payment because such sanctions is considered as an element of usurybased on qat'i and prohibited based on syara', while the basic difference of Sharia bank and Conventional Bankis precisely the element that contains usury itself. On the other hand, there are some Islamic theologians who support such sanctions for the client because it is reasonable based onmaqasid ash-Sharia.[4]

Structurally, the institutional authority of Commercial Court,with special authority, as Specific Jurisdiction, Substantive and Exclusive to receive, examine and decide the Request of Bankrupt as absolute competence, as stated in Article 3 paragraph (1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt payment obligations, provides that the Decision on the request of Bankrupt Statement and other matters related with those things and / or regulated in this Act, will be decided by a court whose jurisdiction covers the area where the legal position of the debtor is. Based on Article 1 paragraph 7 of Law No. 37 of 2004, the definition of the Court is the Commercial Court in the General Courts. Thus, Act No. 37 of 2004firmly stipulates that the Commercial Court is the only court that has the absolute competence on Bankrupt Request.

Bankruptcy Act does not distinguish the classification of debtors who became bankrupt respondent, in Article 1 paragraph 3 Bankruptcy Act, it is mentioned that debtor is a person who has debts because of an agreement or

[1]M. Hadi Shubhan, *Op.Cit.*, page 100.
[2]*Ibid.* page 147.
[3]Sutan Remy Sjahdeini, *Op.Cit.*,pagel.1.
[4]Maftukhatusolikhah dan M. Rusdi, *Riba Dan Penyelesaian Sengketa Dalam Perbankan Syariah*, Politea Press, Yogyakarta, 2008, page 6.

the Act of repayment can be billed in front of the Court (for the requested Bankrupt debtor). Definition of debtors includes the whole notion of debtors who apply according to the National Law and do not distinguish between debtors with Islamic personalized or not for*debtors personlijke*, nor debtors of Legal Entity (rechtpersoon) who are not covered in terms of concept Islamic Personalization; those are the cases which involve Muslims who become the authority of Religion Court. Therefore, the Legal Entity in the form of Islamic Banking, sharia insurance and other sharia finance institutions includingother general Legal Entities, which carry out transactions of sharia economy (rechtpersoon), which are relating to its legal status which are not included in the classification of Islamic personalization sothey should follow the provisions of National Law generally implemented.

The nature and position of the provisions of Article 3 paragraph (1) Bankruptcy, on Decision of the Request of Bankrupt Statement, gives the meaning that the Application of Bankruptcy Statement is not the characterized Case of disagreement / dispute (dispute case) but Case Request based on Volunteer character which does not contain disagreement / dispute (non-dispute case) as a civil administrative procedures, to determine legal policy, whether an individual or legal entity qualifies as debtor under the law to be placed in a state of bankruptcy law status. Where based on Article 2 paragraph (1) of the Law of Bankruptcy, the debtor is declared bankrupt by the Commercial Court decision if the debtor has two or more creditors and do not pay off at least one debt which has reached maturity and billable.

The nature and position of Bankrupt Statement Request Decision as Volunteer character Case does not contain disagreement / dispute (non-dispute case) which have to meet the competence Settlement of Sharia Economy, which uses the legal term 'dispute' (dispute) referring to Law No. 21 Year 2008 concerning Islamic Banking, in which Article 55 states:

(1) Settlement of disputes of Sharia banking is handled in the authority of Religion Courts;

(2) In the case that the parties have foretell dispute resolution in addition to the Religion Court, referred to in paragraph (1) the settlement is made in accordance with the contents of aqad;

(3) Settlement of disputes referred to in paragraph (2) must not contradictive with Islamic sharia principles;

Based on the regulation above, the Constitution of Islamic Sharia Banking is the prime basis in the development of transaction of Sharia economy in Indonesia using the legal term 'dispute of Sharia economy' which hasdispute character (dispute) whose settlement of its case became absolute Competence of Religion Court, and the juridical terminology sense dispute (dispute) is not included as part of debtors'Bankrupt statement in transactions of sharia economy as requested case of Volunteer character which should not contain dispute / disputes (non-dispute case). Thus, Religion Courts do not have absolute competence on Request debtors' Bankrupt Statement in sharia economy transaction because it is not included in the dispute of Islamic-based economy.

Law Number 21 of 2008 concerning on Islamic Banking even provides opportunities of optional right or choices of law for the parties involved in an agreement or contract based on sharia system, whether the dispute between them will be resolved in a general court which is given the authority to examine and adjudicate sharia economy disputes; consequently, it raises the point of tangency between the authority of the General court and the authority of Religion courts[1]. Thus, legally within the General Jurisdiction Court, in this case the Commercial Court retains absolute competence to examine and adjudicate, besides deciding debtor bankruptcy Request in sharia economy transactions, sharia economy disputes throughout completion which will be examined and decided upon by laws that are not contradictive to Islamic principles.

Position debtors of sharia economy transactions in the bankruptcy petition are similar with the other debtors, as mentioned in Article 1 paragraph 3 of Law Number. 37 of 2004 on Bankruptcy and Suspension of Payment, which states that the debtor is a person who has debts because of an agreement or act whose repayment is billable upfront Court; as well as creditors of sharia economic transactions in the bankruptcy petition is similar with other creditors, as mentioned Article 1 paragraph 2 of Law No. 37 of 2004 which states the creditor is a person who has debts because of an agreement or Act whose payment can be billed in front of the court. Bankruptcy does not recognize Islamic personalization both for debtors and creditors. Thus, the debtor's bankruptcy petition both as individuals and legal entities in Islamic economic transactions have equal rights and

[1]Mahkamah Agung RI (Indonesian Supreme Court) (Laporan Penelitian), *Op. Cit.*, page 42.

equal status with other debtors and creditors as determined by the Bankruptcy Act. Particularly, related to the Bankruptcy Law Firm in Indonesia which is not run based onprinciples of Islamic Personality, it becomes absolute competence of Religion Court.

The Supreme Court, even though, do not explicitly stated that Individuals or Legal Entities debtors' Bankrupt Request related to transactions of sharia economy, the case are still submitted to the Commercial Court, or it is also possible to be submitted through the Religion Court. However, the Supreme Court through Book II Guidelines for the Implementation of the Tasks and Administration ofthe Four Courts as determined by the Chief Justice of the Supreme Decree No. KMA / 032 / SK / IV / 2006 dated April 4, 2006 provides procedural guidance of Bankruptcy Request as absolute Competence of Commercial Court regardless of whether the debtor is a debtor of conventional transaction or sharia economy transactions[1];meanwhile, the Religion Courts are not given guidelines to receive, examine and decide Bankrupt Request although the debtor meets the criteria of Islamic personalization and the transactions are bounded in Islamic-based economic transactions.[2]

Formally and materially, there is no a substantive provision as well as law devices which mentions and provides that the Construction Bankruptcy Law Authority of Religion Courts even related to the dispute of sharia economy. Bankruptcy is also particularly associated with the Indonesian Legal Entity which is not bounded by Islamic Personality principles which is basically the absolute competence of Religion Court. Therefore,the legal status and authority (legal status and power) of Religion Courts do not have the legal capacity to complete the bankruptcy petition. In addition, procedures for settlement method which are presented in the form of Bankruptcy application to the Commercial Court is a way of solving the extraordinary character of court through the Bankruptcy Act, by having the conventional way of settlement through civil lawsuit to District Court. Thus, the legal status (legal status) and legal capacity (legal capacity) of the Commercial Court which has extra ordinary and special character of court will have capability to complete a bankruptcy petition that cannot be completed by the authority of the Religion Courts.

In the Islamic Banking practices to the debtors who are involved in the sharia economic transactions and cannot pay their debts, The Bank as the creditor chooses to file a Request of Bankrupt to the Commercial Court instead of the Religion Courts, such as Bankrupt case of PT. Lintas SaranaKomunikasi and all the warrantors (*borgtocht*) with Bank of CIMB NiagaTbk. as Petitioner in the Commercial Court at Central Jakarta District Court which is registered in the Register of Case Number: 07 / Bankrupt / 2011 / PN.NIAGA. JKT.PST. Even though the transactions is in the form of sharia economic transactions of Musharaka agreement, Request bankruptcy is settled by the Commercial Court.

Case of Bankrupt Request of PT. Lintas SaranaKomunikasi and all the warrantors has Register Case Number: 07 / Bankrupt / 2011 / PN.NIAGA.JKT.PST. in the form of sharia economic transactions of Musharaka Agreement. It is known from the Exception of Bankrupt Respondent I, II, III and IV; one of which is about the absolute competence. Bankrupt Respondent I and II declare the Commercial Court at District Court Central Jakarta is not authorized to investigate and prosecute because the Respondent has made a loan facility agreement (loan) in the form of an agreement under the principles of Islamic banking as stated in the deed of agreement of Musharaka financing which is based on the principle of Musharaka number: 45 April 15, 2008 made by and under the advisory of Dra. Rr. HaryantiPoerbiatari, SH. , a Notary in Jakarta, which states agreement of both parties to follow the provisions of Sharia principles and Law. Thus, the problems posed in Bankruptcy Applicant is basically a dispute or a case of Islamic Banking that is resolved through the Religion Courts (Vide Article 55 paragraph (1) of Law No. 21 of 2008) because the Commercial Court at District Court Central Jakarta is not authorized to investigate and judge case a-quo. On the other hand, the Respondent Bankrupt III and IV add that the Commercial Court at District Court Central Jakarta is not authorized in absolute terms of checking and judging because that authority is absolute for the National Sharia Arbitration Board (Basyarnas).

Furthermore,based on Exception Petitioner I, II, III and IV, the judges of the Commercial Court give legal consideration as explained below:[3]

1. That the substance of the Bankruptcy petition is about the debt of the Applicant Respondent g I personally guaranteed by Respondent II, III and IV, which according to the Debt Petitioner's argument is

[1]Mahkamah Agung RI (Indonesian Supreme Court) (Book II), *Op.Cit.*, pages109-132.
[2]*Ibid*, pages 319-505.
[3]Legal Considerations Injunctions number: 07/Pailit/2011/PN.NIAGA.JKT.PST, page 39

not paid until the application is submitted to the Commercial Court in District Court Central Jakarta although Debt will have been matured on April 15, 2010.

2. That essentially the process of bankruptcy and PKPU is a debt resolution mechanism of the debtor to the creditor that the maintenance and settlement conducted by the curator under the supervision of the Supervisory Judge as regulated in the Bankruptcy Act and PKPU.

3. That the Act No. 37 of 2004 on Bankruptcy and PKPU is lex specialist and the Act does not exclude bankruptcy and whether the application of petition filed based on PKPU which proposed based on debt treaty based on MusharakaPrinciples orConventional Principles, even in Article 303 Law No. 37 of 2004 set specifically that the Court shall reserve the right to check and complete the Bankrupt Statement Request of the party to the agreement which contains Arbitration clause; all the debt on which the Request of Bankrupt Statement has fulfilled the provisions of Article 2 (1) of the Constitution OF Bankruptcy and PKPU.

4. That there is no provision specifically regulate the basic / principle Debt Agreement in Bankruptcy Act and the provisions of Article 303 of Law Number 37 Year 2004, the judges found Commercial Court in District Court Central Jakarta as the authority to examine and decide the case a-quo since the case a-quo is not jurisdiction of religion court or the National Sharia Arbitration Board (BASYARNAS).

In Injunctions of Number: 07 / Bankrupt / 2011 / PN.NIAGA.JKT.PST. it has been described the response of the petitioner of Bankrupt Bank of CIMB NiagaTbk. which are stated below:

1. That the bankruptcy petition cannot be equated with a dispute, because Article 55 (1) of Law Number 21 of 2008 concerning Islamic Banking is to regulate when a dispute occurred in Islamic Banking System, in which the Act stipulates that "Settlement of dispute in Islamic Banking carry out by the Court within the scope of the Religion Courts ".

2. That the Bankruptcy as stipulated in Law No. 37 of 2004 on Bankruptcy and Suspension of Payment are not mentioning about the dispute but it serves to regulate the debts.

The base rule of law of Bankruptcy Case of PT. Lintas SaranaKomunikasiand the guarantor to the Bank of CIMB NiagaTbk. in the Register of Case Number: 07 / Bankrupt / 2011 / PN.NIAGA.JKT.PST. states that the bankruptcy process is a mechanism for settlement of debt of the debtor to the creditor, which is not the same as a dispute (dispute). Bankruptcy Law is lex specialist that does not exclude bankruptcy petition filed under the debt-based agreement based on Sharia or Conventional Principles. The base rule of law of Bankruptcy Case of PT. Lintas SaranaKomunikasiand the guarantor to the Bank of CIMB NiagaTbk. in the Register of Case Number: 07 / Bankrupt / 2011 / PN.NIAGA.JKT.PST.is reinforced by the Decision on the level of the Supreme Court of Cassation in the Register of Case Number: 346 K / PDT.SUS / 2011 which substantially considers the reasons of Cassation which cannot be justified because in fact *Judexfacti*is not wrong or problematic in applying the law and not contradictory to law and / or the Act.

Referring to Article 303 Bankruptcy Act governing the authority of Commercial Court to examine and resolve petition of Bankrupt Statement of the partiesbased on the agreement which contains Arbitration Clause, as long as the debt which is requested as the basis of Bankrupt Statement petition has fulfilled the provisions of Article 2 (1) of the Act Bankruptcy. So, the Commercial Court in District Court Central Jakarta has to investigate and resolve the petition, because it was not the jurisdiction of religion court or the National Sharia Arbitration Board (BASYARNAS). Particularly, related to the bankruptcy of PT. Lintas SaranaKomunikasi which is not bound by Islamic Personality principles that become absolute competence Religion Court. Besides, it is the procedure of settlement (settlement method) of Bankruptcy Application is through Commercial Court to solve the problem is specific court which has the character of extraordinary court, whose absolute competency of general seizurement (GerechtelijkBeslag / Public Attachment) cannot be denied by the other Courts and Dispute Resolution Boards.

Practice of petition for Bankruptcy statement in Malaysia is more systematic in the implementation and support ofsharia economic development rather than Indonesia. It can be studied as comparative law (Comparative Law)

of the Bankruptcy Act in Malaysia namely Bankruptcy Act 1967 Part V Section 88 which states that the High Court is the court having jurisdiction in bankruptcy. Thus, Request of Bankruptcy in Malaysia isonly the absolute authority of High Court and not under the authority of the sharia Court. This is as stated byGatotSugiharto that as a former British colony, the kinds of Malaysian Legal System retains the tradition of English common law. This tradition stands in the midst of the Islamic legal system (which is implemented by the Sharia court) and the customary law of various indigenous groups. There are two High Courts in Malaysia: one in Peninsular Malaysia, which is known as the High Court in Malaya, and in East Malaysia, which is known as the High Court in Sabah and Sarawak. With the exception of all the problems under jurisdiction of the Sharia court, this court has jurisdiction which is not limited purely to the region. They can also receive appeals from the Session Courts and Magistrates' Courts.[1]

Furthermore, GatotSugiharto also says that the Sharia Courts Malaysia is the court in the State of which is separated from the Federal Court that does not have jurisdiction for Islamic law related to individuals and family such as engagement, marriage, divorce, guardianship, adoption, legitimation, succession, and their alms and endowments. Jurisdiction in criminal law is limited to what have already existed in the Federal Court and been confined to Muslims who violate the sharia law where the offender can be sentenced up to three years in prison and a fine of 5,000 ringgit, caning maximally for 6 times, or a combination of two or more.[2]

III. Conclusion

The practice of the Commercial Court as the Special Court (Extra Ordinary Court) in the scope of General Courts provides special authority as Specific Jurisdiction, Substantive and Exclusive on the entire Bankrupt application which does not only include debtors in conventional transactions but also debtors in transactions of Sharia Economy, covering not only Bankruptcy on individuals (Persoonlijke) but also Legal Entity (Rechtpersoon) as an embodiment of the application of the principle of Integration in Bankruptcy Law System as a Means of Bankruptcy Law unitary system of Indonesia. And there is no formally and substantively provisions of the technical guidelines and regulation devices concerning debtor bankruptcy Request in disputes based on Sharia Principles which is actually Absolute Competence of Religion Court. Consequently, the legal status and authority (legal status and power) of Religion Courts do not have the legal capacity (legal capacity) to complete the Bankrupt application. Besides, the procedure of settlement (settlement method) are presented in the form Bankruptcy Request to the Commercial Court as the settlement of debts in character Extra Ordinary Court whose general seizurment (GerechtelijkBeslag / Public Attachment) cannot be denied by the Absolute Competence of Religious Court based onIslamic Personalization and Sharia Economic Disputes under its authority.

Thus, the Constituent as well as the Government have to immediately review the regulations relating to Bankruptcy System in Indonesia; especially the Supreme Court as supervisor, advisor and a master of all Bodies of Courts below the Supreme court has to immediately provide clear and firm guidance and technical guidelines through letter distributed and established by the Supreme Court (SEMA) and also set the Rules of the Supreme Court (PERMA) about Absolute Competence of Commercial Court on debtor bankruptcy in transactions of sharia economy and civil matters which is more related to Bankrupt Decision, in order to realize the basic idea of the applying principle of integration to make the Unity of the Legal System of Bankruptcy in Indonesia as a means of construction of the National law System containing unification concept of pluralism on Indonesia that ensure the protection and equal treatment in front of the law.

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[1] Gatot Sugiharto, *Sistem Hukum Malaysia*, read online in http://www.gats.blogspot.com/2008/ 12/sistem-hukum-malaysia.html.
[2] *Ibid.*

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