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Renvoi Procedure for Justiabelens' Justice in the Bankruptcy Law

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Abstract
Renvoi Procedure is a request for credits verification by creditors due to the curator's objection on the creditor's claims by the curator, in which the procedure is submitted to the commercial court. This procedure should be easy and fast. It is useful and has legal certainty as a form of justice for all *justiabelens*. The analysis of this procedure has fulfilled the principle of justice; therefore the researcher applies two theories, namely the theory of legal objectives which the researcher draws from the three general teachings of Gustav Radbruch, and the theory of legal system of Kees Schuit which teaches the ideal element, the operational element, and the actual element. There are several approaches used namely, historical approach, comparative approach, conceptual approach, statutory approach, and case approach. This research is expected to produce prescriptive conclusions and recommendations to gain justice for justice seekers (*justiabelen*), and is expected to be input for government's policie.
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1. Introduction

The Law of Bankruptcy is prepared by the government to settle any existing debts. At beginning, it was to anticipate the monetary crisis occurred in Indonesia which had an unfavorable impact on the national economy, and brought great difficulties for the business world in settling debts and receivables to continue all activities.[1]

Bankruptcy cases are also expected to be a fast trial. However there are some process and formalities that should be carried out. The requirements for bankruptcy based on article 2 paragraph (1) are very simple, namely "A debtor who has two or more creditors does not pay off at least one debt that has matured and can be collected, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors." It shall be a simple thing for a person or legal entity to settle any cases of bankruptcy.

The curator shall perform three stages to settle bankruptcy cases; First, the inventory stage, namely the stage of searching for debtor's assets, making an inventory of debts and receivables, securing debtor's assets which are referred to as bankrupt assets. Second, the verification stage where the curator verifies the debts and receivables of the debtor. There are kinds of creditors for debtor's debt, namely preferred creditors, special creditors, and separatist creditors, all of which have levels of priority for debt. After dividing the types of creditors, the final point is to take care of concurrent creditors with no collateral.

Concurrent creditors (or referred to as unsecured creditors) carry out the calculation of their debts by first submitting a claim for receivables with complete evidence, and the curator matches the calculations of creditors' receivables through creditor meetings to make a list of receivables which are classified into accepted and denied receivables. The Article 127 paragraph (1) of the Bankruptcy Law stipulates that creditors and curators are given the opportunity to file an application for the denial of the debtor's bill. However, the norm of Article 127 paragraph (1) of the Bankruptcy Law states that it is an objection; while the *renvoi* procedure is different from a rebuttal since it has different characteristics.

There are several meanings of *renvoi* procedure analyzed from some countries by the researcher, i.e., in the European economic community (EU Court of Justice), it is known as secondary proceeding, the Dutch Civil Law defines it: The Trustee Up to a Certain Extent. The Italian Civil Code calls it: The Statement of Claims. The Greek law (III Greece Commercial Code) states: Bankruptcy Proceedings and for The Distribution of the Proceed of Liquidation. The Danish Bankruptcy Law defines it: The Creditor Claim to Have a Preferential Standing, or Have Security for His Claim in the Form of Estate, The Information Must Be Stated when Lodging the Claim. The United States (Insolvency Practitioners regulations 1190 and the Insolvency Regulation 1986) calls it a correction procedure (*renvoi*). Regarding the meaning of the word, Article 127 paragraph (1) of the Bankruptcy Law should refer it to as *renvoi* procedure rather than a rebuttal or objection. Since law is about meaning, a wrong meaning may causes misinterpretation of the rules.

Law is about meanings; therefore law is built from a system of meaning and other related systems which

[1] The preamble to Act Number 37 of 2004 on Bankruptcy and Suspension of Credit Repayment Obligations

bring benefits towards the value of justice. In accordance with Kess Schuit's theory (which every analysis must apply theories according to legal scientific methodology), the legal system has several elements, namely: elements of meaning, operational elements (related to institutions) and actual elements of the functioning of law in society by analyzing the decisions of judges that have permanent legal force (Inkracht van Gewijsde). These three elements are strongly bound to build a systemic law.

According to the theory of Kess Schuit, the second element is the operational element of the institution having the authority to administer. In bankruptcy law, the institution that administers is the curator, and is supervised by the supervisory judge. The curator is born from the court's decision, and the supervisory judge is appointed after the court's decision. The task of the curator is to manage and/or settle the bankruptcy estate, there is no relationship between the curator and the debtor or creditor, the main task of the curator is only related to the bankruptcy estate, and the task of the supervisory judge is to oversee the management and settlement of the bankruptcy estate.

The third element is about the actual function of the law by analyzing the Ratio *Decidendi* of the judge's decision which is Infract van Gewijsde. Systematic law built from these systems must be beneficial. *Renvoi* procedure essentially has a substantive justice value by prioritizing the Doelmatigheide principle, meaning that the judge's decision does not only refer to a positive law, but also by considering the principle of expediency according to the judge's belief in order to restore the rights of the creditors.

Although the Article 127 paragraph (1) has a vague regulations regarding *renvoi* procedure meaning system, it already has legal certainty values that can guarantee the rights and obligations of justice seekers (*Justiabelen*) by the promulgation of the article in one of the articles of the Bankruptcy Law. The 127 paragraph (1) of the Bankruptcy Law is used as a legal basis for *justiabelen* to seek for justice for the list of receivables made and denied by asking the court to recalculate the debt verification.

According to Gustav Radbruch's theory on three general teachings of the value of certainty, when the value of expediency which is a component of justice has been achieved, then this norm has become a norm that is not arbitrary and is useful for *Justiabelen*, and furthermore, in accordance with Kess Schuit theory on the meaning system, it is necessary to correct the meaning of the rebuttal in Article 127 paragraph (1) of the Bankruptcy Law and replace it with the meaning of *renvoi* procedure.

The above description is the background on the analysis of *renvoi* procedure as a legal institution in bankruptcy law as a justice for justice seekers (*justiabelen*). It needs to be acknowledged since justice is the goal of law, and is a prescriptive for future legal researches. Therefore, the problem of this research is "How the *renvoi* procedure as a bankruptcy legal step to fulfill the principle of justice both for *justiabelen* in particular and for society in general?"

2. Discussion

2.1 The Essence of Renvoi Procedure

The essence means a nature or basis, the actual fact or reality[1]. By analyzing the nature of *renvoi* procedure, it means to find the essence or basis or the reality of *renvoi* procedure. Therefore, to analyze this procedure, the researcher examines the meaning, form and nature of the procedure. Due to the fact that, to know the fairness of *renvoi* procedure, it is necessary to first know the core or basis of it.

1. Meaning of *Renvoi* Procedure

Meaning means sense or intent[2]. Thus, *renvoi* procedure is the meaning and purpose of the *renvoi* procedure. To find out the meaning and purpose of the procedure, it needs to analyze the doctrines carried out by the experts. There are several meanings of *renvoi* procedures from several which the meaning and intent can be compared to. According to Ivida Dewi Amrih Suci, *renvoi* procedures in bankruptcy law are the stages of a case activity submitted to a court session.[3]

According to Ivida Dewi Amrih Suci, the Indonesian bankruptcy law adopts other countries' similar regulations on *renvoi* procedure. It is also stated that *renvoi* procedure has similar meaning, namely an appeal for verification of receivables whose examination was submitted to the court. Initially the curator had the authority to match receivables in bankruptcy cases, however since *renvoi* procedure exists, and the court; especially the commercial court becomes the authorized party to verify the receivables.[4]

Even *renvoi* procedure have various meanings from several countries as above described, however, the essence and purpose are similar. The European Economic Community calls it a secondary proceeding which is defined as deciding on differences of opinion. It is carried out to secure creditors' claim rights, by written submission in accordance with article 35 of the Joint Legal Decisions of the European Economic Community countries. A written application is made and if it is approved, it will allow the European Economic Community's

1 *Kamus Besar Bahasa Indonesia/KBBI* p. 293.
2 *Ibid* P. 548.
3 Ivida Dewi Amrih Suci, *2020, Karakteristik Renvoi Prosedur Dalam Perkara Kepailitan, Laksbang Justitia:Yogyakart,* P. 133.
4 *Ibid*, P. 133.

Supreme Court to apply its laws.[1]

The Dutch Bankruptcy Act (BA) of 1893 provides the opportunity for creditors, as well as debtors, to control the curator (trustee) to comply with applicable regulations. The decision and/or determination of the trustee can be submitted to the judge, and must be processed no later than 3 (three) days before the report is submitted[2]. Italian law (Italian Civil Code) in section 100 also allows creditors to correct a list of bills by court decision. This section stipulates that if the creditors who do not agree can register their lawsuit 5 (five) days before their statement is heard in court, and it will automatically be deemed to have withdrawn their claim. Then the trial will be determined by the court, and the results of the curator's calculations will be decided by the court, and the results of the decision can be appealed.[3]

Greek law (Book III, Greece Commercial Code), requires that a list of claims to be agreed upon by the trustee before bankruptcy can be processed. This rule allows creditors to participate in the curator's decision on the distribution of liquidated assets. Creditors shall register to the court by completing the document and evidence related, no later than 20 (twenty) days after the official complaint. Complaints will be examined and decided by a judge who is authorized to examine the curator according to the creditor's complaint, and the bankrupt party will be attended if necessary, as well as other creditors whose claims are examined and granted.[4]

Danish Bankruptcy Law allows creditors to add interest including to correct the value/or priority of the claim. Dennis Campbell opined that if the creditor wants to add appropriate interest, the additional interest will appear on the billing evidence, in addition to the principal bill. If the creditor's claim has preferential rights and/or has collateral for its receivables, then the information,[5] by the United States is referred to as *renvoi* procedure on the curator's accusations no later than 6 (six) years after the incident, because the law requires records to be maintained properly in as has been expressed by Hugo Groves & Cormac Simbs in Ivida Dewi.[6]

According to Ivida Dewi, the sense of *renvoi* procedure is a reappointment or further appointment of a procedure whose examination is submitted to the court. It contains a process of matching creditors' receivables in which the results are not satisfactory. Therefore, one of the parties submits the process to the court to examine it[7]. Regarding various meaning of several regulations of other countries and based on the analysis of experts, it is found that the essence of *renvoi* procedure is the a step of fund examination as the results of receivable verification by the curator denied by the creditor or the trustee themselves, and the examination output is submitted to the authorized court to assess.

The word form in the Indonesian Dictionary means a system or arrangement (government, union, etc.)[8] The word system, in association with bankruptcy cases, must be analyzed in deeper. The legal system of Bankruptcy law adheres to the principle of debt pooling in which according to M. Hadi Subhan includes arrangements in the bankruptcy system, including the division of assets among creditors. The elaboration of the system is related to the institutions involved in the bankruptcy process, namely the competent judiciary, the procedural law used, as well as the presence of commissioner judges and curators in the implementation of bankruptcy.[9]

As proposed by Kess Schuit, bankruptcy cases are seen from the form or institution[10], namely analyzing the operational elements or the institution. Positive legal ideals need to be carried out systemically, because law is a system, and as a system, it works functionally between one sub-system and another. The theory of the legal system is applied to examine and analyze the system in special civil courts, i.e., the commercial courts, especially the courts that examine *renvoi* procedure cases. It is accordance with the second element of Kess Schuit's system theory, namely the operational element, which consists of all organizations and institutions established in a legal system. In relation to *renvoi* procedure of bankruptcy cases is the judiciary. Therefore, the regulations on the judiciary and the authority for its examination must be clear and correct based on its principles.

Adjectives are defined as characteristics attach to something (to distinguish it from others).[11] In relation to bankruptcy cases, the characteristics that distinguish bankruptcy cases from other cases in the realm of civil law shall be acknowledged. Generally, a civil case begins by filing a lawsuit to be examined by the judge, being responsible for answering and proving, then the judges makes legal considerations (ratio *Decidendi*) and obtain a verdict and implements the decision. It is the nature of any civil cases in general.

Furthermore, the analysis on characteristics of bankruptcy cases is carried out. It is based on the key analytical tool applied by the researcher, i.e., formal legal theory, where one of the doctrines is procedural law or

1 David Chambil dalam Ivida Dewi Amrih Suci, *Ibid*, P. 133-134.
2 *Ibid*, P. 134.
3 *Ibid*, P. 135.
4 *Ibid*, Pl. 135-136.
5 *Ibid*, P. 137.
6 *Ibid*, P. 137.
7 *Ibid*, P. 139.
8 *Kamus Besar Bahasa Indonesia*, P 103.
9 M. Hadi Subhan, *2014, Hukum Kepailitan Prinsip, Norma dan Praktek di Peradilan, Kencana Prenadamedia Group: Jakarta*, P. 43.
10 J.J.H.Bruggink, *1995, Refleksi Hukum, Translation B. Arif Sidhart, Citra Aditya Bhakti: Bandung*, P. 140.
11 *Kamus Besar Bahasa Indonesia*, P. 837.

formal law or is referred to civil procedural law. According to R. Soeroso, civil procedural law is the entire legal regulation that regulates ways to defend material civil law. Thus it organizes how to file certain cases before the court and how judges make their decisions or verdicts.[1]

M. Hadi Subhan stated that the debt pooling principle is also a specific characteristics of bankruptcy process, both in relation to unusual collections (*oneigenlijke incassoprocedures*), courts that specifically deal with bankruptcy and with their absolute competence relating to bankruptcy, the presence of commissioner judges and trustee, as well as specific procedural law even though it belongs to an ordinary civil procedural law.[2]

The deviation from jurisdictional principle of authority to adjudicate in bankruptcy cases contains the characteristics and specificity of bankruptcy cases, the form and submission of the case to the court is in the form of a request, and the result of the court examination is a decision (verdict).

The principle deviation of bankruptcy law in its procedural law is distinguishing bankruptcy cases from other civil cases. The principle deviation of the cases is a special matter since the law requires such deviation, i.e., by regulating the Bankruptcy Law.

Bankruptcy cases belong to civil cases, for the law regulating the case also belongs to a civil law. There are 2 (two) kinds of law that distinguish it, namely material civil law which regulates its substance, and formal civil law which regulates the procedural. Thus, the hallmark of bankruptcy cases that distinguishes them from other cases of civil procedural law system is the principle of integration in bankruptcy law which means that material law and formal law are unified, making it different from other laws.

Other laws in each arrangement contain only material law, or only formal law, but in bankruptcy law, material law contains formal legal rules and formal law contains material legal rules. The principle of integration in bankruptcy law is one of the characteristics that distinguish bankruptcy law from other laws in the civil law system and civil procedural law.

Bankruptcy cases are involving more than one party (between contending parties), namely the applicant and the respondent. Likewise, this case also contain disputes (contended matter), cases that contain disputes are included in the jurisdiction of *contentiosa*. This case is filed to court in form of a request, so it does not belong to *contentiosa* jurisdiction.

Based on the above description, the regulation contained in the Bankruptcy Law deviates the principle of *contentiosa*-volunteer jurisdictional authority as a result of the form of filing a case to the court which is also distorted since it is a request not a lawsuit (*daagvarding*) in accordance with the characteristics of a *contentiosa* lawsuit. This deviation to adjudicate bankruptcy cases contains the characteristics and specificities of bankruptcy cases. The form and submission of the case to the court is in the form of a request and the result of the court examination is a decision (verdicts).

The specialty of bankruptcy law is the form of its institution, namely a special court, called the commercial court, which is a special court under the general court. Special courts only examine bankruptcy cases, intellectual property rights cases and actio pauliana cases. The specificity of the court that handles special cases of civil law has a different judicial organ from the general court that examines other civil cases. Special courts that examine bankruptcy cases authorize outside parties other than the existing court organs to manage and settle the case.

The specificity of the bankruptcy law referred to by other parties is the existence of a curator, while the trustee is an outside party from the judicial organ who is given the authority to manage and settle the assets of the bankrupt debtor. As other party, the curator's present and authority arises from the legality of the Bankruptcy Law. Therefore, in special courts has different civil justice system from other courts. However it can be referred to as special courts of the civil justice system.

Withdrawal of other parties from commercial court is given the authority to manage and settle all the assets of the bankrupt debtor, then this special judicial institution also appoints and places judges called supervisory judges other than the panel of judges who examine bankruptcy cases. The supervisory judge is given the authority to supervise the curator's duties in managing and settling the bankruptcy estate.

2.2 Authority of the Renvoi Procedure Institution

Based on Kamus Besar Bahasa Indonesia, authority means "The right and power owned to do something"[3]. Thus, the authority of *renvoi* procedure institution is the authority to do something or manage bankruptcy cases. It is to find out the rights given to bankruptcy law in dealing with *renvoi* procedure. Based on article 69 of the Bankruptcy Law, those who manage bankruptcy are curators, and those who have the power to supervise, based on article 65, are supervisory judges, while those who have the power to examine and decide on *renvoi* procedure, based on article 127 paragraph (1), are commercial court judges. Therefore, it is necessary to first analyze the curator, supervisory judge, and case judges of *renvoi* procedure.

1 R. Soeroso in M. Hadi Subhan, *Op Cit*, P. 43.
2 *Op. Cit.*
3 *KBBI*, P. 1010.

The curator's authority in verifying receivables which is closely related to this research is regulated in article 117 of the Bankruptcy Law which states that "the curator is obliged to make a list of both approved and denied receivables based on the rationales made in a separate list". The obligation is an authority to make 2 (two) lists, one of which is a list of approved receivables, and the other is a list of denied receivables. The curator's authority to make a list of disputed receivables causes the birth of *renvoi* procedure in bankruptcy cases.

There are several powers of the curator in the Bankruptcy Law as above described. If the power is not interpreted correctly, it can make the curators as an institution having a broad power of action. It will cause the curator as an institution with no boundaries, and may result in the management and settlement of bankrupt assets outside of their authority.

The curator's authority, as described above, has many arrangements that deviate from principles in other legal fields. These deviations are deviations desired by law, and the permissibility of such deviation is a separate characteristic of bankruptcy law.

One of difference of regulations between the Bankruptcy Law and other laws is the inclusion of a curator from an individual appointed by the court in a bankruptcy decision. The special characteristic of the law to include persons is a distinct characteristic that is different from other legal arrangements. The Bankruptcy Law stipulates that it is permissible for an individual to become a curator in the future legal concept, which was made when this law was to be promulgated. It needs to be examined to find out the desire of the legislators to grant power to individuals other than the *Balai Harta Peninggalan* (BHP).

Article 65 states the authority of the supervisory judge that "Supervisory judges supervise the management and settlement of bankrupt assets". The judges' existence and authority are only in bankruptcy cases. Their existence on bankruptcy cases is special forms of commercial court which differ it form other civil courts. However the authority of the curator and the supervisory judge will end automatically along with the completion of bankruptcy estate settlement.

Based on the Law of Bankruptcy, the authorities of the supervisory judges are as follow:

- To determine the time period of ongoing agreement implementation between the debtor and the creditor when the creditor and the curator do not reach an agreement (see Article 36 of the Bankruptcy Law)).
- To decide the creditors or interested third parties appeal whose rights are suspended to lift the suspension if the curator rejects the application for suspension appointment (see Article 57 Paragraph (3)).
- To provide an approval to the curator if the trustee guarantees the bankruptcy estate to the third party (see Article 69 Paragraph (3)).
- To give permission for the curator to appear before the court, except for certain things (see Article 69 Paragraph (5)).
- To receive reports from the curator every three months regarding the condition of the bankrupt assets and the implementation of their duties (see Article 74 Paragraph (1)).
- To extend the reporting period as referred to in Article 74 Paragraph (1) above (see Article 74 Paragraph (3)).
- To offer creditors to form a creditors committee after the debt verification has been completed (see Article 80 Paragraph(1)).
- If the bankruptcy declaration decision has been appointed, the committee can be replaced by the request of the concurrent creditors based on the decision of the concurrent creditors by a simple majority vote (see Article 80 Paragraph (2) a).
- If the bankruptcy declaration decision has not appointed a temporary creditor committee, the creditor committee is determined by the request of the concurrent creditors based on the decision of the concurrent creditors by a simple majority vote (see Article 80 Paragraph (2)(b)).
- To determine the day, date, time and place of the first creditors' meeting (see Article 86 Paragraph (1)).
- To deliver information to the curator on the plan to hold the first creditors meeting (see Article 86 Paragraph (2)).
- To seal the bankruptcy estate by the clerk or substitute clerk to secure the bankruptcy estate (see Article 99 Paragraph (1)).
- If the creditors committee is not appointed in the bankruptcy declaration decision, the supervisory judge can give approval to the curator to continue the debtor's business, even though a cassation or review exists (see Article 104 Paragraph (1)).
- To give approval to the curator to transfer the bankruptcy estate as long as it is necessary to cover the costs of the bankruptcy, or if his detention will result in a loss in the bankruptcy price despite a cassation or review (see Article 98).

- Other obligations.[1]

The case judge is a commercial court judge, where the commercial court has the authority to examine bankruptcy cases. By the enactment of Act number 37 of 2004 which came into force on October 18, 2004, Article 307 of the UUK-PKPU affirms that *Faillis-Sements-verordening* (fv) S. 1905-217 in conjunction with S.1906-348 and Act Number 4 of 1998 concerning Perpu No. 1 of 1998, it is revoked and is declared no longer valid. The Commercial Court is not an addition to the existing new court as referred to in Article 10 of Act number 14 of 1970 Dated December 17, 1970 concerning the Basic Provisions of Judicial Power, namely general courts, religious courts, military courts and state administrative courts. The Commercial Court is only part of the general judiciary (Read: Article 306 UUK-PKPU). The Commercial Court is only a chamber of the general court. Since the Commercial Court is within the general judiciary, it does not own a position of chairman, because the chairman of the District Court concerned is also in charge of the Commercial Court.[2]

The existence of a Commercial Court with UUK-PKPU is possible based on the provisions of Act number 2 of 1986 concerning General Courts. This Act stipulates: Within the General Courts, specializations can be made and is regulated by law. Elucidation of Article 8 of Act number 2 of 1986 states: “specialization" is the existence of differentiation/specialization in the General Courts environment, for example the Traffic Court, Juvenile Court, and Economic Court.

Based on Article 306 Paragraph (1) of UUK-PKPU, the Commercial Court at the Central Jakarta District Court established based on the provisions of Article 281 Paragraph (1) Perpu Number 1 of 1998 on amendments to the Bankruptcy Law as stipulated in Act number 4 of 1998, it was stated that he still had the authority to examine and decide some cases which were the scope of Commercial Court duties. Indeed, at this time the Commercial Court at the Central Jakarta District Court has been formed, and has also examined and decided cases of bankruptcy petitions and PKPU petitions.

Based on Article 300 paragraph (2) of the UUK, PKPU, and the establishment of a Commercial Court other than the Central Jakarta District Court will be carried out in stages by Presidential Decree, by considering the needs and readiness of the required resources. Currently, apart from the Central Jakarta District Court, a Commercial Court has also been established in several places, including Surabaya District Court, Medan District Court, Ujung Pandang District Court, and Semarang District Court.

In the United States, bankruptcy cases are heard by the special court, namely The United States Bankruptcy Court, for the district concerned. Each district has its own bankruptcy court.[3]The establishment of a Commercial Court to examine bankruptcy cases and also other commercial cases in the future based on government regulations is based on considerations of speed and effectiveness. Bankruptcy cases according to the UUK-PKPU are determined by the period of examination at the Commercial Court level, at the cassation level, and at the review level. Legal remedies that can be taken by parties who are dissatisfied with the decision of the Commercial Court in a bankruptcy case are an immediate cassation to the Supreme Court, without an appeal through a high court. Thus, bankruptcy cases will be faster compared to ordinary case examinations in the district courts.

The decision on the petition for bankruptcy declaration will be effective because based on the provisions of the UUK-PKPU, the decision on the case is immediate. It means the curator has sold the Bankrupt Assets even though the decision on the bankruptcy declaration does not have permanent legal force. Thus, an appeal was filed against the decision.

Article 300 paragraph (1) of the UUK-PKPU mentioned that petitions for declaration of bankruptcy and PKPU are examined and decided by the Commercial Court. Initially, the Commercial Court only examined and decided bankruptcy cases. However, at this time, the Intellectual Property case has also been examined as a manifestation of the provisions of Article 300 Paragraph (1) of the UUK-PKPU. The article stipulates that in addition to examining and deciding on applications for declaration of bankruptcy and suspension of obligation to pay debts, it is also authorized to examine and decide other cases in the field of commerce, in which the formation is carried out by Presidential Decree. Meanwhile, it is considered to expand the duties of the Commercial Court, i.e., to handle cases of other business fields, such as anti-monopoly, unfair competition laws and consumer protection laws.

With the provisions of Article 300 Paragraph (1) of the UUK-PKPU, all applications for a declaration of bankruptcy and PKPU filed after the enactment of the Law on Bankruptcy can only be submitted to the Commercial Court. After the issuance of the Presidential Decree as referred to in Article 300 Paragraph (2) of the UUK-PKPU, other cases in the commercial sector can only be submitted to the Commercial Court. Some commercial cases that can be submitted can only be examined and decided by the Commercial Court, depending

1 Dr. Munir Fuady, S.H., M.H., LL.M., *2014, Hukum Pailit dalam Teori & Praktek, PT Citra Aditya Bakti: Bandung*, P. 36-38.
2 Lontoh, Rudy A; Kalimang, Denny & Ponto, Benny dalam Prof. Dr. Sutan Remy Sjahdeni, S.H., *2016, Sejarah, Asas, dan Teori Hukum Kepailitan. Edisi Kedua, Kencana Prenadamedia Group: Jakarta*, P. 247-248.
3 *Ibid*, P. 248-249.

on the provisions of the government regulation.[1]

The Commercial Court examines and decides first level cases by the Panel of Judges (Article 301 Paragraph (1) UUK-PKPU). In carrying out their duties, Commercial Court judges are assisted by a clerk or a substitute clerk and a bailiff (Article 301 Paragraph (3) UUK-PKPU). Later, if other cases have been examined and decided by the Commercial Court, according to the provisions of Article 301 Paragraph (2) of the UUK-PKPU, the Chief Justice of the Supreme Court may determine the type and value of cases examined and decided at the first level by a single judge (not by the Panel of Judges).

Based on Article 299 of the UUK-PKPU, unless being stipulated otherwise by law, the current Civil Procedure Code is HIR (hereinafter referred to as *Herzien Inlandsch Reglement*). The UUK-PKPU contains some different provisions for events or that deviate from the provisions of HIR. The provisions of Article 299 of the UUK-PKPU mean that if the UUK-PKPU keeps silent or does not regulate certain matters relating to the procedure for submitting a petition for a declaration of bankruptcy and examining cases in and by the court, then it shall refer to HIR. As well as the UUK-PKPU, the United States Bankruptcy Code is also a Bankruptcy Rule. These rules only relate to the process, i.e., procedural issues or other than substantive problems.[2]

The case judge or judge examining the bankruptcy case is obliged to make the judge's legal consideration (ratio *Decidendi*) which is an axiology in the bankruptcy procedural law. The judge's ratio *Decidendi* is a judge's analysis of the legal facts of a bankruptcy case. It is also a legal construction result in which judges implement several ways to carry out the legal system including making legal interpretations, legal construction or legal discoveries. Paul Scholten stated the discovery of law is something other than just the application of rules to events. It almost happen many times the rules must be found, either by way of interpretation or by analogy or rechtsvervjining (refinement of the law).[3]

According to Sudikno Mertokusumo, legal discovery is usually defined as a process of law formation by judges or other legal officers given the task of implementing the law on concrete legal events. It is a process of concretization and individualization of general legal regulations by keeping concrete events in mind.[4] It is mainly made by judges in examining and deciding a case. This law discovery made by a judge is considered to be authoritative.

Legal scientists also made legal discoveries. The result of law discovery made by judges is law, but the legal discovery made by legal scientist belongs to a doctrine or science. Even though the result is not considered as a law, the term “legal discovery” is also used. Therefore, when a doctrine is taken over by the judge in making a decision, it becomes a law.[5]

The problem of law discovery relates to the task of the judge. It arises since the judge conducts an examination of the case until the time he makes a decision. To carry out their duties and authorities to examine, hear and then make decisions, the judges shall adhere to applicable law and their beliefs.

Purwoto S. Gandasubrata sated that there are 3 (three) matters as guidelines for judges in dealing with a case, as follows:[6]

1) In a case where the law or legislation is clear, the judge only applies the law or becomes a trumpet of the law (*la boche de la loi*);
2) In a case where the law or legislation is unclear, the judge must interpret the law or legislation through the methods of interpretation that apply in the science of law;
3) In a case a violation happens or the application of the law is contrary to the applicable law, the judge will exercise the right to examine it in the form of *formale toetsingrechts* or *materieletoetsingrecht* which is usually carried out by *judex juris* on cases decided by *judex facti.*

Basically, legal discovery shall adhere to the existing legal system. The discovery of law based solely on the law is referred to as a system oriented. Legal discovery basically shall be system oriented, but if the system is unable to provide a solution, then it must be abandoned and head to problem oriented. The background of problem oriented emergence, namely the tendency of society to make laws more general that provide an opportunity for the judges to have more freedom.[7]

Wiarda in her book "*Dry Typen van Rechtvinding*" distinguishes the discovery of law into 3 (three), namely the discovery of autonomous law, the discovery of heteronomous law, and the discovery of mixed law, while van Eikema Hommes distinguishes the discovery of law into *Typsich Logicitisch* and *Materiel Juridisch*. The discovery of heteronomous law is essentially similar to *Typsich Logicitisch*, while the discovery of autonomous

1 *Ibid*, P. 249-250.
2 *Ibid*, P. 253.
3 Paul Scholten in Ivida Dewi Amrih Suci, *Op. Cit*, P. 351.
4 Ahmad Rifai in Ivida Dewi Amrih Suci, *Ibid*, P. 352.
5 *Ibid*, P. 352.
6 *Ibid,* P. 352.
7 Bambang Sutiyoso in Ivida Dewi Amrih Suci, *Ibid*, P. 353.

law is similar to *Materiel Juridisch*[1]. The discovery of the heteronomous law (*Typsich Logicitisch*) is considered a technical and cognitive event that prioritizes the law. Meanwhile, judges are influenced by external factors. In this case, the judge is not independent, since they shall obey the law (*legism/typislogicistic*). The discovery of heteronomous law is influenced by external factors of the discovery itself, especially the influence of laws, including the influence of the system of government, economy, politics, and etc .[2]

The discovery of heteronomous law is in accordance with the classical view, put forward by Montesqueu and Immanuel Kant that in applying the law, judges are not independent. The judge is only a bridge of the law, thus the judge is unable to change the legal force of the law, and to add and subtract what has been determined by the law. The law is the only source of positive law. Therefore, for the sake of legal certainty and legal unity, judges shall be under the law.[3]

In the discovery of autonomous law (*Materiel Juridisch*), judges are no longer seen as the mouthpiece or trumpet of the law, but as lawmakers who independently contribute to the content of the law and adapt it to the needs or developments of society[4]. Judges make legal discoveries because they are faced with concrete events or conflicts to be resolved, so they are conflicting. The output of legal discovery is law, because it has binding power as law stated in the form of a decision.[5]

The legislators make legal discoveries even though they do not face concrete events or conflicts like the judges do, but to resolve certain abstract events (has not happened yet, but most likely will happen in the future). Thus, its nature is prescriptive. The result of his legal discovery is law, because it is set forth in the form of law and as a source of law. Meanwhile, legal researchers make legal discoveries which are theoretical. For, the output does not belong to a law. It only acts as a source of law (doctrine). This paper mainly focuses on legal discovery made by judges considering that they are the foundation of people's hope to resolve concrete problems in court.[6]

Adding statutory regulations means that the judge fills the gap (*leemten*) in the formal legal system of the applicable legal system. It was only acceptable in the second part of the 19th century. Paul Scholten argued that the law was an open system. This opinion arises based on considerations on the rapid progress and growth of society. Therefore, in the lagging law, there are many vacancies in the legal system that must be filled by judges as long as the filling/addition does not bring about a change in principle to the applicable legal system. Previously, the legal system was considered as a complete and closed unit. There is no law outside the legislations, and judges are not allowed to carry out laws that were not stated in the legislations (legism ideology). Law is an understandable open system, because it is dynamic which develops continuously in a development process. It has the consequence that judges may even have to fill in the *leemten* (void) in the legal system, as long as the addition does not change the essence of system.[7]

The legal meaning (*rechtsbegrippen*) contains similarities. It is a legal principle that forms the basis of the legal institution concerned. Making a legal understanding is an act that seeks legal principles that form the basis of the relevant legal regulations, namely legal construction (*rechtscontrucktie*).[8] Legal construction (rechtscontrucktie) or analogical interpretation is the interpretation of a legal regulation by giving an analogy to the words according to their legal principles, thus an event that actually cannot be included is then considered appropriate with the regulation, for example "connecting electricity" is considered the same as "taking electricity".[9]

Legal refinement means treating the law in such a way so as if no one is to blame. Refinement of the law by narrowing down the validity of an article is the opposite of a legal analogy. It intends to fill a void in the legal system. The legal system (formal legal system) means that it cannot solve problems fairly or in accordance with social reality (social *werkelijkheid*). Legal refinement is the refinement of the legal system by judges.

The nature of legal refinement is not to seek any parties' fault, and if a party is blamed, tension will arise. Sometimes the judge cannot carry out certain provisions, even though the provisions clearly state the case submitted to the judge. If these provisions are implemented, then the case is not resolved fairly, denies the "*werkelijkheid*/Reality" in society (*positivitiet* is different from *werkelijkheid*). In this case, the judge is forced to remove the case from the environment of provisions, and then it is resolved according to a separate regulation. This act of removing is known as refinement of the law.[10]

Argumentum a contrario or interpretation a *contrario* is the interpretation of the law based on denial,

1 Wiarda in Ivida Dewi Amrih Suci, *Ibid*, P. 353.
2 *Ibid,* P. 354.
3 *Ibid*
4 *Loc. Cit*.
5 *Ibid*, P. 354.
6 *Loc. Cit.*
7 R. Soeroso in Ivida Dewi Amrih Suci, *Ibid*, P. 356.
8 *Loc. Cit.*
9 *Ibid*, P. 356.
10 *Ibid*, P. 357.

meaning that there is a conflicting understanding between the question faced and that is regulated in an article in the Act. Based on this denial, it can be concluded that the case problem at hand is not included in the article, it is outside the legislation.

A *contrario* interpretation is in contrast to the analogical interpretation which also a legal construction is aiming to fill the void of legal system. Essentially, the *argumentuma contrario* is similar to analogical interpretation but having different results. Analogies bring positive outputs, while the interpretation of a contrario has negative results. Both ways of implementing this Law are based on legal constructions. Interpretation based on argumentum a contrario narrows the formulation of law or legislation. It aims to further emphasize the existence of legal certainty.1

The differences of the use of law based on analogy and argumentum a *contrario* are as follows:[2]

- The analogy brings positive results; while the argumentum a contrario obtained negative results;
- The implementation of analogy is to expand the validity of the legal provisions or statutory regulations, while a contrario narrows the validity of the statutory provisions;
- Both analogy and argumentum a contrario are based on legal constructions;
- Both methods can be used to solve a problem;
- Both methods are applied when the article in the legislation does not mention the problem at hand (there are elements in the legislation);
- The aims and objectives of the two methods are both to fill the void of Law.

If it is examined deeper, it can be understood that the characteristics of the legal considerations are:[3]

1. Legal considerations are the duty of the judge to adjudicate every *petitum* of the plaintiff's claim.
   It is outlined in Article 178 Paragraph (2) HIR, Article 1189 Paragraph (2) Rbg, and Article 50 Rv. The decision must totally and thoroughly examine and adjudicate every aspect of the lawsuit filed. It is not permissible to only examine and decide part of it, and ignore the rest of the lawsuit. Such a trial method is contrary to the principles outlined by law;
2. The legal considerations contain in detail the reasons for the rejection or acceptance of each petition by the plaintiff.
   According to this principle, the decision handed down must be based on clear and sufficient considerations. Decisions that do not meet the provisions are *onvoldoende geomotiverd* (or insufficient judgment). The legal reasons that form the basis for consideration are based on the following provisions:

- Certain Articles of Legislation;
- Customary law;
- Jurisprudence; or
- Legal doctrine

   It is confirmed in Article 23 of Act Number 14 of 1970 as amended by Law Number 35 of 1999 now in Article 25 Paragraph (1) of Act Number 4 of 2004 (now in Chapter XI Article 50 Paragraph (1), the Act Number 48 of 2009 confirms that all court decisions must contain the reasons and grounds for the decision, and include articles of certain laws and regulations related to the case decided or based on unwritten law or jurisprudence or legal doctrine. In fact, according to Article 178 Paragraph (1) of the HIR, judges due to their position or ex officio are obliged to fulfill all legal reasons that are not stated by the litigants.
   To fulfill this obligation, Article 27 Paragraph (1) of Act Number 14 of 1970 as amended by Law Number 35 of 1999, now in Article 28 Paragraph (1) of Act Number 4 of 2004 instructs judges as enforcers of law and justice, shall explore, follow, and understand the legal values living in society. Based on the explanation of article above, judges play a role and act as formulators and explorers of legal values that live among the community. A decision that is not being sufficiently considered is a juridical problem. As a result, such a decision can be overturned at the level of appeal or cassation. It is confirmed in the Supreme Court Decision No. 443 K/Pdt/1986, dated August 20, 1988;

3. Legal considerations are constructed after the main case
   Decision formulation is an arrangement or system which must be formulated in a decision in order to fulfill the statutory requirements as stipulated in Article 184 Paragraph (1) HIR or Article 195 Rbg, also in Article 23 of Act no. 14 of 1970 as amended by Act no. 35 of 1999 now in Article 25 of Act no. 4 of 2004 (now in Chapter XI of Article 50 Paragraph (1) of Law No. 48 of 2009 concerning Judicial Power). Based on the article above, the decision must contain the main points of the case and the answers briefly and clearly, including:

1 *Ibid.*
2 *Ibid.*
3 Herowati Poesoko in Ivida Dewi Amrih Suci, *Ibid*, P. 358.

- Proof of Lawsuit
  The arguments for the lawsuit or the *petendi fumdamentum* briefly explained the legal basis and legal relationships as well as the facts that form the basis of the lawsuit. It has its own legal consequences when the decision does not include proof of lawsuit. It is considered that the decision has no basis as a starting point for the examination of the case;
- To include the Defendant's Answer
  According to Article 184 Paragraph (1) of HIR, the requirement to include the defendant's answer shall be brief. It only needs to take the main and relevant with conditions that it must not eliminate the essential meaning of the answer. To avoid any deviation form the correct answer, the judge may ask the defendant about unclear and doubtful answer. In a broader sense, answer includes replicas, duplications, and conclusions in accordance with the procedural rules. The points that should be formulated in the decisions are replicas, duplications and conclusions. The conclusions shall be included in the decisions;
- Brief Summary and Scope of Evidence
  A concise and complete description of facts and evidence is starting with the evidence submitted by the plaintiff and continued with the defendant's evidence;
  a. What evidences are submitted by each party;
  b. Whether or not the formal and material requirements of each of the evidence submitted are fulfilled.[1]

  It means that everyone can prove the incident by having evidence as regulated i the Civil Procedure Code to fulfill the "burden of proof" principle as referred to in Article 163 HIR/283 Rbg. Therefore, before the judge considers the law, the court's decision must first include the considerations in the subject matter of the case. The legal consequences are:
  a) If the decision handed down does not follow the composition of the formulation outlined in the article above, the decision is invalid and must be annulled;
  b) A decision that does not include the arguments for the lawsuit is considered to have no basis as a starting point and is contrary to Article 184 Paragraph (1) HIR, Article 195 RBg;
  c) Failure to include replicas, duplicates and conclusions causing the decision to fail completing the requirements;
  d) The miss of a brief description of the summary and scope of evidence under consideration. It is Contrary to the principle of "burden of proof" as referred to in Article 163 HIR/283 RBg.

4. Legal considerations as one of the principles of Court Verdicts
   Being contrary to the principle of the Civil Procedure Code stating "The decision shall be completed with rationales", these reasons are in the form of legal considerations which are essentially the soul and essence of the decision. Legal considerations contain analysis, arguments, opinions or legal conclusions from judges examining cases.
   The party shall provide some consideration by an objective and rational argument to prove the argument or rebuttal is in accordance with the applicable legal provisions. If the decision is not complete, and by considering the evidence and the value of the strength of evidence, it will cause decision to be insufficient for legal considerations or *onvoldoende geomotiverd*, and it is contrary to Article 178 Paragraph (1) HIR, Article 189 Rbg and Article 18 of Act Number 14 of 1970 as amended by Law Number 35 of 1999 now Article 25 of Act Number 4 of 2004 (now in Chapter XI of Article 50 Paragraph (1) of Act Number 48 of 2009 concerning Judicial Power).
   In the implementation, insufficient consideration for making a decision may cause legal disability. Moreover when it does not consider facts and evidence carefully. Therefore, it needs to reconsider previous verdicts, for example the Court Decision No. 4434 K/Sip/1986, granting a lawsuit without careful consideration of the opposite party's evidence, it is declared to have not been sufficiently considered, and Decision No. 2461 K/Pdt /1984 emphasized that the decision handed down was not sufficiently considered, because the judge did not carefully assess all the facts found in the trial. Likewise, the Supreme Court Decision No. 672 K/Sip/1972 emphasized that the decision must be annulled, because there was no enough consideration (*niet onvoldoende geomotiverd*)) regarding the evidence and the value of evidence strength.[2]
5. Legal considerations include legal discovery and law creation
   Legal considerations are legal discoveries/law creations by judges. Several terms in legal discovery are often associated with formulating regulations that apply generally to everyone. It is usually done by legislators. Judges are also possible as lawmakers (judge made law) if their decisions become *vaste*

1 Herowati Poesoko in Ivida Dewi Amrih Suci, *Ibid*, P. 361.
2 Herowati Poesoko in Ivida Dewi Amrih Suci, *Ibid*, P. 363.

jurisprudence followed by judges, and are guidelines for the public:[1]

- *Rechstoepassing* (Application of Law), namely applying legal regulations to abstract event. Thus, it shall initially make concrete events into legal events so that the legal regulations can be applied;
- *Rechtshandhaving* (Implementation of Law) means carrying out the law with our without the occurrence of dispute/violation;
- *Rechtschepping* (Creation of Law) means that the law was not exist before, it was then created;
  Rechtsvinding (Law Making), (legal discovery or law making) does not mean that law does not exist. The law exists and needs to be explored and found. Law is not always a rule (*das sollen*) whether written or not, but it can also be in the form of behavior or events (*das sein*). From that behavior, the law can actually be explored or found (see Article 28 of Act No. 4 of 2004). Therefore, the term legal discovery is felt faster.
  Interpretation and legal construction method can be applied in law discovery or law creation. Legal science recognizes various methods of interpretation that have a hermeneutic character. Legal scientists must be able to account for each selection of a particular method of interpretation. Legal interpretation methods include:[2]

1. Grammatical Interpretation, interpreting a legal term or a part of a sentence according to everyday language or legal language;
2. Systematic Interpretation, i.e., interpreting a legal provision;
3. *Wets en rechtshistorisch interpretatie*, tracing the intent of the formation of a law is a "wetshistorische interpretatie". An effort to find answers to a legal issue by tracing the development of law (rules) refers to *"historische interpretatie"*;
4. Comparative interpretation of law. To seek a legal issue resolution by comparing various legal systems;
5. Anticipatory interpretation answers a legal issue based on a rule that has not been applied;
   Teleological interpretation. Every interpretation is essentially teleological.

In addition to the interpretation method as mentioned above, a legal construction method (exposition method) is also known which is meant to be a method to explain words or form definition (law) not to explain goods, meaning that this method is a tool used to compile legal materials, which is carried out systematically in the form of language and correct terms. Although the purpose of the legal construction is the judge's decision, in making legal opinions, especially when analyzing legal issues, this legal construction can be used. According to Rudolph von Jhering as quoted by Achmad Ali, there are 3 (three) main requirements to carry out legal construction, namely:[3]

1. Legal construction must be able to cover all areas of positive law;
2. In making the construction shall not maintain logical contradiction;
3. The construction reflects the beauty factor, namely the construction is not something made up and it must be able to give a clear representation of something.

In addition to consider whether or not the events submitted to them are true, judges must be fair to the litigants based on the applicable Civil Procedure Code, because the Civil Procedure Code is binding.[4]
Therefore, judges, as legal stabilizers[5], must truly master the Civil Procedure Code. Lack of knowledge about procedural law in general or civil procedural law in particular, or not mastering procedural law is one of the factors that hinders the course of the judiciary,[6] and even can harm the litigants.[7]

The judge's legal consideration (*ratio Decidendi*) is an axiology or usability value in the Bankruptcy Procedure Law and its use is to make legal concepts or legal discoveries, where the legal findings are to correct vague norms and conflict norms. Inconsistency of vague norms will confuse *justiabelen* to seek for justice in bankruptcy law.

2.3 Principles of Fairness for Renvoi Procedures in Bankruptcy Cases

The principle of justice cannot be separated from three general teachings about certainty, expediency and justice. To analyze the actualization of *renvoi* procedure in the Bankruptcy Law after finding its etymological meaning, it is continued with a teleological interpretation in order to examine the theory of 3 (three) general teachings of legal concepts. The researcher adopts the theory from Gustav Radbruch well known among legal experts. In the journal Heather Leawood, it is written "*Radbruch finds that although the idea of the law is justice, this alone does not fully exhaust the concept of law. Justice, he says, "leaves open the two questions, whom to consider*

1 Sudikno Mertokusumo in Ivida Dewi Amrih Suci, *Ibid*, P. 363.
2 Phillipus M. Hadjon in Ivida Dewi Amrih Suci, *Ibid*, P. 364.
3 Achmad Ali in Ivida Dewi Amrih Suci, *Ibid*, P. 365.
4 Herowati Poesoko in Ivida Dewi Amrih Suci, *Ibid*, P 365.
5 *Ibid.*
6 *Ibid*, in. 366.
7 *Loc. Cit.*

equal or different and how to treat them".[1]

Furthermore, according to Radbruch "I am of the opinion that after twelve years of denying legal certainty, we need more than ever to arm ourselves with considerations of "legal form" in order to resist the understandable temptations that can easily confront every person who has lived through those years of menace and oppression. We must seek justice, but at the same time attend to legal certainty, for it is itself a component of justice").[2]

The legal system built to obtain legal certainty which is a component of justice is to analyze the legal system. It is in accordance with Kees Schuit, namely the ideal element, the operational element and the actual element.[3]

The meaning of the r*envoi* procedure is in accordance with the ideal element i.e., a request for verifying the receivables by the creditor due to the curator's objection to the creditor's receivables as a result of the trustee's matching of receivables, and the procedure is submitted to the commercial court.

Essentially, the *renvoi* procedure has a substantive value of justice that prioritizes the *doelmatigheid* principle. It can be interpreted that the judge's decision does not only use positive legal references, but also by prioritizing the consideration of the principle of expediency according to the judge's belief in order to restore the rights of the creditors.[4]

The operational element of *renvoi* procedure is an institution or organization, namely the commercial court. Since the curator is not authorized to make determinations, the determination submitted by the creditor is a legal defect. The position and authority of the curator must be clear in order to achieve the value of justice and legal certainty. If the curator is interpreted as an institution that provides determination on the verification of receivables, then it is a mall interpretation by the legislators. The *renvoi* procedure is submitted because it is a procedure for re-correction or recalculation of the creditor's receivables whose examination is submitted to the court.[5]

The actual element is the court's decision on the *renvoi* case. It can be analyzed from the ratio *Decidendi* decisions having permanent legal force (*inkracht van gewijsde*). *Renvoi* procedure is a procedure for submitting a recalculation of receivables verification submitted to the court. Thus, that the nature of the law is a procedure. Renvoi procedure belongs to formal procedural law, where the law is about defending a right. Likewise, the nature of procedural law contains orders and is coercive (*dwingendrecht*). Therefore, a norm that regulates *renvoi* procedure must be clear and firm.[6]

It is not appropriate that the arrangement of the judge's legal considerations (ratio *Decidendi*) above is based on Article 127 Paragraph (1) of the Bankruptcy Law. The arrangement of the article, either its elements or legal material, does not have the characteristics of *renvoi* procedure. For, the judge's legal considerations (ratio *Decidendi*) as described above is a method of finding the judge's law (rechtsvinding/law making). This method can be done by using the judge's legal interpretations. It can also be done using the judge's legal construction. As judges (judge made law), if the judges' decision becomes permanent jurisprudence (vaste jurisprudence) it can be followed by judges and becomes a guideline for the general public. This method is applied by judges because the law already exists, but it still needs to be explored further.[7]

The improvement concept to Article 127 Paragraph (1) of the Bankruptcy Law is carried out to ensure and confirm the arrangement of *renvoi* procedure, and to have the value of legal certainty, justice, and expediency. The value of legal certainty must be firmly and clearly stated, for justice seekers will be able to interpret the norm correctly.

Meanwhile, the value of justice must be firmly and clearly stated to avoid injuring people for seeking justice. They will be able to have a right interpretation of the norm. It must have the value of expediency. When the creditor denied the claims for receivables, then a *renvoi* procedure to verify the bills can be submitted by the justice-seeking community. Thus, improvements to the norms of Article 127 Paragraph (1) of the Bankruptcy Law have the value of legal certainty, justice and expediency.[8]

Renvoi procedure based on Gustav Radbruch's three general ideas to be applied in formal law to maintain material law (*dwingendrecht*) which are coercive shall prioritize its legal certainty. Legal certainty is built from the legal system contained in the norms. It is analyzed from the theory of Kees Schuit's legal system, namely the ideal, operational and actual elements. The content of the norms governing *renvoi* procedure must have interrelated meaning, authority and actuality. If the meaning is incorrect when it is applied for court

1 Heather Leawood in Ivida Dewi Amrih Suci*, Ibid*, P. 14.
2 *Ibid*, P. 15.
3 Kees Schuit in J. J. H. Bruggink, *Refelksi Hukum*, translation Arif Sidharta, 1995, Citra Aditya Bakti, Bandung, P. 140.
4 Ivida Dewi Amrih Suci, *Op Cit*. P. 429.
5 *Ibid*, P. 431.
6 *Ibid*, P. 413-414.
7 Sudikno Mertokusumo in Ivida Dewi Amrih Suci*, Ibid*, P. 421.
8 *Ibid*, P. 428.

examinations, then the elements will not be fulfilled. Likewise, if the authority is not in accordance with the competence, then the norm is incorrect which cause the regulations to have no legal certainty. The formal law which is coercive (*dwingendrecht*) is the main point to achieve justice. Therefore, if the *renvoi* procedure is a step for law seekers (*justiabelen*) in bankruptcy law, it must prioritize the principle of legal certainty, and this principle must fulfill the ideal, operational and actual elements.

3. Conclusion

The norm of Article 127 Paragraph (1) is not only reflected as a norm for justice seekers (*justiabelen*). To have legal certainty, a norm shall guarantee the rights of the people. When a norm has legal certainty as coercive formal law (*dwingendrecht*), it must also have correct meaning system. To achieve the value of legal certainty, it shall first improve the meaning contained. It is done to obtain the value of justice for *justiabelen.* Therefore, the *renvoi* procedure as a form of justice for justice seekers (*justiabelen*) in bankruptcy law must consider the legal system, especially the system of meaning.

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