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The Nature of Renvoi Procedure in Insolvency Law in Indonesia

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Abstract
One of the priciples of Insolvency Law is credit settlement to renormalize fairly,quickly and effectively in business world because it is regulated in law. However *renvoi* procedure is juridically not regulated in Law Number 37 Year 2004 about Insolvency and Credit Payment Obligation Adjournment. For this fact, to find out the nature of *renvoi* procedure in Insolvency Law in Indonesia based on the conceptual system constitutes a legal effort for curator, or creditor to settle the credit dispute in court on the supervisory judge's order. The juridical meaning of *renvoi* procedure in Insolvency Law in Indonesia is not objection, so it needs improvement in Article 127 section (1) of Law Number 37 Year 2004 about Insolvency and Credit Payment Obligation Adjournment, which firmly has to remove the word "objection" to be "*renvoi* procedure". In addition, *Renvoi* procedure in Indonesia reflects the principle of formal justice and substantive justice, but it does not reflect the legal certainty. It is therefore necessary to change the word objection into *renvoi* procedure that it is useful for the justice seekers.
Keywords: essence, renvoi procedure, law of insolvency

1. Preliminary

The economic and commercial development and the globalization impact on business world climate always need capital. Although most capitals of the entrepreneurs are loans of various resources, both from bank, investor's capital, obligation issue, and other legal ways, in reality these loan capitals make many problems of debt-credit settlement in society. For the sake of the business world, the fair, quick, open, and effective settlement of debt-credit problems is regulated in Law Number 37 Year 2004 about Insolvency and Credit Payment Obligation Adjournment (LICPOA).

The general explanation of LICPOA is based on some principles such as balance, business sustainability, justice and integration. One of the main objectives of Insolvency Law is to ascertain the correctness of quantity and the legitimacy of the creitor's debt with verification.[1] When the credit is verified, it is certainly not as simple as we imagine because the curator at this time of verification is frequently denied by a creditor or the creditors. It happens untill the supervisory judge tries to reconcile the two parties. If no agreement, the supervisory judge orders both parties to settle with legal effort in court. In this case, this legal effort process is ambiguous because this term should be juridically called "objection" or "*renvoi* procedure" that causes the process to be fatal in legal formal, which loses the justice seeker (*justitiabelen*).

The insolvency or bankcruptcy influences the right and duty of the bankrupted party and that of the other parties. If no agreement between the curator and the creditor, the way to settle the quantity and legitimacy of the creditor's debt which becomes the curator's authority is to object as it is regulated in Article 127 section (1) of LICPOA stating that:

> In case of objection, while the supervisory judge cannot reconcile both parties, though the dispute has been presented to the court, the supervisory judge orders the two parties to settle the dispute in the court.

However, if based on Technical Guide of Administration and Technical Guide of Public Court and Specific Civil, Book II, 2007 edition, Part B number (5) states that, b. Renvoi Procedure:

1) In case of the dispute concerning the debt quantity in the meeting of debt verification, the Supervisory Judge orders both parites to resolve the dispute in Commercial Court.
2) The case about the credit dispute is verified by the Decision-making Assembly.
3) The verification of renvoi procedure dispute is performed in a simple way.
4) The legal remedy that can be presented on the decision of the Decision-making Assembly is to present cassation.

In judicial practice it can be found the term *renvoi* procedure as in some jurisprudences, namely:

[1] Sutan Remy Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan*, Jakarta: Kencana Prenada Media Grup, 2016, hlm. 6

1. The Verdict of Supreme Court of the Republic of Indonesia Number: 77/Pdt.Sus-Renvoiprosedur/2015/PN.Niaga.Jkt.Pst., jo. Number: 77/Pdt.Sus/PKPU/ 2015/ PN.Niaga.Jkt.Pst jo. Number: 77/PDT.SUS/PAILIT/2015/ PN.Niaga.Jkt.Pst.
2. The Verdict of Supreme Court of the Republic of Indonesia Number: 406 K/Pdt.Sus-Pailit/2015, on 7 July 2015.
3. The Verdict of Supreme Court of the Republic of Indonesia Number: 940/Pdt.Sus/2010, on 11 February 2011.

From the legal consideration of those jurisprudences, the objection by the objector cannot be accepted because what to be performed is through the legal effort called *renvoi* procedure. Substantively the content material of Article 127 section (1) of LICPOA cannot secure the legal certainty for the justice seekers (*justiciabellen*). The unclearness of the word "objection" will lead to such legal issues as what is meant by objection?, what is objection in the meaning of *rechtsmiddel*?, or is it common objection that has not become a legal effort in a court?, can it become *fundamentum petendi* outside the civil public justice (*civiele recthlijk proceduur*)?, or is it still related to the Verdict of Commercial Court on the petition of bankruptcy statement and others related to and/or regulated in LICPOA?. Mainly in the sentence containing "something else", namely *actio pauliana*, the third party's resistence to the confiscation, or the case that Debtor, Creditor, Curator, or Administrator become one of the litigants related to the bankruptcy property, including the Curator's lawsuit to the Directors causing the company to be stated in bankruptcy because of the negligence or the failure. It is therefore necessary to find the nature of *renvoi* procedure in Law of Insolvency.

Based on the background above, the main problems in this research are formulated to study and analyse in order to get the following finding:

1. *The conceptuaal system of Renvoi Procedure in Insolvency Law in Indonesia.*
2. *The juridical meaning of Renvoi Proceduer in Insolvency Law in Indonesia.*
3. *The principle of formal and substantive justice in Renvoi Procedure.*

2. Research Methods

This research belongs to normative legal research, the legal research process conducted to bring about the new argumentation, theory, concept as the prescription to unswer the legal issues by studying and analysing the legislation stipulations, verdicts, and other legal materials. This research can hopefully give an answer which is right, appropriate, or wrong. Thus, the result obtained in this research has value to meet the criteria of normative legal research, the research based on the analysis of legal norms.[1]

In the context of normative legal research, this research is conducted to analyse the written law from such various aspects as theory, history, philosophy, comparation, structure and composition, scope and material, consisstency, general explanation, and article by article, formality, and binding power of law, as well as the legal language used, and also analyse the applied aspects or the implementation.

In line with the aims of the research, this legal research uses five approaches. The first is conceptual approach which is used to search the views and doctrines developing in legal science from the opinions of legal experts and theory specifically related to renvoi proceduer. The second is statute approach which is used with activities of verification, classification of legal product in the form of legislation regulation which can hopefully take the basic principles of the legal issue substance in case of the understanding of renvoi procedure. The legislation regulation analysed includes Law Number 37 Year 2004 about Insolvency and Credit Payment Obligation Adjournment (LICPOA) and Technical Guide of Administration and Technical Guide of Public Court and Specific Civil, Book II, 2007 edition. The third is historical approach which is used to study and analyse the establishment process of legislation regulation which contains and regulates the legal issues which become the object of study and analysis in this legal research.

The historical approach concentration is focused through understanding of the stipulation of insolvency law regulating renvoi procedure. The fourth is comparative approach or comparative approach of legal system[2] in insolvency law regulating renvoi procedure. The fifth is case approach which is performed by inventorying, taking a close look, studying, and analysing the verdicts which are then abstracted and formulated to be a concept as an answer for the legal issues to be answered in this research. Some jurisprudences of the verdicts are the Verdict of Supreme Court of the Republic of Indonesia Number 77/Pdt.Sus-Renvoiprosedur/2015/PN.Niaga.Jkt.Pst. jo. Number 7/Pdt.Sus/ PKPU/2015/PN.Niaga.Jkt.Pst. jo. Number 77/PDT.SUS/PAILIT/2015/PN.Niaga.Jkt.Pst.; the Verdict of Supreme Court of the Republic of Indonesia Number 406 K/Pdt.Sus-Pailit/2015, on 7 July 2015; and the Verdict of Supreme Court of the Republic of Indonesia Number 940/Pdt.Sus/2010, on 11 February 2011.

[1] Peter Mahmud Marzuki, *Penelitian Hukum*, Prenada Media, Jakarta, 2005, hlm. 29-36

[2] Herowati Poesoko, *Diktat Bahan Kuliah Perbandingan Hukum*, Program Doktor Ilmu Hukum, Fakultas Hukum Universitas Jember tahun 2014, hlm. 3

3. Results And Discussion

In the dictionary "Kamus Besar Bahasa Indonesia" nature means true reality.[1] In this research it means the true reality of the analysed object. In relation to the legal research Bernard Arief Sidharta states that the analysed object of legal science is positive law in force in a certain state at certain time (law in force at this time), that is conceptual system of legal principles, rules of law, legal decisions of legal awareness product, and politics of law which the important parts is made positive by the legal authority of the state, as well as the legal institutions to actualize the conceptual system and the proscess. The legal materials are processed by always refering to justice, historical and social contexts.[2] Therefore, to find the nature of *renvoi* procedure, the reasearcher will divide some chapters into sub-chapters, namely: (1) Conceptual System of *Renvoi* Procedure in Insolvency Law in Indonesia; (2) *Renvoi* Procedure in Insolvency Law in Indonesia; and (3) Principle of Formal and Substantive Justice in *Renvoi* Procedure.

3.1 The Conceptual System of Renvoi Procedure in Law of Insolvency in Indonesia

Due to no concept of *renvoi* procedure in Law Number 37 Year 2004 about Insolvency and Credit Payment Obligation Adjournment (LICPOA) which no articles regulating *renvoi* procedure, to find the concept of *renvoi* procedure, the researcher uses the conceptual system approach which is started with historical interpretation and comparasion in legal system family specifically regulating *renvoi* procedure in insolvency law of some countries and legal expert's opinion.

Starting from the general theory of International Civil Law (ICL) that the problem which always interests is about "*Renvoi*" or reappointment.[3] It is also stated by M. Marwan and Jimmy P. that *renvoi* itself constitutes reappointment or further appointment based on the rules of ICL from a foreign legal system refered by the rules of ICL *lex fori*. Because the word procedure or *process* is related to procedural law or law of procedure, the meaning of procedure is examination submission to court.[4] Thus, *renvoi* procedure is case activity to court through reappoinment or further appointmnet based on the rules of ICL from the foreign system refered by the rules of ICL *lex fori,* through stages of a case settlement through court.

There are some understandings of *renvoi* procedure concerning bankruptcy case in other countries. For example, *EEC Court of Justice* can decide dissenting opinion between "*First Proceeding" Likuidator* and Creditor, including deciding number of Debt in accordance with Article 26 section (1), as "*Secondary Proceeding*" that binds, stated on Article 32. In Article-35 it is stated that:[5] in order the creditors can secure their billing rights with written proposal. If it is approved, EEC Supreme Court may use the legal authority based on Article 35 concerning Mutual Legal Decisions of EEC countries.

Dutch Civil Law also regulates renvoi procedure in another term but it has the same meaning, that is enabling the creditor to use the right of intervension on the bill list objected by the curator until the judge's decision. It is as stated that:[6] Dutch Insolvency Law 1893 gives opportunity to the creditors, also the debtors, to control the curator (trustee) in order to be in line with the valid stipulation. The curator's decision and/or determination can be submitted to the judge, and must be processed at least three days after the submitted report.

Italian Civil Code in Section 100 also enables the creditor to correct the Bill List with the Verdict. This section states that:[7] the creditors who agree can register their lawsuit five days before being tried automatically. The curator's decision will be decided by the court. If it does not satisfy, it can be presented to the Court of Appeals, or if it still does not satisfy, it can be presented to thew Court of Cassation.

Book III, Greece Commercial Code obliges that the bill list is agreed by the curator before the bankcruptcy can be processed. This article states that:[8] the regulation enables the creditors to participate in the curator's

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[1] Kamus Besar Bahasa Indonesia, Balai Pustaka, Jakarta, 1989, hlm. 293

[2] Bernard Arief Sidharta, *Refleksi tentang Struktur Ilmu Hukum, Sebuah Penelitian Tentang Fundasi Kefilsafatan Dan Sifat Keilimuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia*, Mandar Maju, Bandung, 1999, hlm. 216

[3] Schnitzer dalam Sudargo Gautama, *Pengantar Hukum Perdata Internasional Indonesia*, Binacipta, Bandung, 1987, hlm. 89

[4] M. Marwan dan Jimmy P., *Kamus Hukum Dictionary of Law Complete Edition*, Reality Publisher, Surabaya, 2009, hlm. 536

[5] "*The Creditors may lodge their claims upon receipt of the notice. Once adopted, the EC Court of Justice shall have jurisdiction to give rulings on the interpretation of the Convention."* dalam Dennis Campbell, *International Corporate Insolvency Law*, Butterwoth, London, 1992, hlm. 630-631

[6] *"The Dutch Bankruptcy Act (BA) of 1893, creates for certain Creditor as well as for the Debtor, opportunities to control the Trustee up to a certain extent. A Petition against the judgment of the Trustee can be filled with an Examining Judge. The Examining must react in 3 (three) days." Ibid.*, hlm. 382

[7] *"The Creditors who have filled an Opposition must register their Statement of Claims, five days before the Hearing of theirs claims, will be considered automatically forfeited. The Proceeding are decided upon by the Court. The Court's judgment can be appealed before the Court of Appeal. The Court of Appeal's judgment can be challenged before the Court of Cassation." Ibid.*, hlm. 344

[8] "This Procedure allows the Creditors to participate in Bankruptcy Proceedings and for the Distribution of the Proceeds of Liquidation. The Creditors must filled their claims with the Clerk of the Court and produce the Documents and the Data Evidencing their claims within 20 days from an Invitation which is Published in Daily Press and is communicated in Writing to them. The Claims to filled are Reviewed by the Judge Rapporteur and the Trustee in the presence of the Creditor's Concerned, and if necessary, the Bankrupt himself such Other Creditors

decision of the liquidated asset distribution. The creditors must register their assets to a court clerk, completed with documents and other evidence tools at least twenty days after the official announcement. The complaint will be examined and decided by the judge who has authority to examine the curator based on the the creditor's complaint (and if it is needed, it will be attended by the bankcupted party) and other creditors whose claims are examined and decided.

Danish Bankruptcy Law enables the creditor to add interest, including correcting the value and/or priority. It is stated by Dennis Campbell[1] that: if the creditor wants to add the reasonable interest, the additional interest will appear on the billing evidence, as the addition of the main bill. If the creditor's bill has preference right and/or has security of the debt, the information is compulsorily added in the bill. Accordingly the insolvency court can determine the deadline of claim submission (the claim after the deadline will not be processed).

The Renvoi Procedure is very important to classify the Assets in line with the valid Insolvency Stipulation. Thomas H Jackson[2] proposes that: from sanifying the bakcupted party's obligation when the curators generally avoid the authority limitation. There has been the standard principle regulating this case, but overlapping may still happen between the banlrupted asset versus the priority of debt repayment from the bankrupted party.

The creditor's certainty to sustainably correct the curator cannot be avoided in order that at the time of liquidation the bankrupted assets do not lead to dispute and/or ijustice. Douglas G Baird[3] mentions that in term of the related doctrines and the violation report, the creditors in insolvency must be protected from all the internally and externally injured party, as mentioned in the doctrines and Law of Violation Report, which must be defended by each creditor. The detailed Insolvency Regulation must be agreed before, in order that the blatancy by the emotional creditor does not take place.

In the United States of America, the renvoi procedure of the curator's action I at least six years after the case, because the judge obliges that the notes must be kept in that period. It is as stated by Hugo Groves & Cormae Smith[4] that the liquidator's main duty is to realize the payment and keep the financial note (a part of it is regulated in Insolvency Regulation by the entreprenurs in 1990 and Payment Disablity Regulation of 1986). The liquidator and/or the curator must keep the administrative note and commercial note up to six years, after insolvency asset authorization.

Justice can sustainably be defended by the creditors to have the decision in line with the priority right, and not be forced by other parties including the curator. As it is stated by Kevin J. Delaney[5] that in analysing the general theory of insolveny many legal witers focus themselves on the legal principles which are attached and inseparable, which secure the justice of bankruptcy court. The creditor has the security which is the main priority and must be paid fully before the common creditors can get the payment. If the insolvency asset is not sufficient, every creditor gets proportional payment which is fair among a group of creditors.

Though there are some different terms of *renvoi* procedure understanding in some countries, one point that has the same meaning is the procedure of debt adjustment application which its examination is given to the court. The systems regulating insolvency law which state or bring about *renvoi* procedure or reappointment in the court in relation to the submission of curator od creditor to be processed or or decided by the court are *Italian Civil Code section* 100 and *Book III, Greece Commercial Code.*

There are some experts who have opinion of of renvoi procedure. For example, Bernadette Waluyo[6]

who claims have been Reviewed and Accepted." dalam Dennis Campbell, Ibid., hlm. 244

[1] "If the Creditor wishes to add interest and he entitled to do so, the interest amount must appear from the proof, and be added to the Principal. If the Creditor claim to have a preferential standing, or to have security for his claim in the form of estate, the information must be stated when lodging the claim. However the Bankruptcy Court is able to fix a Final Date for lodging claims, so that claims logged After that date are not to be considered." Ibid.

[2] "Refining Liabilities: The Basic Trustee avoiding Powers of Sections. There is undeniable validity to this way of viewing this situation. Substantial and Inevitable overlap exist between the question of what are the Assets of that Bankruptcy is concerned with and the question of How Liabilities are Ordered in Bankruptcy." dalam *Thomas H. Jackson, The Logic and Limits of Bankruptcy Law, Beard Books, Washington DC, 1986, hlm. 68*

[3] "Fraudulence Conveyances and Related Doctrines: Protections enjoyed by the Creditors both Inside and Outside the Bankruptcy, embodied in Fraudulence Conveyance Law and related doctrines, are best understood that Most Creditors would Bargain for. This Bankruptcy specific policy Ensures that Bankruptcy is on the Horizon, No Creditors engage in Gun Jumping". dalam *Douglas G. Baird,* Elements of Bankruptcy, Concepts and Insights Series, Foundation Press, New York, 2001, *hlm. 130*

[4] "The duties of a Liquidator, is acting for Payments and Receipts and maintaining Financial Records, (are partly contained in the Insolvency Practitioners Regulations 1990 and in the Insolvency Regulations 1986). The Liquidator must keep all the Administrative Financial and Trading Records, in respect of the Company for a period of Six years, following his vacation of office". dalam *Hugo Groves & Cormae Smith, Corporate Insolvency, Law & Practice, Butterworth, London, 1992, hlm. 304*

[5] "While eschewing a General Bankruptcy Theory, most legal writer's view point to General Principles of Inherent in the Law that Ensure Fairness in Bankruptcy Court. Secured Creditors (those negotiated for collateral to secure their claims) are on Top of Priority Level and are Paid in Full before the Next Level (unsecured creditors) receives anything. If there is Not Enough money to pay them all, each receives a Pro-rata share of money owed according to the Principle of Temporal Equality". dalam *Kevin J. Delaney, Strategic Bankruptcy, How Corporations and Creditors Use Chapter-11 to their Advantage, University of California Press, Berkeley, 1992, hlm. 45*

[6] Bernadette Waluyo, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*, Mandar Maju, Bandung, 1999, hlm. 56

mentions r*envoi* procedure as debt objection, and he states that if in debt adjusment meeting there is objection of debt, the supervisory judge will reconcile the parties. If the parties cannot be reconciled, the supervisory judge will order the parties to resolve the case in the court. The trial is executed Sidang pengadilan tersebut dilakukan secara sumir.

Rachmadi Usman[1] states that insolvencdy also regulates *renvoi* matter. It can be foud in Article 118 Law Number 4 Year 1998 about Isolvency as it has been changed into Article 127 section (1) Law Number 37 Year 2004 about Insolvency which states that if there is debt objection by the curator or Treasure Hall and the bankrupted debitor in the verification meeting, whereas the supervisory judge cannot reconcile, this judge hakim will refer the parties or order both parties to be in a court trial. The return of objection settlement like this is called *renvoi.* Zainal Asikin[2] also states concerning *renvoi* procedure that in Insolvency Regulation *renvoi* is implemented in certain case, and procedure if the creditor's debts are objected by Treasure Hall/Curator and one creditor or more (in verification meeting), whereas the supervisory judge is not successful in resolving the different opinion, the judge will order both parties to settle the different opinion at the court in simple procedure. So the term *Renvoi* in Dutch language or *Renvoi* in French language, the meaning is handed to the judge appointed by the Court Chief.

From the above explanation by the experts, *renvoi* procedur is principally a leggal effort to settle the dispute between the curator and the creditor or the creditors concerning the debt that cannot be reconciled by the supervisory judge. For this, the supervisory judge orders both parties to resolve the case through the procedure in court.

3.2 The Juridical Meaning of Renvoi Procedure in Insolvency Law in Indonesia

Searching the validity of *renvoi* procedure concept in Insolvency Law (IL), firstly based on Technical Guide of Administration and Technical Guide of Public Court and Specific Civil "Book II, edition 2007, Part B number (5) states, Renvoi Procedure;

1) In case of dispute cocerning debt number in verification meeting, the Supervisory Judge orders both parties to settle the dispute in Commercial Court.
2) The case of debt dispute is examined by the Decision-making Assembly.
3) The examination of renvoi procedure dispute is executed in a simple way.
4) The legal effort that can be filed for the Decision-making Assembly's decision is to file cassation.

The subject matters above are found in some legal considerations of jurisprudence, namely the Verdict of Supreme Court of the Republic of Indonesia Number: 77/Pdt.Sus-Renvoiprosedur/ 2015/PN.Niaga.Jkt.Pst., jo. Number: 77/Pdt.Sus/PKPU/ 2015/PN.Niaga.Jkt.Pst jo. the Verdict of Supreme Court of the Republic of Indonesia Number: 77/PDT.SUS/PAILIT/2015/PN.Niaga. Jkt.Pst.; the Verdict of Supreme Court of the Republic of Indonesia Number: 406K/Pdt.Sus-Pailit/2015, dated 7 July 2015; and the Verdict of Supreme Court of the Republic of Indonesia Number: 940/Pdt.Sus/2010, dated 11 February 2011. According to the legal consideration of the juriprudences above, the objection by the objector cannot be accepted because what to be done is through legal effort called "*renvoi* procedure".

The second search is to analyse for finding the answer of whether there is or is not similarity or difference between "objection" and "*renvoi* procedure". In discussing "objection", in IL there are some articles, namely article 117 of IL stating, "*Curator must insert the agreed credit into a credit list which is temporarily admitted, whereas the credit to be objected and the reason are inserted in a separate list.*" If viewed from this article, there are four points, namely (1) two kinds of credit list, (2) the agreed credit and the objected credit, (3) made by the curator, and (4) each credit made in separate list. If analysed in detailed, there are two meanings of the objected credit, namely the credit objected by the creditors or the credit objected by the curator.

The case *renvoi* procedure is regulated in Article 127 section (1) of IL, but in practice the parties usually call the case as the creditor's objection case though many call it as *renvoi* procedure case. It makes vague meaning of *renvoi* procedure because this case is not objection case. Likewise objection does mean *renvoi* procedure if Article 127 section (1) of IL is the basis of *renvoi* procedure. Some articles in IL have some regulations of objection, but to correctly interprete the legal effort of *renvoi* procedure is on Article 127 section (1) of IL, if it is interpreted as objection, it needs analysing the meaning objection in some articles of this IL.

Article 124 section (1) of IL asserts the vague meaning of objection by curator or the creditors if the objection is interpreted as *renvoi* procedure. This article states, "*In the meeting as mentioned in Article 121, the supervisory judge reads the credit lis which is temporarily agreed and the credit list which is objected by the curator*". In this article it is clearly stated that the party objecting the credit list submitted by the creditors is the curator. As a result it can be interpreted that the objection intended in this article is the curator's objection not the creditor's objection as the legal effort mentioned in Article 127 section (1) of IL.

[1] Rachmadi Usman, *Dimensi Hukum Kepailitan di Indonesia*, Gramedia Pustaka Utama, Jakarta, 2004, hlm. 99-100
[2] Zainal Asikin, *Hukum Kepailitan dan Kewajiban Pembayaran Utang di Indonesia*, Pustaka Rineka Cipta, Bandung, 2013, hlm. 90

The meaning of *renvoi* proccedure, if it is called as objection, will be vague, if it is viewed from Article 124 section (2) of IL which states:

> "Every creditor whose name is mentioned in the credit list as stated in section (1) can ask the curator to give information concerning each credit and its placement in the list, or can object the validity of credit, the right to be preceded, the right to hold the goods, or can agree the curator's objection".

In this article there are two kinds of objection, the creditor's objection in the sentence "*Every creditor .... or can object the credit validity ...*". This sentence in the article is interpreted that every creditor is given the authority to object the validity of credit.

Likewise the sentence in Article 124 section (2) of IL states, "*Every creditor ... or can agree the curator's objection*". The intended meaning of objection is the curator's objection. For this, objection in this article means the curator's objection and/or another credtor's objection. The objection in Article 124 section (2) of IL is not the objection intended in Article 127 section (1) of IL about *renvoi* procedure regulation. The objection intended in Article 124 section (2) of IL is the curator's objection or another creditor's objection at the time of credit verification. Likewise the objection intended that every creditor can object the credit validity is to object the curator's objection. To understand the meaning of to object the curator's objection, the validity must be analysed. To object the objection in law of civil procedure must meet the principle or "the existence of objecting the objection" must be in the principle of civil procedure law.

Article 124 section (3) of IL states, "*Curator has right to revoke the temporarily recognizance or his/her objection, or claim the creditor to confirm with the oath of credit validity which is not objected by the curator or by one of the creditors*". Based on this article it can be interpreted that the right to object given to the creditor is in line with section (3) of this article is the right to object the credit validity recognized by the curator, not the credit objected by the curator, objected by the creditor. It is in line with the statement of this article in the sentence *"..., or claim the creditor to confirm with the oath of credit validity which is not objected by the curator or by one of the creditors*". For this the meaning of the objected credit validity is the credit validity objected by the curator or by other creditors.

Article 126 section (1) of IL also states, "*The credit which is not objected must be removed into the recognized credit list, which is inserted in the meeting agenda*". In this article it is firmly stated that after the meeting of creditor, regarding Article 124 section (1), section (2) and section (3) of IL, if no longer objection both by the curator and by other creditors, the credit is removed into the recognized credit list and inserted in the meeting agenda. For this the creditor meeting is an important part of insolvency process especially concerning *renvoi* proceduer, because in this creditor meeting there will be right and duty of the creditor and right and duty of the curator as the party organizing and finishing all the property of the bankrupted debitor.

The objection intended in some of the articles above are different from the regulation of article 127 sectin (1) of IL because this article is wished to be able to regulate *renvoi* procedure, but the objection regulation in other articles is the process of disputing each other at the time credit verification. The *renvoi* procedure case is about credit dispute which is realized after the process of verification and there is no agreement between the curator and the creditor, although they have been reconciled by the supervisory judge and both parties keep disputing the credit. Therefore, to secure the justice for the parties concerning the credit verification dispute the legal effort is given in order the dispute can be settled in the court. Such legal effort is called the legal effort of *Renvoi* procedure.

The legal effort of *Renvoi* procedure in insolvency case is regulated in Article 127 section (1) of IL which states, "*In case of objection and the supervisory judge cannot reconcile both parties, though the dispute has been filed to the court, the supervisory judge orders both parties to resolve the dispute in the court*". If the meaning of each sentence in this article is understood, the regulation of this article is not about the objection filed to the court, but about the justice security for the parties provided by the state, namely the legal effort of *renvoi* procedure. For this, the legal effort of *rennvoi* procedure is the legal effort of court examination filed by the creditor due to the curator's objection of the credit filed by the creditors at the time of the credit verification. The examinatyion authority submission to the court inserted in this article is the examination authority submission concerning the credit verification objected by the curator. As a consequence the name of this case procedure is not the objection but the case object is the curator's objection.

The legal effort or the case which the examination is submitted to the court is about the application of reverification of the creditor's credit objected by the curator and/or other creditors or usually called *renvoi* procedure, and not about objection examination, although this legal effort is about the same case, on of the unsatisfied parties to the credit list objected by the curator, usually in the objection, that is the unstisfaction to the verdict or the plaintiff's claim. However, the meaning of the unsatisfied parties cannot be similarized or in other words it has different meaning.

Satjipto Rahardjo states that various disputes have their own procedures so that in common law there are many procedures which make complexityt. The mistake in procedure can make fatal in executing the procedure.

Similarly lack or unsuccessfulness in executing the procedure can be fatal, too although substantively the party is in better position than his/her opponent.[1] The formal legal theory is the theory which is very suitable to be used as an analysis tool because the *renvoi* procedure submission is a part of formal law. If *renvoi* procedure submission is analysed with this tool, it can be known whether *renvoi* procedure has been in line or not with the principle in formal law.

The *renvoi* procedure examination submission is a civil lawsuit process in insolvency case after bankcuptcy decirion. The *Renvoi* procedure is submitted as the legal effort to the court due to the objection of both the curator and other creditors for the credit list submitted by one of the creditors at the meeting concerning the credit verification. In Insolvency Law the *Renvoi* procedure is regulated in Article 127 section (1) which states, "*In case of objection, whereas the supervisory judge can reconcile both parties, although the dispute has been filed to the court, the supervisory judge orders both parties to settle their dispute in the court*". According to this section, the litigants are given the right to submit the application of credit reverification which is filed by the creditot and objected by the curator and/or other creditors to the court for case examination and this legal effort is more simply called *renvoi* procedure.

Renvoi procedure is a case procedure submitted to the court. If viewed from Article 127 section (1) of Insolvency Law (IL), the following elements are found, namely a) there is objection; b) the supervisory judge can reconcile both parties; c) the dispute is filed to the court; d) on the order of Supervisory Judge to both parties; e) to resolve the dispute in the court. If seen form the element in part a, it must be known first the intention of the objection. Based on Article 117 of IL, it is stated "*Curator must insert the agreed credit into the credit list which temporarily admitted, and the objected credit including the reason is inserted into the separate list*". With this regulation, it is necessary to identify the party who objects in this article, in order to find the correct intention of the objection.

Article 124 section (1) and section (2) of IL is the regulation stating that the curator and other creditors are the parties who object the credit of a creditor. To know the regulation in this law, it can be seen in the followings.

(1) In the meeting as stated in Article 121, the supervisory judge reads the agreed credit list and the credit list objected by the curator.
(2) Every creditor whose name is mentioned in the credit list as stated in section (1) can ask the curator to give information of every credit and placement in the list, or can object the credit, the right to be the first, the right to keep goods, or can agree the curator's objection.

If the above article is seen carefully, the intended objection is the curator's objection, as in the sentence *"…the credit objected by the curator*", and the objection of other creditors as in the sentence "*Every creditor whose name is mentioned in the credit list …*", or "*can object the validity of credit … or can agree the curator's objection*". In this case the objection of other creditors can intepreted in two understandings, (1) opportunity to object the the credit validity and the placement in the credit list made by the curator, and (2) opportunity to agree the curator's objection. Based on the above explanation, the objection intended in this article is the curator's objection and the objection of other creditors.

The second element of Article 127 section (1) of IL is that "*The supervisory judge cannot reconcile both parties*". This element means that the supervisory judge is obliged to reconcile both parties, the creditor who submit the credit verification, the curator and other creditors who object. The third element is that "*The dispute has been filed to the court*". The dispute here is that the credit verification has been to the commercial court. The fourth element is that "*On the the supervisory judge's order to both parties*". In this case, based on Article 65 of IL the supervisory judge has a duty supervise the management and settelement of bankrupted property, and Article 66 of IL states "*The court must listen to the the supervisory judge's opinion, before making decision of the management and settelement of bankrupted property*". The supervisory judge's authority in supervising the management and settelement of bankrupted property is about all decisions, and the court will listen to the supervisory judge's opinion, besides as the party supervising settelement of bankrupted property, the supervisory judge also has authority to order both parties in dispute. The fifth element of Article 127 section (1) of IL is "*to settle the dispute in the court*". The court here means the commercial court and the case submitted to the court is the dispute among the litigants the creditor meeting to execute the crfedit verification.

Based on the above explanation of the elements, the legal effort in Article 127 section (1) of IL is not the legal effort of objection submitted to the court. The objection intended in this article is the credit list submitted by the creditor that is objected by the curator or the validity is objected by other creditors at the meeting of credit verification, because of reconcilation unability, the supervisory judge orders the parties to submit examination to the court concerning the the credit list verification objected by the curator and/or other creditors. For this the legal effort in line with this article is not that of objection, but the legal effort of the credit reverification application submitted by the creditor objected by the curator and/or other creditors, which the

[1] Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, 2014, hlm. 78

examination is sebmitted to the court. If viewed from the meaning, the meaning of this legal effort is the same as that of *renvoi* procedure.

The legal effort concerning the reverification of the creditor's credit obviously contains the meaning of *renvoi* procedure in Article 127 sectiont (4) of IL, which states the followings.

> (4) In term of the creditor asking the credit verification does not attend the meeting at the decided time, he/she is considered that he/she has revoke his/her request and in term of the party who object does not attend the meeting, he/she is considered that he/she has removed his/her objection, and the judge must admit his/her credit.

This article regulates the intended legal effort not the legal effort of objection, but the legal effort of renvoi procedure. The meaning of the legal effort of renvoi procedure is mentioned in the sentence "In term of the creditor asking the credit verification does not attend the meeting …". The intention of this objection in this section is the objection of the creditor's credit list, not the legal effort of objection filed to the court. It can be seen in the sentence "…the party who objects does not attend the meeting, he/she is considered that he/she has removed his/her objection, and the judge must admit the party's credit". The party who does not object is the curator or other creditors concerning the creditor's credit list as in the above explanation. Thus it can be recognized that the application object which is in line with Article 127 section (1) of IL is the creditor's credit list objected by the curator and/or other creditors, so it needs the examination of the credit list reverification from the court.

The case of renvoi procedure is civil case due to the bankruptcy decision of a person or corporation. It is in accordance with regulation in Article 2 section (1) of IL which states, "Debitor who has one or more creditors and does not pay in cash at least a debt which is billed, is declared bankrupted with the verdict, both his/her own application and on the application of a creditor or more creditors". Thus the bankruptcy statement with the verdict requires two or more creditors, not paying at least a debt which is in due date and can be billed.

This bankcruptcy can be seen in Inslovency Law in Article 24 section (1) which states, "Debtor by law forfeits his/her right to posess and manage his/her property included in the bankrupted property, since the declaration date of the bankruptcy verdict". Because the debitor can no longer manage his/her property, it makes changes of the debt and the crdedit. The regulation in this article is closely related to the understanding of bankruptcy in Article 1 number 1 which states, "Bankruptcy is public confiscation of the bankrupted debtor's all properties which the management and settelement is executed by the curator under the supervisory judge's control as regulated in this law". For this the bankcruptcy can be interpreted as the submission of authority to manage the property and pay the debt of the creditor to the curator supervised by the supervisory judge. Renvoi procedure is a lawsuit which emerges because of the objection of curator and/or other creditors to the credit list made by the creditor in the credit verification process to settle the bankrupted debtor's all properties.

To recognize the place of *renvoi* procedure, it is firstly recognized about the creditor meeting to verify the credit, which is regulated in Article 113 section (1) of IL which states:

(1) At least fourteen days after 14 days of the verdict of bankcruptcy declaration, the supervisory judge must decide:
   a. Deadline of bill application;
   b. Deadline of tax verification to determine the number of tax responsibility in line with legislation regulation of taxation;
   c. Day, date, time, and place of the creditor meeting to verify the credit.

This article regulates the determination of creditor meeting realization for credit verification. In this credit verification the creditors must submit the credit list.

The determination of bill submission deadline is the time which the creditors must submit each of their credit list. This obligaton of credit list submission by the creditor is regulated in Article 115 section (1) of IL which states as in the following.

> "All the creditors must submit each of their credit lists to the curator accompanied with calculation or other written information, which shows the characteristic and credit number, accompanied with evidence letter or the copy, and a statement of that the creditor has or does not have the privilege, liens, security, fiducia, mortgage right, mortgage, collateral rights of other materials, or rights to hold objects".

This regulation regulates the creditor's obligation to submit his/her credit the curator for verification and adjustment by curator concerning the validity of the credit.

The credit list submitted by the creditor, based on Article 116 section (2) of IL, must be adjusted by the curator. From this adjustment of the creditor's credit by the curator, the curator must negotiate with the creditor if there is credit objection. It is in line with Article 116 section (1) of IL which states:

"(1) The curator must:
   a. verify the credit calculation submitted by the creditor with the note made before and the bankrupted debtor's information; and

b. negotiate with the creditor if there is objection of the accepted bill."

After the curator verifies the credit based on Article 117 section (1) of IL, the agreed credit list and the objected credit list are made. Based on Article 127 section (1) of IL, the supervisory judge has obligation to reconcile both and if they cannot be reconciled, the supervisory judge orders them to settle the dispute to the court (commercial court).

The creditor's legal effort, that the credit list is objected by both the curator and other creditors, is objection like exception, opposition or legal effort of appeal and cassation, because it not mentioned in formal law about a procedural process regulating the objected objection. It is said so because the credit list submitted by the creditor in the creditor meeting about the credit verification objected by the curator or other creitors is objection. However, the legal effort of the curator's or other creditor's objection is no longer objection because it is not possible to make the legal effort of objection in the form of objection. According to the regulations in other countries, the most appropriate legal effort is *renvoi* procedure. For this, Insolvency Law has its own characteristic, both in form and characteristic, but in the process this law is also subjected to law of civil procedure. In every process insolvency law cannot be in contrast with the principles of civil procedural law.

The legal effort in Article 127 section (1) of IL cannot be equated to the objection as the case in civil procedural law or interpreted as an objection. The objection in civil procedural law in this case is lawsuit. If no lawsuit, in civil procedural there will never be objection. The objection in civil procedural law is the authority of the defendant or the party sued by the plaintiff.

The objection like exception cannot be equated to the legal effort intended in Article 127 section (1) of IL. Exception is executed because of lawsuit and it is intended to object the lawsuit formality and does not reach the subject matter of lawsuit. It means refutation or rebuttal of the sued party over the lawsuit filed by the plaintiff that does not reach the subject matter, usually only containing claim for lawsuit invalidity, whereas Article 127 section (1) of IL is the legal effort for the curator's objection and/or other creditor's objection to bankruptcy case.

The legal effort intended in Article 127 section (1) of IL cannot be equated to resitance (*verzet*), the defendant's legal effort due to the verdict that the defendant is not present (*verstek*) as regulated in Article 125 section(3) of HIR and Article 129 of HIR/Articlel 149 section (3) of RBg and Article 153 of RBg. It cannot either equated to the reisistance of parties (*derden verzet*), the resistance of verdict, that the third party was formerly not related to and the reason of this resistance due to the the verdict makes the third party lost as regulated in Article 378 Rv. And Article 379 Rv.

The legal effort intended in Article 127 sectiont (1) of IL cannot either equated to the resistance of the parties (*partij verzet*), in which the resistance in this form is the resistance of the parties or the debtor resists the confiscation, or the decision of the execution confiscation has been made in the decision execution. The resistance in this type is executed after the verdict even at the decision execution stage, at the time of dispute object confiscation. It is regulated ia Article 207 section (1) of HIR/Article 225 section (1) of RBg. The three resistances above is the resitance of the verdict, both due to the party's absence, or other party's resistance and the resistance at the time of execution confiscation. All the resistances are those of the verdict. The legal effort based on Article 127 section (1) of IL is the legal effort to the objection of the curator and/or other creditors that are not court organ that can decide a case, and the legal effrort object of this legal effort is the credit list presented by the creditor and objected by the curator and/or other creditors.

The appeal legal effort is the objection or resistance to the verdict by one of the parties or both. If one of the parties or both in civil dispute does not satisfy and does not get justice of the verdict of the court, he/she can present the appeal legal effort to the high court, and this court still reexamines the legal fact (*judex factie*). The appeal legal effort as the resistance or the objection of the verdict cannot either be equated to the legal effort intended in Article 127 section (1) of IL although this legal effort equally reexamines, but the difference is that this legal effort is the resistance or mthe objection of the court's verdict.

Similarly the cassation legal effort cannot be equated to the legal effort based on Article 127 section (1) of IL because the cassation legal effort is the legal effort which no longer reexamines the legal fact, but the court's duty is to revoke the verdict or the stipulation with the reason that the court has no authority or gets beyond authority, the court misuses or breaks the valid law and or the court neglects to meet the requirements obliged by the legislation regulation threatening the negligence with the the cancelled verdict. Therefore the cassation legal effort is commonly called the legal effort of law enforcement (*judex jurist*). If the meaning is viewed from this cassastion legal effort, it cannot be equated to the legal effort intended in Article 127 section (1) of IL, because the legal effort regulates the judge's working way in making decision or enforcing law in line or not with the valid law.

Insolvency Law in Indonesia is a law which adopts foreign law because Indonesian original law does not know insolvency law or bankruptcy law. In relation to insolvency adopting foreign law, the charaterisitic of Indonesian Insolvency law has similarity to that of foreign law. Similarly, about the choice of law concerning international civil law, it is similar to the principles mentioned in insolvency law. The legal effort of Article 127

section (1) of IL, part of insolvency case, is the legal effort given by the judge to the parties to select their case submission to the court, although the case has been examined before by the organ in insolvency, that is the curator.

The legal effort of *renvoi* procedure submitted to the creditor concerning the credit list objected by the curator at the credit verification meeting is viewed from the principles of the legal similarity to *EC Court of Justice* which can decide the dispute between "*First Proceeding" Likuidator* and Creditur, including deciding the credit number in line with Article Article 26 section (1), as "*Secondary Proceeding*" which binding, as stated in accordance with Article 32. In *Article-35* it is stated that the intention of this article is that the creditur can secure his/her billing right with written submission, that if it is agreed, the Supreme Court of European Economic Community enables to implement the Legal Authority. Likewise in Italian law (*Italian Civil Code) in Section 100 also allows the Creditur correct the Bill List with the Verdict.*

Dutch law (*Dutch Civil Law*), allows the creditur to use the right of intervention on the bill list objected by the Curator untill the verdict. It is as stated in *"The Dutch Bankruptcy Act (BA) of 1893. The regulation in Greek Law obligates the bill list to be agreed by the curator before the bankruptcy can be processed, Book III, Greece Commercial Code. This regulation of Book III, Greece Commercial Code enables the creditors to participate in the curator's decision about asset distribution which is liquidated. The complaint will be examined and decided by the judge who is given authority to exanimne the curator..*

Similarly Denmark law (Danish Bankruptcy Law) enables the creditor to add interest, including to correct the value and/or priority of his/her billing right. In the USA, the correction (renvoi) procedure of the curator's action is at least six years after the occurence because Law obligates the Note to be well kept in that period. It gives an understanding that law gives the right of correction to the creditur to correct in order that it gives legal certainty, the creditor continuously corrects the curator, it is unavoidable, and at the time of insolvency asset liquidation it does not result the dispute and/or injustice.

The above explanation describes that the legal effort intended in some contries does not have similiar meaning to that intended in Article 127 section (1) of IL. Some countries interprete the process in various terms, such as correction procedure of the credit list, intervention right of the credit list, debtor's correction of the bill list with verdict, security of billing right with written submission to the Supreme Court of European Economic Community, and correction of value and/or priority of Billing Right. However all the terms mean tha correction procedure of what is resulted by the curator in credit verification. It may be the result of the curator's objection of the credit list or the objection of other creditors. *Thus the meaning of objection in Article 127 section (1) of IL is the curator's objection not renvoi procedure.*

Such legal effort is not the legal effort of objection or the legal effort of exception as in some cases presented before, but appropriately, briefly and clearly the regulation must be called as the legal effort of renvoi prosedure. Due to insolvency law as lex spesialis of civil law, as well as insolvency lawsuit as lex spesialis of civil lawsuit, it is precise to call such legal effort as the legal effort of renvoi procedure because Article 127 section (1) of IL does not have the similar characteristic to the renvoi procedure.

3.3 The Principle of Formal Justice and Substantive Justice in *Renvoi* Procedure

To analyze the actualization of *renvoi* procedure in IL after finding the etimological meaning is furthermore to teleologically interprete to analyse the teachings or theory of the purpose of law. Cocerning the theory, the researcher follows of Gustav Radbruch theory which is very widely recognized by the legal experts. It underlies the purpose of law from basic values of law that is justice value, usability value and legal certainty.[1] For this, the purposes of law are (a) justice, (b) usability or benefit, and (c) legal certainty. Theoretically the three pruposes of law are very ideal, but it is practically difficult to realize them, even they are frequently controversial. It means that one purpose ignores another. For example, "legal certainty" negates or denies "justice". Furthermore according to Gustav Radbruch, the three purposes of law must be implemented in harmony in order the one purpose does not negate another purpose, and the justice does not denies the justice and uasability in society (*doelmatigheid*).[2]

The actualization intended here is to search the embodiment of *renvoi* procedure nature which is the exeception effort of the credit list verification decided by the curator, but objected by the creditor or the curator himself/herself. Because of no agreement of the parties and the supervisory judge cannot reconcile both parties, the supervisory judge then orders both parties to settle their dispute in the court. Talking about the court is not separated from procedural law which is a process of executing and defending the material law before the court until the judge makes his/her decision. Therefore *renvoi* procedure belongs to the formal law domain mentioned in IL.

Insolvency Law has the principle of Debt. The process of debt concept insolvency is very decisive because

[1] I Dewa Gede Atmadja, *Filsafat Hukum, Dimensi Tematis dan Filosofis*, Setara Press, Malang, 2013, hlm. 38
[2] M. Hadi Shubhan, *Hukum Kepailitan Prinsip, Norma dan Praktek di Peradilan*, Kencana Prenadamedia Group, Jakarta, 2014, hlm. 39

without debt it is not possible to examine the bankruptcy lawsuit. Without debt the essence becomes nothing because bankruptcy is legal institution to liquidate the debtor's asset to pay his/her debts to the creditors.[1] If viewed from the natural law philosophy genre, the legal science nature is justice although among the legal philosophers it invites controversial argument. One side views "justice" as "*guidestar*", and the other views it as "*curse*" in the study of legal philosphy. It is obvious that the word "justice" has many meanings and it is ambiguous or multi-interpreted. Thus, this word has no clear meaning. The followers of *the Pure Theory of Law* label this word as *Justice an irrational-ideal*.[2]

Dealing with *Renvoi* Procedure in procedural law domain, Hari Chand argues that nowadays there are various understanding of justice. One of them is:[3]

1. *Substantive Justice* is expressed in substantal matter of dispute.
2. *Procedural Justice* is "formal justice" exspressed in dispute resolution proceddure implementation or decision making procedure. The benchmark is clear, that is "obedience" to Procedural Law.
3. *Comparative and Non-Comparative Justice* is expressed between a person and another individual that each individual is single part, does not depend on the other individual. The bechmark of "comparative justice", is "objective standard" of individual's skill.
4. *Legal Justice* expresses the justice according law and it deals with sanction imposition on the result of the broken law enforcement. For this although the law enforcement is considered unfair, but still called "legal justice". The benchmark of "*legal justice*" is legality principle or *rechtsmatigheid*.

Furthermore if the meaning of *Renvoi* Procedure which contains justice value can be examined with the justice concept of Hari Chand, namely: *Substantive Justice* which is expressed in the substantial matter of dispute that is the dispute between the curator and the creditor or other creditors concerning the credit at the time of verification although it has been reconciled by the supervisory judge. However, the parties persist on their own standpoints. In *procedural justice* (formal justice) by Article 127 section (1) of IL concerning this dispute the supervisory judge orders the parties in dispute to resolve the dispute in the court. It is certainly subject to procedural law which cannot be diverged (*dwingenrecht*). The benchmark of comparative justice is objective standard which means that the judge in deciding the dispute must be objective, does not take a side on the one of gthe parties in dispute, and the judge must be fair in deciding the dispute.

In addition the benchmark of *Renvoi* Procedure is *legal justice*. In his/her legal consideration (*ratio decidendi*) the judge firstly bases on law in order to meet the legal principle, but possibly the judge is given freedom to find law of law making for reaching the legal justice. The benchmark of the fair law in the Verdict (jurisprudence) refers to Rijkshof's view of jurisprudence that there are two models of the verdict, namely:[4]

1. Jurisprudence, which is led by legal regulation that the verdict is only based on the legal regulation consideration which is valid in general, is called formal justice or *legal justice*. In Marc Galanter's view, justice is set according to positive law which is in progress in the courtroom.
2. Jurisprudence which is directed to the purpose of law that the verdict more considers the specific situation and condition and the case is examined and tried. The verdict is based on the consideration of the values existing in society, is called material justice, and also called substantive justice..

Substantive justice in law enforcement is interpreted that the judge's decision does not only use positive law reference, but also gives priority to the consideration of usability prinincple according to the judge's belief to redress the rights of curator or creditors, that it is a must to redress again before the dispute taking place. The benchmark of fail law according to "substantive justice" is to more give priority to the principle of *doelmatigheid*. However, the justice process must be in line with the procedural law valid in Bankruptcy, which is specific procedural law started from the judge's duty to constate, qualify and constitute. Furthermore jurisprudence hopefully results the decision which reflects formal justice and substasntive justice.

However in term of the legal certainty, substantively the content material of Article 127 section (1) of IL does not secure the legal certainty for the justice seekers (*justiciabellen*). The vagueness of the word "objection" will evoke the legal issues of what is meant by objection?, does it mean *rechtsmiddel*? or is it general objection which has not become the legal effort in the court?, can it be made as *fundamentum petendi* outside the general civil (*civiele recthlijk proceduur*)?, or is it still related to the Verdict of Commercial Court on the petition of bankruptcy statement and others related and/or regulated in IL?. Mainly in the words, *actio pauliana*, the third

[1] *Ibid*., hlm. 34
[2] I Dewa Gede Atmadja, *Op.Cit*., hlm. 71
[3] Hari Chand dalam I Dewa Gede Atmadja, *Ibid*., hlm. 75-76
[4] *Ibid*., hlm. 84

party's opposition to the confiscation, or the administrator becomes one of the litigants relating to the bankrupted property, including the Curator's claim to the Directors causing the company to be declared in bankruptcy because of the negligence or mistake.

Law on justice value has been analyzed. It is compulsory to improve Article *127 section (1) of IL if this article is wished to be the base of legal effort of renvoi procedure. It is also in line with Guide Book of Administrative Technique and General Civil Court Technique and Specific Civil of Book II* Edition 2007, in part B, Court Technique, number 5. The other things related to the bankruptcy, on letter b, *Renvoi* procedurr on page132, which is Technical Guide for the judge and all series in court and has been affirmed by some jurisprudence which states that the process of objection is not appropriate. The process should be called as the legal effort of *renvoi* procedure in order to be useful for the seekers of justice.

4. Conclusion

Based on the discussion above, it can be concluded as follows:

1. *Renvoi* Procedure in conceptual system is in line with the principle that *renvoi* procedure is the legal effort to settle dispute between the curator and the creditor or the creditors concerning the credit that they cannot be reconciled by the supervisory judge and the supervisory judge orders both parties to settle the dispute through the procedure in the court.
2. The juridical meaning of *renvoi* procedure is not the legal effort of objection or the legal effort of exception as in some cases filed before, but the regulation must be appropriate, brief and clear, which is called as the legal effort of *renvoi* procedure. Because insolvency law is *lex spesialis* of civil law and insolvency dispute is also *lex spesialis* of civil case, it is very precise to call such legal effort as the legal effort of *renvoi* procedure since Article 127 section (1) of IL does not have the same characteristic as *renvoi* procedure.
3. In order the principles of formal justice and substantive justice of *renvoi* procedure is achieved, it is necessary to change Article 127 section (1) of IL that the word "objection" is changed into the phrase "*renvoi* procedure".

5. Suggestion

Based on the above conclusions, the authors suggest some of the following:

1. It is important for the law makers to remove Article *127 section (1), (2), (3) of IL that the word "objection" in that article ism changed into renvoi procedure to achieve the principle of legal certainty.*
2. *It is necessary for the judge to be consistent in the formal and substantive justice in order the decision contains the certain justice principle.*

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