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Initiating Comprehensive Verification System in the Settlement of Bankruptcy in Commercial Court

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ABSTRACT

Verification system in bankruptcy implements the principle of simple verification as stipulated in Article 8 (4) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment, namely the petition of bankruptcy declaration which must be granted if there are facts which proves simply that the requirements to be declared bankrupt has been met such as the fact that there are two or more creditors and the fact that the debt has reached the maturity and billable. Simple verification in bankruptcy, on one hand, applies based on aspects of legal certainty, but on the other hand ignores aspect of justice and expediency. Under these conditions, the problem that is going to be studied is how the system of verification of bankruptcy in the future that has to meet the aspect of justice, legal certainty, and expediency.

The method used in this research is normative research using primary legal materials and secondary through conceptual approach, and the legislation approach by analyzing the analytical unexplained prescriptive verification system that can provide justice, legal certainty and expediency by implementing comprehensive verification namely verification system that includes verification of aspects of the debtor's ability to pay the debt, verification to substantive aspect that there is more than one creditor and the debt that has already matured and could be charged as well as taking into account the aspects of good intention of the debtors.

Key words: Comprehensive Verification, Bankruptcy Settlement, Commercial Court

INTRODUCTION

The purpose of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment for the advantages of the business world is to solve the problem of debts fairly, quickly, openly and effectively with the balance protection for both the parties. However, concerning the balance protection of in the settlement process in the Commercial Court has caused injustice to prospective debtor companies since the process of proving the viability of debtors are not considered.

Law Number 37 Year 2004 determines whether the debtor can be declared as bankrupt or not based on two conditions laid down in Article 2 paragraph (1), namely:

1. The debtor has two or more creditors;
2. The debtor does not pay off at least one debt which has already reached the maturity and billable.

Creditors in this case are those concurrent creditors, separatist creditors and preference creditors. Especially for the separatist creditors and preference creditors, they can apply for a declaration of bankruptcy without losing rights over the collateral material possessions that they have against the debtor and its right to precedence. Whenever there is a syndicate of creditors, then each creditor is a creditor.

The definition of debt is "an obligation expressed or can be expressed in the amount of money both in the Indonesian currency or foreign currency, either directly or that will arise in the future or contingent, arising from treaties or laws and mandatory that should be fulfilled by the debtor and, if it cannot be fulfilled, it will entitle the creditor to obtain fulfillment of the assets of debtors ". Under these provisions, the formulation of the debt can be translated into several elements, namely:

1. Debt is an obligation expressed or can be expressed as a sum of money;
2. Both in the Indonesian currency or foreign currency;
3. Either directly or that will arise in the future or contingent:

4. The arises is because the agreement or the law;
5. If it is not filled, it entitles the creditor to obtain fulfillment of debtor property.

The spacious meaning of debt and creditors were not widely followed by limiting the value of the debt and not accompanied by a test of the ability of the debtor to pay the debt as a requirement to file for bankruptcy, which means the bill, no matter how small the debt and whether they arise from the debts relationship as well as the other civil relationship, can cause the obligation to pay money that may be filed for bankruptcy by both concurrent creditors, separatist creditor or preference creditors,and the judges of the Commercial Court should grant the request of bankruptcy if it fulfills the requirements of debtors who have more than one creditors and at least one debt that has not been paid when the debt has reached the maturity and billable

The essence of bankruptcy is the inability of the debtor to pay the debt. The last change in terms bankrupting the debtors in Indonesia's law does not accommodate this thing. The terms of juridical for bankrupting debtors are mentioned in Article 2 paragraph (1) *juncto* Article 8 paragraph (4), namely: request for declaration of bankruptcy that must be granted if there are facts or conditions simply proving that the requirements to be declared as bankrupt by showing that the debtors have two or more creditors and cannot pay at least one debt when it has reached the maturity and billable.

Simple procedure applied in the bankruptcy law in Indonesia implies that debtors possibly still have the ability to pay the debt are bankrupted by the Commercial Court. Philosophically nature of bankruptcy is the inability of the debtor to pay the debt. Indonesia's bankruptcy laws tend to protect creditors because of the absence of inability to pay debts requirement as a condition of being bankrupted for debtors. Simply verificationin the current bankruptcy, on one hand, applies the aspect of legal certainty, but on the other hand ignores the aspect of justice and advantage.

Based on the juridical issues, this research will examine how the verification system of bankruptcy in the future can fulfill the aspect of justice, legal certainty, and expediency.

RESEARCH METHOD

This study is a normative study which is a study of the legal principles and legal norms. The study uses a conceptual and legislation approach.

Theoretical Framework

Theory of Justice

The purpose of the law is something that wants to be achieved by law. According L.J. van Apeldorn[1], the purpose of law is to maintain public order. To preserve the public order, the law should be balanced to protect the needs in the society. Roscoe Pond[2]distinguishes between personal needs, public needs and social needs. Also, to maintain public order, the law should be able to balance the needs, thus it would be regarded as a fair rule[3].

The function and purpose of law are interrelated. Judicial functions ensure the regularity and order; an outline of the functions can be outlined in three stages, namely:

1. The function of the law is as a tool of public law and order. This is possibly because the nature and character of the law that provides guidance and instructions on how to behave in society; indicating which ones are good and right through the norms that govern the command or prohibition, so that the public will be instructed to behave
2. The function of the law is as a means of realizing social justice and spiritual birth. The nature and character of law have binding power is the nature of law to deal with real cases which gave justice
3. The function of law is as a motor for development. One of the binding and force of law is as a tool for development in order to bring the society towards more advanced conditions.[4]

[1]L.J. van Apeldorndalam Peter Mahmud Marzuki, *PenelitianHukum*, (Jakarta :KencanaPrenada Media Group, 2005), page 58.
[2]*Ibid.*
[3]*Ibid page* 59.
[44]H. Muchsin, *IkhtisarIlmuHukum* (Jakarta :BadanPenerbitIblam, 2006), pages10-1.

The purpose of law can be understood as a construction of mind as a must to direct the law to the ideal situations that the public wants. The purpose of law as a benchmark is regulative and constructive. Without legal purposes, the legal product generated would lose its meaning.[1]

The purpose of law in ethic theory introduced by Aristotle is that the purpose of the law is solely to actualize justice. What is meant by justice is to give each person what should be their parts or rights. Aristotle taught two kinds of justice namely the distributive justice and cumulative justice. Purpose of law according to Gustav Radbruch is that legal must fulfill the basic values of justice (*gerechtigkeit*), legal certainty (*rechtssicherkeit*), and usefulness (*zweckmaezzigkeit*). These three elements is a common goal.[2]

Law as a carrier of the values of justice is the measurement of fair or unfair in the legal order. Justice has a normative characteristic and at the same time has a constitutive characteristic. Normative is because it serves as a prerequisite transcendental underlying every positive law dignified. It becomes the moral foundation of law and at the same as the benchmark system of positive law. Justice is where positive law stems. Moreover, it is said as constitutive law because justice must be absolute basis for the law as law. Without justice, a rule becomes inappropriate to be a law[3].

The purpose of law should be understood as the basic as well as the binder in the formation of legislation. The three basic values stated by Radbruch namely justice, legal certainty and usefulness is the goal of law. Demands for justice and certainty are fixed parts. Whereas, the benefit of relativity element for the purpose of justice (as the content of the law) is in order to increase the value of kindness to people, more than an ethical value in law. Good value for humans can be attributed to three subjects, namely individual, collectivity, and culture. Radbruch realizes that there is always a conflict between the three aspects of justice, legal certainty and expediency. So, then the law is ordered structurally starting from fairness, certainty and expediency. The value of justice is a cornerstone of the embodiment of justice in the law[4]. The purpose of law and justice are like twosides of the coins that are interrelated

The concept of justice by Aristotle says, "the law is proportional for both equal things that are treated equally, and unequal thing that is also treated equally”. It is very relevant to be applied in the concept of bankruptcy in which it must be distinguished between debtors of companies who are still prospective debtor company and others who are not prospective. Equalizing all conditions of debtorswho will be bankrupted in the provisions of the law is an injustice. Especially, considering the impact of the decision of a declaration of bankruptcy against a company is very extensive; it is not only against the debtor itself, but it also gives an impact on the labor / employees, society and the state.

The essence of justice is equality of treatment of the equal things and also different the unequal treatment. This raises a question about what is equal and what is unequal. The answers of these questions can be answered by looking to the purpose of the law itself. The idea of justice is an absolute legal purpose and what makes the law can be implemented. But, the issue of justice may be contradictive with the element of expediency and legal certainty.

Bankruptcy laws have provided legal certainty with regard to procedures to make debtors being bankrupt, as mentioned in the provisions of Article 8 paragraph (4) that the judge of the Commercial Court should make the debtors bankrupt if it is proved simply the elements of Article 2 (1). However, the pattern in fact have raised the issue of injustice to the prospective debtor companies, and are not beneficial to the development of business in Indonesia which promote increased investment and the sourcesof state revenue, as well as micro disadvantages because the bankruptcy of a company impactsalso on labor and other parties concerned.

According to Rawls, it is needed to balance between private need and the common need. How should provide the size and balance of the so-called justice? Justice is a value that cannot be negotiated because justice ensures stability of human life. Rules are needed to prevent conflicts of interest[5]. John Rawls is a supporter of

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[1]EstiWarasih, *PranataHukumSebuahTelaahSosiologis*, (Semarang : PT.SuryandaruUtama, 2005), page 43.
[2]Gustav RadbruchdalamSatjiptoRahardjo,*IlmuHukum*, (Bandung : Alumni, 1991), page 19-21.
[3]Bernard L. Tanya, dkk, *TeoriHukum :StrategiTertibManusia Lintas ruangdanGenerasi* , (Yogyakarta : Genta Publishing, 2010), page 130.
[4]*Ibid*
[5]John Rawls, *A Theory Of Justice TeoriKeadilanDasar-DasarFilsafatPolitikUntukMewujudkanKesejahteraanSosialDalam*

formal justice which consistently puts rules-based justice. Justice should not only include as the moral concept but also relating to the mechanism of achieving justice, including how law participate and support these efforts.

Modern society in this era needs legal certainty in various interactions with fellow human beings to realize the positions of the primary role of law as reflected in the rules. Icons of modern law are now more precisely prioritizing legal certainty. The problem of legal certainty is influenced by the rise of the capitalist system of economic production.[1]

Theory of Economic Analysis of Law

The issue of bankruptcy is not just a question of law itself. Bankruptcy is a complication between legal issues and economic issues. Complications between law and economics in the context of bankruptcy are not two contradictory things although both are different symbols. If we look at the bankruptcy law of the aspects of rule of law (legality), then the discussion will culminate in a formal jurisdiction. While looking at the problems from the point of bankruptcy of economic analysis law, it will raise the question \whether bankruptcy is beneficial or not.

Based on economic point of view, bankruptcy can indeed be understood from the two approaches, namely legal and technical approaches. Bankruptcy is a legal basis bankruptcy marked by the bankruptcy approval from the court since it has already qualified to be stated as bankrupt according to the legislation. On the other hand, bankruptcy is based on technically approach, individual / company that have negative equity, where total debt is greater than the total assets.[2]

Bankruptcy in Indonesia so far is only seen based on one point of view that bankruptcy is an independent legal issue. Judge of the Commercial Court should decide a bankruptcy if it has met the requirements specified in bankruptcy law, without considering factors outside the law such as consideration of the financial condition of the debtor. It could happen that the bankruptcy of the debtor occurs legally although it is not technically feasible for being bankrupted. It possibly will be directed to injustice, especially for debtors who have positive equity, for example total assets greater than total debt.

The technical approach from an economic viewpoint is in line with the philosophy that bankrupt debtor is people who are incapable to pay the debt because the debt exceeds the amount of total assets. Based on this approach, the issue of bankruptcy needs to be seen in the two approaches, namely the legal and economic approach, that if based on economic analysis technically debtors are worth to be bankrupted because they are not prospective since the amount of debt is much larger than the assets. Then, such a situation will be strengthened with the decision of a declaration of bankruptcy by the court.

In general the economic analysis of legal work by using the theoretical framework to analyze the rules and laws that are used. It utilizes the economic analysis of law to draw conclusions about human desire and the consequences in terms of the law and how best steps to shape the legal arrangement. Predictions range of all possible human reaction to the imposition of the rule of law can be made through the economic analysis with the help of precocious exact formulas and also can be accounted using scientific theory used in both economic and law theories.[3]

Economic analysis of law cannot be served as an approach to address issues of law to obtain justice problems in the law[4]. Approaches and implementation in this analysis should be prepared based on economic considerations without eliminating the element of fairness, so that justice can be an economic standard based on three basic elements, namely the value, usefulness and efficiency based on human rationality.[5]

Negara, (Yogyakarta : PustakaPelajar, 2011), pages 210 - 225.

[1]Achmad Ali, *MenguakTeoriHukum (Legal Theory) Dan TeoriPeradilan (Judicial Prudence) TermasukInterpretasiUndang-Undang (Legisprudence)*. (Jakarta : Prenada Media Group, 2009), page 290

[2] Hery, *AnalisisLaporanKeuangan :PendekatanRasioKeuangan*, CetakanPertama, (Yogyakarta : Center for Academic Publishing Servise CAPS, 2015), page 191.

[3]Jhonny Ibrahim, *PendekatanEkonomiTerhadapHukum, TeoridanImplikasiPenerapannyaDalamPenegakanHukum.* (Surabaya : ITS Press,2009), page 44.

[4]Richard A. Posner, *Economic Analysis of Law*, (New York :Sevent Edition Aspen Publisher,2007), page 15.

[5]*Ibid.*

In addition, the economic approach can be a reference for assessing the extent how far the impact of the imposition of a legal provision or legislation to the public. So, it can be more easily to be identified public reaction and the advantage given by law or the legislation[1]. Indonesia bankruptcy laws do not reflect conditions outside the norm of bankruptcy. Bankruptcy law should recognize and respect the things outside of bankruptcy such as the need of debtors that should be protected inside and outside of the bankruptcy[2]. Bankruptcy law is not only question of the debtor's financial difficulties, but also a moral issue, political problem, and, individual and social consequences for the parties related to the financial difficulties. Laws should be able to encourage or facilitate the economic sector.[3]

Protection for prospective companies as mentioned in the principles of business continuity can not only be view in the front of the law, but also can be assessed based on the economic concept. To answer the question of indicators of a company said as prospective companies referred to the principles of business continuity requiring an analysis of the economic theories that are relevant.

Prospects of future company are known by measuring the performance using an instrument that analyzes finance reports periodically. The financial statements describe the financial posts that the company earned in a period[4] based on the results of the accounting process that can be used as a tool to communicate the company's financial data or activities to the parties concerned.[5]

Financial statement analysis is a process to dissect financial statements; it is intended to find out how effective the company's operations have been run through the analysis of financial statements that can know the strengths and weaknesses of the company[6]. By knowing the weaknesses, the management company will be able to fix or cover up the shortcomings, while knowing the company's strengths can be used as capital for the development of future potential.[7]

According to economic studies, prospective company means a company that generates profit and appears to thrive in a healthy state[8]. To see whether a company is healthy or not, it can only be judged through the company's physical state, such as building construction or expansion. The most important factor to be able to see the development of a company lies in the financial element because the element can also evaluate whether the policies adopted by a company is right or not, given very complex problems that can lead to bankruptcy; because there are many companies that are not healthy financially. Financial analysis basically wants to see the prospects and risks of the company. Prospects can be seen from the level of profit (profitability) and the risk can be seen from the possibility of companies experiencing financial difficulties.

Prospective analysis can be performed after the financial statements are adjusted to reflect the economic performance of companies accurately. Prospective analysis is the core assessment. Prospective analysis is also useful for testing the accuracy of the company's strategic plan. Thus, we need the analysis of whether the company is able to generate sufficient cash flow to fund the expected growth or whether the company needs debt financing or equity in the future. Similarly if it is necessary in the analysis, the strategic plan will also yield planned benefits by the management company. Finally, the prospective analysis is useful for creditors to assess the company's ability to meet its obligations.

Financial ratio analysis can be used to assess a company's potential and prospects. Financial ratios are the main tool for financial analysis. Financial ratio analysis can reveal important linkages between the financial statements and can be used to evaluate the financial condition of the company's performance[9]. Financial ratio analysis can provide a picture of the financial state of the company and can provide information on whether the company's financial condition is healthy or not. Information related to condition of the company stating the company as financially healthy is necessary to maintain the existence of a company in the future.[10]

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[1]FajarSugianto, *Economic Approach to LawSeri II.* (Jakarta :KencanaPrenada Media Group, 2013),page 29.
[2]Thomas H. Jackson, *Bankruptcy, Non Bankruptcy Entitlement, and The Creditors' Bargain.* (Yale Law Journal, 1982),page 858.
[3]Cuk Ananta Wijaya, *FilsafatEkonomi Adam Smith*, JurnalFilsafat "Wisdom" Vol 19, Nomor 1, April 2009, page 13.
[4]Kasmir, *AnalisisLaporanKeuangan*. CetakanKedelapan. Jakarta : PT. RajaGrafindo, 2015.page 7.
[5]Hery, *Op.Cit,*page 3
[6]*Ibid*, page 132-133.
[7]Kasmir, *Op.Cit*, page 66.
[8]Indrawati, *MenilaiKesehatan Perusahaan*, http://stiei-mce.ac.id/2013 . accessed on 13 Desember 2015.
[9]Hery, *Op.Cit*, page162-163.
[10] WicakLinggaBahara, Muhammad SaifidanZahroh Z.A, *Analisis Tingkat Kesehatan Perusahaan Dari*

In terms of financial ability, in general the company is healthy (prospective) if the company is included in the category of liquid and solvable. Liquidity shows the company's ability to meet its debt obligations in the short term. While, solvency is the ability of the company meets all its obligations both short term and long term.

4. Discussion

Justice is a constitutive element concerning any notion of law. Justice placed in the highest position to penetrate the rigidity-stiffness searching for truth and justice is impeded by procedural paradigm walls of positivism that promote the use of legal certainty. However, in the modern legal systems of rigidity of rules as the basis of rationality that the law will be valid only if the form of norms can be enforceable and determined by an instrument in a country that is also still needed.[1]

The purpose of law is to achieve justice for the greater prosperity for people and also to create order. This objective is contained in Law No. 37 Year 2004:

"That the development of national law in order to realize a fair and prosperous society based on Pancasila and the Constitution of the Republic of Indonesia Republic of Indonesia Year 1945 should be able to support and guarantee certainty, order, enforcement, and legal protection based on justice and truth"

The issue of fairness will never end to be discussed. It will even become more pronounced because of the development of society. It is because of the demands and different needs which sometimes are contradictive. Real justice is relative concept. Injustice to prospective employers lies in terms of bankruptcy that does not contain capability of the debtor. In addition, verification of bankruptcy is done simply that the judges only need to prove facts that there are two or more creditors and the fact that the debt is already matured and unpaid. Then, the large amount of debt proposed by the applicant and the defendant does not preclude a declaration of bankruptcy.

Law number 37 of 2004 on Bankruptcy and Suspension of debt Payment do not give detail explanation regarding to the procedure for the simple application to verify bankruptcy. The absence of a clear definition and limitation in the use of a simple verification causes wide differences among the judges in interpreting the notion of simple verification in resolving the bankruptcy petition[2]. The system of simple verification in bankruptcy has given disadvantages or injustice, especially against prospective debtors.

The Supreme Court imposes limits of the simple verification in the National Workshop held in September 2002 because the type of the settlement of bankruptcy is done through petition (volunteer). Then, verification is only done one-sided. In the verification of the petition, the judges are only in charge of examining the documents of requirements for granting a request by cross-checking with the applicant or related party. Case investigation request does not know the terms of exception, replic answers, closing argument and conclusions as well as in a lawsuit (*contentiosa*)[3]. In Act No. 37 of 2004, it does not regulate the exception (unless an exception regarding the authority to judge)[4].

In examining bankruptcy petition in relation withthe evidence, the judges should focus on:

1. Is there any debt relationship between creditors and debtors in which the debt is already matured and billable?
2. What is the debt relationship between debtors and creditors with other creditors?

The Supreme Court in the Supreme Court Circular No. 07 of 2012 on the formulation of the Law about the Plenary Meeting Room of the Supreme Court As the Guidelines for the Implementation of Task For Justice (Civil Law Special) states that the parameters or indicators of proven simply refers to the provisions Elucidation of Article 8 paragraph (4) Act No. 37 of 2004, the parameter is the time verification of the existence of debt.

AspekKeuanganBerdasarkan Surat KeputusanMenteri BUMN Nomor : KEP-100/MBU/2002 (StudiKasuspada PT. ADHIKARYA (Pesero) Tbk. 2012-2014Period), JurnalAdministrasiBisnis (JAB) Vol. 26. No.1 September 2015, page 2.

[1]E. Sumaryono, *EtikaHukum*, (Yogyakarta :Kanisius, 2006),page 183.

[2]Aria Suyudi, EryantoNugrohodanHerni SriNurbayanti, *AnalisisHukumkepailitan Indonesia : Kepailitan Di NegeriPailit*, (Jakarta : PusatStudiHukumdanKebijakan Indonesia, 2004),page 148.

[3]*Ibid*, page 148.

[4]Supreme Court Circular No. 7 of 2012 on formulation of the Law of the Supreme Court Plenary Meeting Room For Implementation Guidelines Task For Hakim.

An indicator that must be proved in the first bankruptcy petition is verification; proving the existence of the debt means the presence or absence debt relationship. Commercial Court only proves the existence of debt association, while the massive amount of debt is not hinder. In addition to prove the existence of debt relationship, the other main evidencesprovethe existence of other creditors in the bankruptcy petition verification. To ensure thatthe bankruptcy petition can be granted, the applicant for bankruptcy has burden to prove the existence of other creditors in the proceedings.

Some of the directives of the Supreme Court contained in SEMA No. 07 of 2012 relating to prove the existence of other creditors in the bankruptcy as follows:

1. The Parties shall undertake other creditors call to attend the hearing of the applicant's bankruptcy petition for bankruptcy because other creditors are part of proves for applicant's bankruptcy.

2. Proving the existence of the second creditor is not enough by proving Balance Sheet / Financial statements of the Bankrupt Respondent, but both creditors must prove documentary evidence (loan agreement) or witness (second creditors present) unless recognized by the debtor.

The fundamental question if there are facts or circumstances that cannot be proved simply is whether the case cannot be submitted to the commercial court because it is the jurisdiction of the district court (civil court), thus it is need to be interpreted that Article 8 (4) of Law No. 37 Year 2004 is only aimed at obliging the judge and not to reject the application for a declaration of bankruptcy if it can be proved by simple facts and circumstances, the facts and circumstances as what stated in the provisions of Article 2 (1). However, it does not mean if it is found in filed bankruptcy petition statement that cannot be proved simply, the judges refuse to examine the bankruptcy case. The judges of the commercial court are still obliged to examine and decide upon the declaration of bankruptcy.

Article verification and court basis take decision about the debtor is a very important provision because Article 8 (4) is spearheading that causes the bankruptcy. Article 8 paragraph (4) contains the "shackles" of the judges in making a decision of a declaration of bankruptcy. Judges are not given the flexibility to consider factors beyond the provisions of article, as seen in the wording of Article 8 paragraph (4), namely:

"Application for a declaration of bankruptcy must be granted if there are facts or circumstances which proved simply that the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled"

The phrase "must" in Article 8 (4) becomes phrases that handcuff judges in deciding the case. The judges do not even have consideration besides receiving a bankruptcy petition filed if it has met the elements of Article 2 paragraph (1). Although the judges grant authority and independence to get out of the barriers in the article, in reality, most judge of the Commercial Court is legalistic positivistic. Consequently, the article is applied categorically on behalf of the rule of law despite the fact that the ruling would lead to injustice and widely beneficial.

Legal protection of the debtor can be done by replacing the phrase "must" be the phrase "should" be granted, it will give space to the judge of the Commercial Court to consider other factors in the decision, such as an analysis of the financial statements of the debtor and the factor of good faith and principles protection of the prospective debtor company, including considerations related to public welfare, business development as well as consideration of strengthening the national economy ". The judge can make a decision based on the substantive fairness of justice contained philosophical meaning that judges should not be shackled by sound legislation. This is consistent with the meaning that judges have an obligation to explore the values to find a just verdict. As the provisions of Article 5, paragraph (1) of Law Number 48 Year 2009 regarding Judicial Power, which says "Judges and constitutive judges of the constitution shall explore and understand the values of law and justice in the society" ,then by law the judge has duty as legislators judge[1]. The judge "may" make the laws by themselves out of the sound of legislation that is not fair, but it "should not" always out of the provisions or the contents of the law since justice can still be found in the sound legislation. New judges may be out of the contents of the law if, after excavated in such a way, the sense of justice that still cannot be found in it ".[2]

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[1] RomliAtmasasmita, *TeoriHukumIntegratif, RekonstruksiTerhadapTeoriHukum Pembangunan danTeoriHukumProgresif,* (Yogyakarta :Genta Publishing,2012), page 39.

[2] Moh. Mahfud MD, *PenegakanKeadilan di Pengadilan*, Kumpulan Tulisan Mahfud MD, posted 15 Juli 2015, https://profmahfud.wordpresscom/penegakan-keadilan-di-pengadilan. accessed on10 Agustus 2015. page 6.

The phrase "simply" should also be removed because it is assessed from the model of voluntary bankruptcy petition; automatically all the inspection process will be more modest than the verification of the lawsuit. In simply terms is defined in Article 8 paragraph (4) in the explanation of the terms illustrate the simplicity proving the existence of creditors and debt is paid that is already matured and can bill the proceedings. The existence of a phrase that must be proven is "debtors who are in a state of not being able to pay" automatically required an additional proof and procedures to prove that the debtor is enable to pay. This procedure is called as insolvency test based on the common law system of the bankruptcy law.

Based on some of the weaknesses in the evidence contained in the bankruptcy laws of Indonesia, the concept of insolvency in the future need to be added to verify of the debtor's financial statements in the evidentiary phase of bankruptcy, as what is done in other countries with a common law system by insolvency test. Concept ofverificationdebtor's finance report in the evidentiary stage is a model of applied insolvency test, particularly for debtors who have good faith to settle the debt. Insolvency test is an ideal method to test the ability of the debtor to pay the debt.

This judge verification stage will conduct an assessment of the financial accounting standards submitted by the debtor, or if necessary the judge can ask a team of independent experts to conduct an assessment of the financial statements. The results of the preliminary investigation of the debtor's financial statements will be considered by the judge in making a decision. The judge will make consideration of the results of the analysis of financial statements. If based on the results of analysis of the debtor's financial report stated the debtor company still has potential and prospects with the good faith of the debtor to pay the debt, then the judge should make a decision to not make the debtors bankrupt.

Conversely, if the result of verification is shown that the company debtor has no prospects and ability to pay the debt because the amount of debt exceeds the total assets, the debtors deserve to be bankrupted. Furthermore, if based on financial statement analysis of debtors is still prospective, but did not show good faith in payment of debts, then also submitted to the consideration of the judge. Debtors who still have prospects and ability to pay off debt and have good faith to repay the debt is given protection by not was sentenced declaration of bankruptcy. Debtor who has good faith can be shown by the existence of an agreement or statement affordability of prospective borrowers.

This mechanism provides protection that is fair to the parties. The debtor's good faith is given the protection of the bankruptcy, otherwise debtors who are naughty and not behaving in good faith because they do not want to pay the debt even though based on the analysis of financial statements, they are still prospective, the judge may consider to continue the bankrupted statues because of lack of good faith, so it is not given protection by the law.

Through the mechanism of verification of financial statements of the debtor in the evidentiary phase, the debtor will be bankrupted is debtor who is really enable to pay debts and do not have the potential and prospects as well as goodwill. This stage is the stage of screening or the screening of the solvent and insolvent debtors, which will be taken into judges' consideration in sentencing a declaration of bankruptcy.

For debtors who based on the results of the analysis show the results of prospective financial statements and have the ability to continue his efforts, before the judge went on to make a decision the judge should still be able to offer peaceful settlement between debtors and creditors. As referred to in Article 130 HIR / 154 Rbg. Peace should be prioritized in the bankruptcy. Peace between the two sides will produce a debt settlement that shows a win-win solution. Currently, developments in the United States is very encouraging towards utilization and empowerment of Alternative Dispute Resolution (ADR), in particular mediation in the settlement of bankruptcy with the goal of accelerating the completion, as well as maintaining the fairness and efficiency.[1]

[1] Lisa A. Lomax, *Alternative Dispute Resolution in Bankruptcy:"Rule 9019 and Bankruptcy Mediation Program"*.Proceedings :*RangkaianLokakaryaTerbatasHukumKepailitandanWawasanHukumBisnisLainnya: tentangPenyempurnaanUndang-UndangKepailitan*, (Jakarta: PPH, 2003), page 36.

CLOSING

Conclusion

Verification system in the future should accommodate the aspect of justice, legal certainty and effectiveness which are done by changing the simple verification system in bankruptcy proceedings with the comprehensive verification system conducted in all aspects falling within the scope of bankruptcy, namely the aspect ability of debtors to pay the debt as evidentiary of substantive requirement that there are more than one creditors and the debt that has been matured and could be charged, as well as taking into account the aspects of good faith debtors.

Suggestion

Based on the urgency of changing simple bankruptcy system into a bankruptcy system that provides justice, legal certainty and effectiveness, it should be revised related to the verifications of bankruptcy and the procedures of proof bankruptcy in Act No. 37 of 2004; the requirement of bankruptcy should incorporate the aspects of the inability of the debtor and verification system, not only proving the fact that the creditors are more than one and the fact that the debt has been matured and billable.

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