Journal of Law, Policy and Globalization
ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) DOI: 10.7176/JLPG
Vol.81, 2019

Verdicts on Bankruptcy Cases Study Case on Judges' Legal Behaviour

Rr. Ani Wijayati[1*] Setiono [2] Soehartono[2]
1.Student of the Science of Law Doctoral Program,
University of Sebelas Maret Surakarta, Indonesia
2.Lecturer of the Science of Law Doctoral Program,
University of Sebelas Maret Surakarta, Indonesia

Abstract
The objective of this paper is to reveal, conceive and analyze: 1) appraisal on simple verification to bankruptcy verdicts by judges, 2) the significance of indebtedness by judges and any implications over its verification and 3) new constructions of legal behavior on judges in order to realize fair and just laws in accordance with verification of bankruptcy based on progressive laws.In order to reach the objective, doctrinal and non-doctrinal legal studies are applied. A doctrinal legal study is used to review any developed and conceptualized laws on doctrines. The objective of the doctrinal legal study is to provide secondary data that procured from legislation inventory, verdicts of judges, to review related literature with its certain issues, and to analyze those pieces of information based on deductive methodology. Moreover, a non-doctrinal legal study is used to review any developed laws that based on valid, customized and developed in the public. A non-doctrinal legal study is conducted by procuring primary data from observation method, profound interviews, and analyzing those data with an interactive inductive method. In order to promote the two approaches, the researcher used several theories: theory on behavior legal studies, theory on legal hermeneutics and theory on progressive laws.This study has shown that: 1) simple verification is an absolute requisition that restricts judge's competence in the Commercial Court in order to verify whether a debtor who is filing for bankruptcy evidently proven to pay all his due debts and whether it is collectible or not. Judges on the Commercial Court has a tendency and assessment to make a verdict on bankruptcy as soon as possible and immediately implemented as specified on Article 8 paragraph (4) Bankruptcy Laws of 2204; 2) There is a tendency of correlation between judges' comprehension on indebtedness and its verdicts. There are two debt comprehensions, which are a narrow comprehension, refers to textual interpretation, and extensive comprehension refers to contextual interpretation; 3) Progressive laws are relatively relevant to act as a basis and reference on judges' legal behavior and reconstruction in carrying out the bankrupt statement application. This is based on historic legal culture values under positive legal paradigm which experienced difficulties to present ideal, humanist and responsive laws as well as to protect the public. Hence, legal culture values of judges shall be renewed in order to adjust with needs and development of legal sciences as well as economic growth, which has redefined our way of thinking, interpretation, and ethics.
Keywords: judge verdict, bankruptcy case, legal behavior.
DOI: 10.7176/JLPG/81-10

1. Introduction

1.1 Background

To give loan by a creditor to debtor has been practiced for centuries in the social community. It is not likely nowadays to find businessmen or companies that have no debts.[1]Debt has been an inseparable factor in the business industry. To have debt is a common thing, not wrongdoing, as long as he/she is solvent. Thus, the problem will occur once a debtor is not able to pay any of its debts.

A company that is not able to pay any of its indebtedness shall be charged under a bankrupt verdict[2] by the Commercial Court, whether it is requested by creditor or debtor or other third parties as specified on Law Number 37/2004 regarding Bankruptcy [3]and Postponement to Pay its Debt (hereinafter refers to Bankruptcy Law

[1] Sutan Remy Sjahdeni, Hak Jaminan dan Kepailitan(Collateral Rights and Bankruptcy) Business Laws Journal, Volume 17, January 2002, page 46.
[2] The terminology of bankruptcy in Indonesia is translated from faillesement (Netherlands). In legal systems of Great Britain or the United States of America and several countries under common laws, it is known as bankruptcy. Bankruptcy is something that relates to bankrupt events. Bankrupt itself is to stop paying for its debts. Please refer to Ridwan Khairandy, *Pengantar Hukum Dagang* (*Introduction of Commerce Laws)* Faculty of Law of UII, Yogyakarta, 2006, page 153.
[3] As a special branch Public Court, the Commercial Court is regulated as a supplement for existing courts specified in Articles 18 and 25 Law Number 48/2009 regarding Judiciary Power, namely Public Courts, Religious Courts, Military Courts and State's Administrative Courts, and Constitutional Court. Moreover, explanation of Article 27 paragraph (1) Law Number 48/2009 specified that terms of "Special Court" in this condition is Child Court, Commercial Court, Human Rights Court, Corruption Court, Industrial Relationship Court and Fishery Affairs Court in scope of Public Court and Tax Affairs Court in scope of State Administrative Court. In addition, Act Number 49/2009 pertaining to Public Court (UUPU), is a juridical primary to establish Commercial Court. Please refer to Victorianus M.H. Randu Puang, *Penerapan Asas Pembuktian Sederhana dalam Penjatuhan Putusan Pailit*(The Practisce of Simple Verification to making Bankrupt Verdict) Sarana Tutorial Nurani Sejahtera, Bandung, 2011, page 7.and Adi Sulistyono and Isharyanto, *Sistem Peradilan di Indonesia Dalam Teori dan Praktik*,(Justice

of 2004).

In essence, bankruptcy is a general seizure[1]with conservator[2]on all debtor's assets and properties that stated as bankrupt. Any bankrupt individuals shall forfeit its properties and be submitted to curator,whom will be assisted by Supervisory Judge that is appointed by Commercial Court.[3]Bankruptcy is to confiscate and execute to all of debtor's properties to pay debts[4]to the creditor[5]in *paripassu*[6]or its equivalent, except there is a creditor with the privilege to take precedence.[7] Bankruptcy is applied to a debtor (both in individual, mutual business, or legal body) who unable to pay any of its debts to a creditor.

Bankruptcy process to a debtor is a measure to settle and solve any indebtedness of its business in a fair and[8]effective way.[9] Bankruptcy is an application to the Commercial Court with objective to obtain a constitutive bankrupt statement.[10] The objective of bankruptcy is to avoid unilateral seizure/control of debtor's properties, if, in the same time, there are certain creditors to collect its debts to a debtor, in this case, bankruptcy is used to assure equal distribution of debtor's properties to its creditors. The objective of bankruptcy is also to prevent any creditors that have material security rights to claim its rights by selling debtor's properties with no regards to debtor's interests or other creditors. In addition, bankruptcy will also prevent debtor to make any adverse actions to its creditors.[11]

One of the issues in bankruptcy is the implementation of simple verification principles.[12] This is due to no clear comprehension or limitation for simple verification principles implementation 2004 Bankruptcy Law of 2004. It is only stated in Article 8 paragraph (4) that bankrupt claim shall be granted in the event that there is fact or proven condition in a simple way that any requirements to claim a bankrupt as specified in Article 2 paragraph (1) has been met. Thus, the two provisionsare closely related.

The said requirements stated in Article 2 paragraph (1) of Bankruptcy Law of 2004are debtor with more than 2 creditors and not able to pay at least one of its collectible and due debts, declared bankrupt by court verdict either by its own request or request from more than one creditors,and the fact that there are two or more creditors and the fact that debt has fallen due and is not paid [13] The difference in the size of postulated debts by bankrupt claimant and respondent shall not prevent to issue a bankrupt verdict.

The explanation of simple verification principles is already clear and obvious, however, in reality, it is not

System in Indonesia in Theories and Practices) Kencana, Jakarta, 2018, page 396.

[1] It can be said general seizure of all the debtor's properties on behalf of creditor's interests. Law Number 22/2004 on Bankruptcy provides an exclusion from seizure. Furthermore, refers to Sudikno Mertokusumo, Hukum Acara Perdata Indonesia (Indonesian Penal Codes), Liberty, Yogyakarta, 1982, page 58.

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

[3] Refers to article 1 in relation with Articles 16 and 21 on UUK of 2004(Bankruptcy Laws).

[4] Refers to Article 1(3) UUK of 2004(Bankruptcy Laws).

[5] Refers to Article 1(2) UUK of 2004 (Bankruptcy Laws).

[6] Principles of *paripassu pro rata parte* means the properties counted as collective collateral for creditor and the proceeds shall be proportionally distributed among (creditors) unless if there is precedence among those creditors according to laws and regulations to have its claim payments. This principle emphasizes on debtor's property distribution to pay all of its debts to creditors in a fair way according to its portions *(pond-pond gewijs)* and not in *paripassu*. Please refer to M. Hadi Shubhan, *Hukum Kepailitan :Prinsip,Norma dan Praktek di Peradilan (Bankruptcy Laws : Principles,Normsand Practices in the Courts)*Kencana Prenada Media Grup, Jakarta, 2008, page 29.

[7] BagusIrawan, *Aspek-aspek Hukum Kepailitan,Perusahaan dan Asuransi(Aspects on Bankruptcy Laws,Company and Insurance)*Alumni, Bandung-2007, page 19.

[8] Justice principles wish laws to provide proportional fair justice to each party. In concepts of laws, justice and any related parties in bankruptcy shall be regulated proportionally and fair. Please refer to Bernand Nainggolan, *Perlindungan Hukum Seimbang Debitor,Kreditor dan Pihak pihak Berkepentingan dalam Kepailitan(Balanced Legal Protection for Debtor,Creditor and Interested Parties in Bankruptcy)*Alumni, 2011, Bandung, page 124.

[9] Effective principle: litigation procedures and mechanism in the Commercial Court is relatively effective. The timetable is predictable from the first-degree case to cessation; therefore litigants may have its advantageous. Any bankrupt decrees and PKPU cases that made in open public hearing shall have precedence and even the relevant verdict has submitted to legal measures. Please refer to Syamsudin M. Sinaga, *Hukum Kepailitan Indonesia(Bankruptcy Law in Indonesia)* Tatanusa, Jakarta, 2012, page. 329.

[10] The constitutive verdict shall have a novel legal situation or to nullify a legal situation. Retnowulan Sutantio *Op.cit.*, page 109.

[11] Gunawan Widjaja, "*Kepailitan Perusahaan Asuransi*"*(Bankruptcy of Insurance Company)*Center on Legal Research, *Newsletter*, No. 60, March 2005, page 12.

[12] There are many writings and studies about this issue, namely: Ridwan Khairandy in his writing "*Beberapa Kelemahan Mendasar UU Kepailitan"(Certain Fundamental Weaknesses on Act of Bankruptcy)* Jurnal Magister Hukum Volume 2 No. 1 February 2000; Siti Anisah's Thesis " *Masalah-masalah dan Pemikiran terhadap Pelaksanaan Undang-Undang no 4 tahun 1998 tentang Kepailitan (Issues and Ideas on Implementation of Act Number 4/1998 pertaining to Bankruptcy) ,* Post-graduate on Laws Master Program of UII. Page 22; Dissertation of Hotman Paris Hutapea "*Kepailitan berdasarkan Obligasi Dijamin*"(*Bankruptcy based on Assured Bonds*)and one interview on the selection for supreme judge candidates on July 23, 2012, about simple verification on bankruptcy.

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

necessarily that way.For example, in bankruptcy cases of several Indonesian major companies: PT. Asuransi Jiwa Manulife Indonesia (AJMI) [1], PT. Cipta Televisi Pendidikan Indonesia, [2] and PT. Telkomsel [3], the Commercial Court has made its verdicts *(Judexfacti)*whereas, "it is simply proven", however, by the Supreme Court*(JudexJuris)*, evidently, those verdicts were invalidated and stated that there were no simple pieces of evidence or vice versa on occasion, fact or condition of debt and shall not be given simple evidence on verdict by the first court. Dissenting opinions also occurred within the panel of judges, for example,on issue about verification on number of debts. These reality and phenomenon have become controversies in public and it is very appealing to make deepen reviews on any empirical realities or of the phenomenon on those facts, such as why dissimilar outputs occurred between any verdicts from the Commercial Courts and the Supreme Court for a specific case;Are there any factors that causes output differences from those two institutions;What does the perspective from the Commercial Court's judges on giving a bankrupt verdict, meanwhile, the Supreme Court gives non-bankrupt verdict;How judges interpret debt and whether bankruptcy cases due to unpaid debt can be proven simple or not.

In order to respond its reality and phenomenon, there are 2 (two) perspectives that will be applied, internal and external perspective.[4] From the internal perspective, there are no matters that are important enough to be disputed over the empirical reality of a judge's decision, meaning that the judge is legitimate and there is no prohibition to declare bankruptcy or not, based on proven or not proven in a simple way. This is judge competence to examine and give verdicts, provided that it is in accordance with the formal and procedural rules that have been determined in the laws and regulations. While from an external perspective, the operation of the law is not only limited to the fulfillment of formal procedures. The work of judges is firstly determined and limited by formal rules in the formulation of various laws, not to mention the behavior of the actors involved by excluding other elements such as politics, economics, and culture.[5]Every law enforcement activity will involve values, ideas, attitudes and behaviors that related to the laws.

By reviewing the decisions of judges in the Commercial Court and the Supreme Court, the values, ideas, beliefs, and patterns of behavior of judges will be explored and revealed in constructing bankruptcy decisions.[6]

1.2 Problem Formulation

Based on descriptions on the background mentioned above, we will study further the following issues:

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

2. Study Methods

There are three issue formulations that need an accurate study method in this paper.The studied object is laws that are conceptualized as judges' decisions and laws that are conceptualized as symbolic meanings, as manifested and observed in and from the actions and interactions of citizens of the law, conceptualized as a meaningful reality that is in the subjectivity of the subject.[7]

In order to answer the first issue formulation, the comprehended third legal concept is the legal concept as decisions that are created by judges *in concreto* under judicial processes as part of legal remedies to resolve cases and have a possible precedent on the next case or cases.[8]

[1] Verdict Number: 10/Pailit/2002/PN. NiagaJkt. Pst. awarded on June 13, 2002 in relation with Cessation verdict with number: 021K/N/2002, awarded on July 5, 2002.
[2] Cessation verdict with number: 834 K//Pdt.Sus/2009awarded on September 19, 2009.
[3] Verdict with number: 48/Pailit/2012 PN. NiagaJktPst awarded on September 14, 2012 in relation with Cessation verdict with number 704/K/Pdt.sus/2012, awarded on November 22, 2012.
[4] Brian Z. Tamanaha, A *Social Legal Approach to the Internal External Distinction; Jurisprudential and Legal Ethics Implications*, University Press, Cambridge, p 161.
[5] Lawrence M. Friedman, The legal System A Social Science Perspective, Russel Safe Foundation New York, 1975, p.15, Legal culture is human attitude to the law and legal system-beliefs, values, thoughts, and expectations. So legal culture is the thoughts of social and social strengths that determine how the law is used, avoided, or misused.
[6] According to William James in the life of the judge, there is power that they do not recognize and cannot afford to give a certain name as the total push and pressure of cosmos, which shall decide what option shall be made, in Achmad All &Wiwie Heryani,Sosiologi Hukum,Kajian Empiris Terhadap Pengadilan (Legal Sociology, Empirical Study on the Court), op.cit., p.6.
[7] Sutandyo Wignjosoebroto,Konsep Hukum,Tipe Kajian dan Metode Penelitiannya (Legal Concepts, Type of Studies and its Study Methods), Kertas Kerja, BPHN, Jakarta, 1995, p.5.
[8] Sutandyo Wignjosoebroto,Konsep dan Metode(Concepts and Methods)Setara Press, Jakarta, 2013, p.25.

For the formulation of second and third issues, we used the fifth legal concept which seen the law as a manifestation of the symbolic meanings of social actors as seen in interactions between them or studies that base or conceptualize the law as attitudes or behaviors.[1]

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

The study on judicial legal behavior is empirical legal research with a socio-legal approach.[2]The object being studied is a law conceptualized as a meaningful symbol as a result of mental construction on individuals (judges) who are subjective and diverse, manifested in the form of a judge's decision about bankruptcy.

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

In accordance with the data used in the study and the type of approach taken, the data analysis technique is qualitative descriptive. Descriptive means this research will interpret existing data by comparing similarities and differences in certain phenomena, as well ascomparing studies, classifying judgments, setting standards, establishing correlations and positions (status) of elements with others. This study reveals the legal behavior of judges in carrying out their duties and responsibilities at the trial to be observed and analyzed.[3]

In accordance with the approach method used, this study uses data analysis through two stages:[4]

a. The first stage is to analyze the data in the first problem formulation which is based on the doctrinal approach, using normative analysis methods. At this stage the writer conducted a legal inventory of various legal norms and described the law using deductive logic methodology.
b. The second stage is to analyze the data in the formulation of the second and third problems that are based on a non-doctrinal (empirical) approach, carried out using qualitative analysis, specifically an interactive analysis model.

3. Study Results

3.1 Practices of Simple Verification by Judges at the Commercial Courts and the Supreme Court

3.1.1 Urgency of Verification

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

In settling out any civil cases, one of the duties of a judge is to investigate legal correlation whether the basis of the claim really exists or not.[5] To win the case, this legal correlation must be proven by the claimant. Failure to prove the arguments on which the claim is based will result in the lawsuit being rejected by the Judge examining and adjudicating the case.[6]

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

Proving a civil case by seeking the law is a formal truth, which means that the judge is bound to the information or evidence presented by the parties.[7] The judge is bound to a recognized or disputed event;

[1] Ibid, p.40.
[2] Faisal,Menerobos Positivisme Hukum(To Breach Legal Positivism), Gramafa Publishing, Jakarta, 2012, p.20.
[3] The writer tries to understand and express the behavior of people (judges), their relevant motives and behavior. In literature, the descriptive method terminology is equated with normative methods, survey methods, case studies. Please refer to Morton Deutsch and Stuart W. Cook, Research Method in Social, Dryden Press, New York, 2004, p.48.
[4] Heribertus Soetopo,Pengantar Penelitian Kualitatif,Dasar-dasar Teoritis dan Praktis(Introduction to Qualitative Study, Fundamentals of Theories and Practices),Pusat Penelitian UNS, Surakarta,1988, p.34.
[5] Retnowulan Sutantio and Iskandar Oeripkartawinata, op.cit, p.58.
[6] Ibid.
[7] Yahya Harahap and Abdul Manan defines evidence in the broadest sense as the ability of the Claimant and/or Respondent to use argumentative laws to support and justify the legal relationship and events that are transferred (by the Claimant) or denied by (by the Respondent) in the legal relationship that is being prosecuted. In a narrow sense, evidence is only needed as long as the things that are disputed or things that are still disputed or only as long as it becomes a dispute between related parties. Please refer to M. Natzir Asnawi,Hukum Pembuktian Perkara Perdata di Indonesia(Argumentative Laws of Penal Cases in Indonesia), UI Press, Yogyakarta, 2013, p.2.

therefore,its opinion is sufficiently convincing verification.[1]

In legal science, verification is not an absolute matter as to natural sciences; however, it is a social verification which contains certain level of uncertainty elements, even a slight one. Therefore, legal verification on the truth is subject to relativity, not an absolute truth that may lead to differences on the assessment of the results of verification among judges. It is, of course, understood on non-absolute truth of legal verification, due to characters of all human knowledge include judges are relative based on their experiences, visions, and ideas that are not constantly true, valid and genuine.

If the absolute truth is required to decide on a case, then surely a judge cannot be able to carry it out, therefore the value of certainty is always relative. In juridical verification, the certainty is a medium to decide the truth of an event as a base to award any verdicts or decisions.[2]

The court has a social function, therefore, certainty in judicial perspective shall not be more significant than any certainties that exist on social measures. Charles Samford claimed that judicial body shall not an intact structure with rational, logical regularity as have been specified on normative laws and regulations. The truth is that interested public wants to see the court just as it is. The internal condition in the court when maintaining their roles to settle any dispute shall truly a Mirror Society where the relevant court located.[3]

3.1.2 The Essence of Simple Verification on Bankruptcy Laws

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

The implementation of simple verification in bankruptcy case examinations is logical as it is basically the case of a bankruptcy statement application, not a claim, and there is a time limit for the panel of judges to settle the case.

Validity period of simple verification in bankruptcy *FaillisementVerordening* (FV) has been regulated in Article 6 paragraph (5) of FV. This simple verification has, in practice, caused significant losses for creditors. Any bad debtors could easily claim for bankruptcy on itself, as long as the relevant debtor is qualified as a bankrupt debtor that failed to pay its debts. Nevertheless, a creditors applied bankrupt application due to provisions in Article 5 paragraph (5) of FV, bankrupt application shall be fulfilled, in the event that creditor(s) is able to verify its collecting rights in a simple and brief ways. Based on verdicts of *HogeRaad* (HR) dated on 30 November 1911, 19 September 1919 and 28 June 281935, “a brief claim is verified means that verification shall not be needed anymore for common verification” (Book IV of Penal Codes).

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

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

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

However, thissituation might open a wide discussion among judges on interpreting the notion of simple verification in resolving bankruptcy applications. With a narrow time frame to decide whether or not a bankruptcy application is granted, the panel of judges often rejects the application on the ground that the case cannot be proven briefly.[4]

Sudargo Gautama argues that if you pay attention to the simple verification adopted in Article 6 paragraph

[1] The Supreme Court’s Jurisprudence dated on, 1974, In Summary of the Supreme Court’s Jurisprudence in Indonesia II, Penal Laws and Penal Codes, 1977, page 210.
[2] Sudikno Mertokusumo,Bungai Rampai Ilmu Hukum (The Anthology of Legal Sciences), Liberty, Yogyakarta, 1984, p. 86.
[3] Achmad Ali, Menguak teori Hukum dan Teori Peradilan (Uncover Judicial and Legal Theories), KencanaPrenada Media Group, Jakarta, 2012, p.261.
[4] Aria Sujudi, Eryanto Nugroho dan Herni Sri Nurbayanti,Analisa Hukum Kepailitan Indonesia,Kepailitan di Negeri Pailit (Analyses on Bankruptcy Laws in Indonesia, Bankruptcy in a Bankrupt Country),The Center of Indonesian Policy and Legal Study/Pusat Studi Hukum dan Kebijakan Indonesia, Jakarta, No. 4/2004, p.148.

(3) of this Law, it is very easy to obtain a bankrupt statement.Furthermore, this bankruptcy claim must be granted and cannot be rejected if the provisions in Article 6 paragraph (3) are seen literally (*letterlijk*).[1]

Example of simple verification in the Commercial Court during the validity period of the Law can be found in the case of PT. Palace Dharmala Sakti Sejahtera vs. PT. Asuransi Jiwa Manulife Indonesia, verdictnumber 10/Pailit/2002/PN.Niaga/Jkt/Pst. This verdict raised hard reaction from not only domestically but also internationally, because PT. AJMI is a company whose financial condition is still solvent.[2]The Judges of the Commercial Court in their legal considerations argued that the bankruptcy conditions as specified in Article 1 paragraph (1) of Bankruptcy Laws had been fulfilled, which are the debtor has more than a creditor, at least one debt that is not paid, and the debt has fallen due and can be billed

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

In the event that the issue on insolvency is linked to the provision of evidence briefly, the classification of bankruptcy cases that require simple proof is illogical because bankruptcy cases that occurred today involved large companies, procured large assets and a large number of employees, In addition, the current bankruptcy cases are relatively complex problems which intersect with various provisions, such as company law, stock market law, or laws regarding mortgage rights,thus it cannot be simply categorized.

The subject of simple verification is also regulated in Article 8 paragraph (4) of 2004 Bankruptcy Laws that states:

Requests for bankruptcy statements must be granted if there are facts or circumstances that are simply proven that the requirements for bankruptcy as referred to in Article 2 paragraph (1) have been fulfilled.

On explanation part of Article 8 paragraph (4) of 2004 Bankruptcy Laws stated that:

> Simple facts or conditions that are meant to be defined are the fact that there are two or more creditors and the fact that debts have fallen due and are not paid, while the difference in the amount of debt debated by bankrupt claimant and bankrupt respondent does not prevent the bankruptcy decision from being awarded.

A more detailed explanation regarding the simple verification adopted in the Bankruptcy Laws of 2004 compared to FV and the previous Bankruptcy Laws still bears several weaknesses, such as no parameters that must be considered by the judge in applying this simple verification, both from the FV period to the 2004 Bankruptcy Laws period; and no solution on problem regarding the ease of obtaining bankruptcy status.[3]

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

Based on the analysis described above, the rejection carried out by the Panel of Judges is part of the absence of clear parameters of simple verification under 2004 Bankruptcy Laws. This situation tends to lead into multiple interpretations among judges in examining and adjudicating a bankrupt case. In addition, the absence of bankruptcy philosophy in Bankruptcy Laws 2004 also resulted in this bankrupt institution becoming ineffective and seemingly not suitable for its purpose. In practice, many debtors are still solvent but decided bankrupt and in reverse the debtors who are insolvent are still not bankrupt due to the obligation to implement the simple verification itself. Such a situation is contrary to the purpose and philosophy of bankruptcy law itself.

Judges seem rigidly applying laws on a real case, such as the bankruptcy application. They tend to have positivistic views[4]and prioritizing legal certainty aspect in examining and adjudicating cases of bankruptcy

[1] Sudargo Gautama,Komentar Atas Peraturan Kepailitan Baru Untuk Indonesia (Comments on New Bankruptcy Regulations for Indonesia), Citra Aditya Bakti, Bandung, 1998, p.31.
[2] Report of PT. Asuransi Jiwa Manulife Indonesia (PT. AJMI) on March 1, 2002.
[3] Sunarmi, Dedi Herianto dan Devi Azwar,Konsep Utang Dalam Hukum Kepailitan Dikaitkan dengan Pembukttian Sederhana (Indebtedness Concepts in Bankruptcy Laws Associated with Simple Verification), USU Law Journal Volume 4 No. 4 (October 2016).
[4] In positivism view, in principle the judge's duty is only to establish concrete events and then apply the laws to its concrete events. The judge

petition above other aspects like justice and benefit of the law, even though justice is the ultimate goal of the law itself which should still be prioritized over certainty and expediency.

As explained by Immanuel Kant that quoted by Van Apeldoorn[1]that if the law is carried out as it is said, justice will be pushed forward (*summumius summa iniuria*) on the contrary if the law is carried out in certain circumstances, it is felt that more and more negates uncertainty.

3.2 Comprehending Debts and Its Implications to the Implementation of Simple Verification

3.2.1 Philosophy of Bankruptcy Laws

The most fundamental philosophy of bankruptcy law is to overcome the problem if the debtor's assets are not sufficient to pay all of his debts to all of his creditors. The essence objective of bankruptcy is a process to distribute the debtor's assets and properties to its creditors. Bankruptcy is a way out for the process of distributing debtors' assets which will be a sure and fair bankrupt estate. Bankruptcy is an exit clause from financial distress, a way out of problems that are financially entangled and cannot be resolved.[2]

Another objective of bankruptcy is to divide the assets and properties of the debtorbetween the creditors by curator, or bankruptcy intended to avoid a separate confiscation or separate execution by the creditor and replace it by holding a joint confiscation so that the debtor's assets and properties can be shared with all creditors according to their respective rights.[3]

Bankruptcy is not merely a measure to facilitate a business whether it is owned individually or in the form of a corporation to become bankrupt, but it is also aneffort to overcome the bankruptcy of a business.[4]

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

3.2.2 Significance of Debts in Bankruptcy Laws according to Judges' Interpretation

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

Faillisemen Verordening did not regulate the definition on FV debt, it determined the decision of bankruptcy statements imposed on each debtor who is unable to pay or in a state to stop paying off its debt. Sine there is no specific legal definitions of debts, there remain several translations and interpretations. Although FV did not determine the meaning of debt, but judges does interpret it.

Debtor's debt is not merely showed from money loan, however, debtor's debt is due to other legal correlation. For example, verdict number 01/Pailit/1997/PN.Jkt.Utama (July 25, 1997). This case ruled that in order to verify the state of being unable to pay, the judge only evaluate the evidence submitted by the parties in the court without looking at the assets and liabilities of the company through its accounting. The judge's decision was taken by quoting several jurisprudences as a reference and then draws conclusions about the state of stopping paying. This proves that accounting examination by judges is rarely carried out.

Neither FV nor Law Number 4/1998 regulates the meaning of debt. Law Number 4/1998 stipulates that debtors can be declared bankrupt if "they do not pay, at least, one debt that has fallen due and can be billed to creditors".This definition only determines a debt which cannot be paid by the debtor is its principal interest. This means that the application for a bankruptcy statement against the debtor can be done if it is in a state to stop paying off debt or when it does not pay interest only.[5]

In the realm of law enforcement, the lack comprehension of debt has led to several different views: first, the notion of debt is only in the form of the obligation to pay a number of debts arising from a loan and loan agreement. Second,a debt is the obligation to pay a sum of money, but not fulfilling this obligation can cause a loss of money to the party to whom the obligation must be fulfilled. The verdict of the Commercial Court argued that debt did not originate from the construction of legal lending and borrowing, but in the form of fulfilling an achievement provision.

Article 1(6) of 2004 Bankruptcy Laws can be seen as positive laws on bankruptcy in Indonesia that

in completing a case only applies the law in fact or the event that was submitted to him because based on the idea the judge is only a part of medium of the law (la boucche de la loi).

[1] L. Van Apeldoorn,Pengatar Ilmu Hukum (Introduction on Legal Sciences), Translated from MN. Oetarid Sadino, Pradnya Panamita, Jakarta, p.13.

[2] Sunarmi, Hukum Kepailitan (BankruptcyLaws), PT. Softmedia, Medan, 2010, p.19

[3] Andriani Nurdin, Kepailitan BUMN Persero (Bankruptcy on State's Owned Company with a Limited Liability), Alumni, Bandung, 20012, p.133.

[4] Ibid.

[5] Explanation of Article 1 paragraph (1) Act Number 4/1998.

addresses the notion of debt in its broadest sense. Nevertheless, in practice, the definition of debt as such turns out to cause certain problems when it is associated with simple verification.

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

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

The results of the study concluded that legal positivism is still mainly comprehended among judges in handling bankruptcy cases by applying simple verification and defining debt. This paradigm has shaped positivistic ways of thinking among judges in handling cases and rarely found non-positivists judges. Referring the results of the study analysis on judges' decisions in the Court of Justice and the Supreme Court, two typologies were identified in the judge's way of dealing with bankruptcy cases,there are the type of judges who were positivist and non-positivist. The first type strongly emphasizes formal measures of rule text (centric rules) in understanding legal truth, while the second style elaborates the legal rule text with the socio-cultural context that surrounds it (debt comprehension).

3.3.1 Be a Good Judge

In carrying out their functions to apply legal substance,additionally judges might as well underlying their abilities in the epistemology field and their professional ethics with high moral integrity, so that in giving decisions in bankruptcy cases judges are not only correct in terms of epistemology aspects, but also in terms of morality aspects.[1]

Judges in implementing the law shall see three basic aspects in every legal system that work at the same time, which are juridical, philosophical, and sociological aspects, so that the objective of justice considered in the judge's decision is oriented to the law (legal justice), moral justice as well as social justice.[2]

In reference to the law as a verdict of a judicial institution, a judge has the authority to find arguments that historically have been a true desire that really happened in the past and at the time of the formation of related regulations as positive law.[3]

Since the Commercial Court established in 1998, a number of its decisions had describe certain controversial issues which mainly put forward legal certainty regardless of aspects of justice and its benefits to the community. The principle of legal certainty and expediency is not applied professionally in the decisions of the first court. Commercial judgment as a first-level court only emphasizes legal certainty without regard to justice and expediency. Judges' considerations only prioritize the fulfillment of bankruptcy requirements as stipulated in article 2 paragraph 1 of 2004 Bankruptcy Law. Whereas the Supreme Court of the Republic of Indonesia considered the proportional application of legal certainty, justice and benefit principles by harmonizing or balancing the three elements in law enforcement.

Judges in deciding any cases must also act professionally. They not only have the ability in legal epistemology aspects, but also have moral integrity, which has the quality of being honest and high morality.[4]

3.3.2 Ideal Consideration to Award a Verdict of Bankruptcy Dispute

The creation of Law Number 37/2004 concerning establishment of KPKPU was driven by the need of business community for a set of laws in resolving the problem of accounts receivable debt that is fair, open and fast. However, since it was promulgated on November 18, 2004, settlement through bankruptcy and postponement of debt repayment obligations are still experiencing problems in its implementation. This can be seen from the number of bankruptcy and PKPU requests handled by the Jakarta and Surabaya Commercial Courts. The data submitted by the Academic Script Compilation Team shows the existence of problems in the implementation of the 2004 Bankruptcy Laws. The Law is still far from public expectations to help economic recovery and strengthen legal institutions in debt settlement, both domestically and and internationally.[5]The Bankruptcy Law was deemed not in accordance with the development of the community, among others, concerning bankruptcy requirement that has no limit on the amount of debt; the fact and debt criteria were deemed too narrow, causing different interpretations by judges in deciding bankruptcy cases. This condition raises the view that the 2004 Bankruptcy Law does not provide guidance on bankruptcy settlement nor providing legal certainty. Therefore, an amendment of the 2004 Bankruptcy Law should meet the public's needs for a fast and fair bankruptcy

[1] K. Berten,Sejarah Filsafat(History of Philosoph),Kanisius, 23rd Edition, Yogyakarta,2001,p.59-63.
[2] The Supreme Corut of the Republic of Indonesia,Pedoman Perilaku Hakim Kode Etik Hakim dan Makalah Berkaitan,{Guidance for Judges' Behaviors, Code Of Conduct for Judges and Related Papers}, the Center of Research and Training/Pusdiklat of The Supreme Court of the Republic of Indonesia, p.2.
[3] Arbijoto, Tinjauan Kritis Terhadap Hukum Kepailitan (The Critical Reviews on Bankruptcy Laws), Legal Journal of Prioris, Volume 2, Nomor 3, September 2009, p.136.
[4] As. Hornby, Oxford Advance Learner's Dictionary, Oxford University Press, Oxford, 1994, page 625
[5] Academic Document Preparation Team, Academic Document Draft Law on Amendments to Law Number 37/2004 concerning Bankruptcy and Delaying Obligations of Debt Payments, Jakarta,2017.

settlement.

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

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

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

The debtor's financial situation must be determined objectively and independently based on financial audit and financial due diligence carried out by independent public accountants.[1]

3.3.2.2 Insolvency Testas a Requisite to Apply Bankrupt Statement

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

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

Regarding the bankruptcy requirements, there are several issues that occurred in the application of the bankruptcy conditions as stipulated in Article 2 paragraph (1) of the 2004 Bankruptcy Laws, as follows:

a. A debtor can be declared bankrupt with 1 (one) debt as long as it can proof the existence of a second creditor even though the second creditor's claim has not yet matured. As a result, the entire debtor's assets and properties shall be made under general seizure for repayment debt as its logical consequences:[3]
    1. With only one creditor as the applicant is contrary to the essence and objective of the 2004 Bankruptcy Laws for certain creditors.
    2. The creditor is not a bankrupt applicant. The majority of creditors, whose claims have matured, are not necessarily intending to take legal action to make the debtor bankrupt, but the debtor has been declared bankrupt by only one bankruptcy application and consequently all creditors are forced to apply collectively as bankrupt creditors.
    3. Even there are 100 (one hundred) creditors as bankrupt applicants, it only needs 1 (one) creditor as a bankrupt applicant.
    This article implied that the 2004 Bankruptcy Laws did not prohibit the submission of bankruptcy statements by creditors even though the size of the claims of the applicant's creditors was a very small portion than its total debts of the debtor.
b. There is no creditors' minimum debt limit that can be applied for bankruptcy. This causes creditors with

[1] Gregory J. Chwuthil,Prinsip Hukum Kepailitan : Suatu Perbandingan Hukum Kepailitan di Amerika Serikat dengan hukum Kepailitan Indonesia (Principles of Bankruptcy Laws: A Comparison of Bankruptcy Laws in the United States and Bankruptcy Laws in Indonesia), a Paper on Advanced Education of Bankruptcy Laws Department, Advanced Legal Sciences Education Program of Laws Faculty of University of Indonesia, Jakarta August 3-19, 1998, p.14.

[2] Sutan Remy Sjahdeini, Op. Cit., p.127.

[3] Hotman Paris Hutapea,Identifikasi Permasalahan Hukum dalam Teori dan Praktik di Pengadilan Niaga (Legal Issues Identification in Theories and Practices at the Commercial Court),the Center of Legal Study/PusatPengkajianHukum (PPH), Jakarta, 2004, p.144.

very small claims to submit bankruptcy applications, and this can disrupt the debtor's business activities and other creditors' liquidity.

c. The phrase "not paying off debt" causes the debtor to be declared bankrupt without regard to the financial health of the debtor and the reasons behind whether it is due to the debtor is truly unable to pay or because the debtor is simply not paying. In other words, the 2004 Bankruptcy Law in simplicity states the application of debt conditions in terms of bankruptcy in the presumption to insolvent condition, the debt condition is not questioned whether the debtor is in a condition unable or unwilling to pay.

Future Bankruptcy Laws in Indonesia will require an insolvency test. This is at least for a number of reasons, first to prevent debtors have more assets than their debts declared bankrupt by the court. Someone is considered solvent if only the person can pay off its debts that are due and can be billed. The debtor is also considered solvent if its asset does not exceed its debt. In general, there are three financial tests to determine insolvensi, which are balance sheettest, cash flow test and transactional analysis.[1]The two broad terms of debt in the 2004 Bankruptcy Lawrequire non-simple verification. On the implementation of simple verification in the 2004 Bankruptcy Law, they are used as an excuse to reject the application for a bankruptcy statement by the Commercial Court's judge on the grounds that the application for a bankrupt statement was not as simple as evidence. Request for bankruptcy statement that requires debt in a broad sense cannot be resolved through a simple verification mechanism.

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

4. Closing

4.1 Conclusion

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

b. There is a tendency of correlation between the definition of the judge regarding debt and the verdict that will be awarded. There are two qualifications of judge's comprehension about debt, which are narrow meaning and broad meaning. Narrow meaning refers to textual interpretation which is based solely on the actual text of the law, while broad meaning refers to broad or contextual interpretation, i.e. interpretation that underlying on the text of the law shall also considers the situation surrounding the occurred event.

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

4.2 Suggestion

a. The Commercial Court Judge as a central figure in creating quality decisions needs to improve their intellectual capacity, i.e. by attending technical education and training as well as always sharpen his sense to procure a good attitude and behavior.

b. Judges as law enforcers and justice are expected or required to be active, creative and have forward visionary insight in examining and making decisions. The existence of insolvency tests does not cause different interpretation in the decisions of judges which ultimately lead to legal uncertainty. The Commercial Court needs to follow the Supreme Court's ruling on judicial review of Bankruptcy Laws in 2005 which suggested the need for an insolvency test. An insolvency test is a test to determine whether assetsare greater than its cash and money.

[1] SitiAnisah,Perlindungan Kepentingan Kreditor dan Debitor dalam Hukum Kepailitan di Indonesia (Creditors and Debtors' Interests Protection in Bankruptcy Laws in Indonesia), Total Media, Jakarta, p.421.

References

Laws/Regulations
Penal Codes
Commerce Law Codes
FaillisementVerordering (FV)
Act Number 4/1948 concerning Bankruptcy and Postponement Obligation to Pay Debts
Act Number 37/2004 concerning Bankruptcy and Postponement Obligation to Pay Debts

Books/Journals
Adi Sulistiyono and Isharyanto,*Sistem Peradilan di Indonesia dalam Teori dan Praktik* (*Judicial Systems in Indonesian Theories and Practices)*, Prenadamedia Group, Depok,2018
Ahmad Ali &Wiwie Heryani, *Sosiologi Hukum Kajian Empiris terhadap Pengadilan (Legal Sociology, an Empirical Study on Judiciary),* Kecana Prenada Media Group, Jakarta, 2012.
Ahmad Ali,*Menguak Teori Hukum dan Teori Peradilan (To Reveal Judiciary and Legal Theories),*Kecana Prenada Group Jakarta, 2012
Andrian Nurdin,*Kepailitan BUMN Persero (Bankruptcy on State's Owned Company with a Limited Liability)*Alumni, Bandung, 2012
Arbijoto,*Tinjauan Kritis Terhadap Hukum Kepailitan (*Critical *Review on Bankruptcy Laws),* JurnalHukumPrioris, Volume 2 number 3, September 2009
Aria Sujudi, Eryanto Nugroho and Herni Sri Nurbayanti *Analisa Hukum Kepailitan Indonesia Kepailitan di Negeri Pailit (Analyses on Indonesian Bankruptcy Legal in a Bankrupt Nation),*the Center of Study on Laws and Policies in Indonesia, Jakarta, 2004
Bagus Irawan,*Aspek-aspek Hukum Kepailitan Perusahaan dan Asuransi (Aspects on Bankruptcy Lawsfor Company and Insurance)*, Alumni Bandung, 2007.
Bambang Sutiyoso,*Reformasi Keadilan dan Penegakan Hukum di Indonesia (Justice Reformation and Law Enforcement in Indonesia)*,UII Press Yogyakarta, 2010.
Bernard Nainggolan,*Perlindungan Hukum Seimbang Debitor Kreditor dan Pihak-pihak Berkepentingan dalam Kepailitan (Equal Legal Protection between, Debtors, Creditors and other Interest Parties in Bankruptcy)*,Alumni , Bandung, 2011.
Brian Z Tamanaha,*A Social legal Approach to the Internal External distinction Jurisprudential and legal Ethics Implication*,University Press, Cambridge,2002
Faisal,*Menerobos Positisme Hukum (To Breach Legal Positivism),*Gramafa Publishing, Jakarta, 2012
Gregory J Churchil,*Prinsip-prinsip Hukum Kepailitan Suatu Perbandingan Hukum Kepailitan di Amerika Serikat dengan Hukum Kepailitan Indonesia (Principles on Bankruptcy Laws: A Comparison of Bankruptcy Laws in the United States and Bankruptcy Laws in Indonesia)*, a Paper, Advanced Education Program in Bankruptcy Laws Department, Legal Sciences Program, FH IU, Jakarta,1998.
GunawanWidjaja,*Kepailitan Perusahaan Asuransi (Bankruptcy on Insurance Companies)*, PusatPengkajianHukum,*Newsletter* No.60 March 2005
Heribertus Soetopo,*Pengantar Penelitian Kualitatif Dasar-dasar Teoritis dan Praktis (Introduction on Qualitative Study of Fundamental Theories and Practicals),*the Center of Study of UNS, Surakarta, 1988.
Hotman Paris Hutapea, *Identifikasi Permasalahan Hukum dan Teori dan Praktik di Pengadilan Niaga (Indentification on Legal Issues, Theories and Practices in the Commercial Court),*the Center of Legal Study/Pusat Pengkajian Hukum, Jakarta, 2004.
K Berten,*Sejarah Filsafat* (*History of Philosophy)*, 23rdEdition,Kanisius, Yogyakarta, 2003.
Lawrence M Friedman *The Legal System A Social Science Perspective,* Russel Safe Fondation New York 1975
M. Hadi Shubhan,*Hukum Kepailitan prinsip norma dan praktik di Peradilan* (*Bankruptcy Laws, Practices and Norm Principles in the Court),*KencanaPrenada Group, Jakarta, 2008.
M.NatzirAsnawi , *Hukum pembuktian Perkara Perdata di Indonesia (Verification Laws on Penal Cases in Indonesia),* UII Press Yogyakarta.2013.
The Supreme Court dated on August 3, 1974 In the Summary of Jurisprudence of the Supreme Court of the Republic of Indonesia, Civil Laws and Penal Codes, Jakarta,1977.
Morton DeutchdanStruat W Cook, *Research Method in Social*, Dryden Press New York 2004
Retnowulan Sutantio&Iskandar Oeripkartawinata,*Hukum Acara Perdata dalam Teori dan Praktek (Penal Codes in Theories and Practice)s*, Mandar Maju Bandung, 1995
Ricardo Simanjuntak, *International Provisions from Act Number 4/1998,*the Center of Legal Studies, Jakarta, 2005.
Richard M Heynes, *Bankruptcy and state collection The case of the Missing Garnisment*, Cornel Law Review, vol 91, 2016.
Ridwan Halim,*Hukum Acara Perdata dalam Tanya Jawab (Penal Codes in Debriefing),* Alumni, Bandung

1974.
Ridwan Khairandy,*Pengantar Hukum Dagang (Introduction on Commerce Laws),*Faculty of Laws of UII, Yogyakarta,2006.
Ronald Saija,*Penyalahgunaan Keadaan dalam Prosedur Permohonan Pailit di Pengadilan Niaga (Condition Misusage in Bankrupt Request Procedures in the Commercial Court)*, JurnalHukumAcaraPerdata Vol.1 no1 January 2015
Satjipto Rahardjo *Hukum Progresif Hukum yang Membebaskan(Progressive Laws, a Releasing Laws),*JurnalHukumProgresif Vol.1No.1, Legal Science Master Program on Undip, Semarang, 2015.
Satjipto Rahardjo,*Hukum dan Perilaku (Laws and Behavior),*Kompas, Jakarta, 2009.
Siti Anisah, *Perlindungan Kepentingan kreditor dan debitor dalam hukum Kepailitan di Indonesia (Protection on Debtors' and Creditors' Interests in Bankruptcy Laws in Indonesia),* Total Media, Jakarta,2008.
SudargoGautama,*Komentar Atas Peraturan Kepailitan Baru untuk Indonesia (Comments on New Bankruptcy Laws for Indonesia)(1998)* Citra Adtya Bakti, Bandung, 1998.
Sudikno Mertokusumo,*Bungain Rampai Ilmu Hukum (The Anthology of Legal Sciences),* Liberty, Yogyakarta,1984.
SudiknoMertokusumo,*Hukum Acara Perdata di Indonesia (Indonesian Penal Codes)*, Liberty, Yogyakarta.1982.
Sunarmi,*Hukum Kepailitan (Bankruptcy Laws),* PT Softmedia Medan 2010.
Sunarmi,,Dedi Herianto,dan Devi azwar,*Konsep Utang dalam Hukum Kepailitan Dikaitkan dengan Pembuktian Sederhana (Debt Concepts in Bankruptcy Laws Related with Simple Verification),* USU Law Journal Volume 4 no.4 October 2016
Sutan Remy Sjahdeini,*Hak Jaminan dan Kepailitan (Collateral Rights and Bankruptcy),*Jurnal Hukum Bisnis Volume 17 January 2002.
SutandyoWignjosoebroro, *Konsep dan Metode (Concepts and Methods)*, Setara Press, Jakarta,2013.
SutandyoWignjosoebroto, *Konsep Hukum Tipe ,Kajian dan Metode Penelitiannya (Legal Concepts: Types, Studies, and its Methods),*Kertaskerja BPHN, Jakarta, 1995.
SyamsudinM.Sinaga,*Hukum Kepailitan Indonesia (Indonesian Bankruptcy Laws),* Tetanusa, Jakarta, 2012.
Victorius MH Randu Puang, *Penerapan Asas Pembuktian Sederhana dalam penjatuhan Putusan Pailit (The Implementation of Simple Verification Principles in Awarding Bankrupt Verdicts)*, Sarana Tutorial Nurani Sejahtera, Bandung, 2011