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Interpretation in Simple Evidence Against Bankruptcy Matter and Suspension of Debt Payment Obligations in Indonesia

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Abstract

Key words:

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At the cassation level in the Supreme Court, the application of the procedural Legal for proving bankruptcy is generally applied through the interpretation method due to the unclear norms of simple proof. This was seen in the practice of Bankruptcy Legal in Indonesia and verified in the case of PT. Telkomsel, this study examines the case in the light of the Bankruptcy Law. The normative legal research or doctrinal research method was used to carry out this study. The research design adopted three types of approaches: the legal approach, the matter approach, and the conceptual approach. This methodology was in compliance with the recommendations of [Joni Emirzon \(2007\)](#) who emphasized on the need of legal research sources in order to solve legal problems in any research study. Findings revealed that the judges in the Commercial Court expanded the definition of debt falling under Bankruptcy Legal - Suspension of Debt Payment Obligations, which received many criticisms from various parties. The Supreme court reverted the verdict stating that the Commercial Court is not obliged to reject bankruptcy provisions in the Law. The study implications include using the Insolvency Test model in future bankruptcy laws to make it easier to see evidence of a Bankruptcy matter include simple evidence or ordinary evidence.

Introduction

The simple principle of proof in bankruptcy matter in Indonesian courts has received increasing attention among the public, especially practitioners and academics ([Llp & Levin, 2013](#)), especially since the issuance of regulations on bankruptcy, namely Government Regulation in Lieu of Legal No. 1 of 1998. The promulgation of this regulation on April 22, 1998 ended the New Message era of President Soeharto's administration. This Regulation took about one hundred and twenty days to come in effect from the date of promulgation. This regulation can be said to be a milestone in the continuation (*estafette*) of the previous bankruptcy regulations and continued with subsequent bankruptcy regulations. The series of bankruptcy regulations has continued from the colonial period to the present day. The previous bankruptcy regulation was the *Faillissements-Verordening* contained in the *Staatsblad* of 1905 No. 217 in conjunction with the *Staatsblad* No. 348 of 1906. After the Government Regulation in Lieu of Legal No. 1 of 1998, the next bankruptcy law was Legal No. 4 of 1998 and later Legal No. 37 of 2004.

The principle of proving bankruptcy is different from the principle of proving civil Legal suits in general. The principle of proof in bankruptcy Legal is known as the simple proof principle or *summierlijk* ([Adhi Hutama & Rudy, 2020](#)). Since the Government in Lieu of Legal No. 1 of 1998 came into effect, a special court has been established to handle bankruptcy matters, namely the Commercial Court. The institution that handles bankruptcy matter is continued in Legal No. 37 of 2004 and its authority

has been expanded, namely in addition to adjudicating bankruptcy matter and suspension of debt payment obligations (Badriyah et al., 2020). Legal No. 37 of 2004 issued guidelines concerning bankruptcy and suspension of debt payment obligations included components like providing a collective framework to settle all debts of a bankrupt entity simultaneously, whenever the debt was due. Bankruptcy is required to use some or all assets to pay off debts (Jayadi, 2019). This law also sustained rules including determining which assets should be used to pay versus which bankrupt assets may be retained. (Noor, 2020). These rules also varied with the status of the bankrupt company, whether individual or the government (Prusak, 2018).

Moreover, the law (Legal No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations) regulated how assets and income should be used to repay and distributed among creditors. In Indonesia, the resolution of bankruptcy legal problems can be done with simple evidence (Marisi et al., 2019). Through a simple principle of evidence, bankruptcy procedural laws have been stipulated as a legal norm in this law or in other prevailing laws and regulations in Indonesia. (Horváthová & Mokrišová, 2018). Therefore, when compared to the formation of laws, the Government Regulation of Legal No. 1 of 1998 was less than perfect in reviewing its legal principles and norms considering that the time for its preparation was very urgent.

The criticism of the Government Regulation on Legal No. 1 of 1998 / Legal No. 4 of 1998 and even Legal No. 37 of 2004 concerning Bankruptcy and Suspension of Obligation to Pay Debts can be seen as input to revise the laws or even formulating new laws. The principle of simple evidence or simple proof does not stand alone but is always associated with a simple trial in court. The principle of simple proof requires that there are two or more creditors; that there are debts that are due and collectible; and that such dues have not been paid in full by the debtor.

In addition to "evidence" concerning simple legal applications, the law adopts a simple course, namely a trial process. However, there are contradictions and differences in interpretation by legal enforcers and courts. The contradictory and normative Legal No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations opened up opportunities for judges to interpret the bankruptcy procedural Legal as regulated in Article 299 of Legal No. 37 of 2004 concerning Bankruptcy and Postponement of Payments. Article 299 of Legal No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations confirms that unless otherwise stipulated in this Legal, the applicable procedural Legal is the Civil Procedure Code (Noor, 2020). Hence, if the bankruptcy procedure Legal is compared with the general civil procedure Legal, the evidence in the general civil procedure Legal is comprehensive evidence. The parties are given the widest possible freedom to prove the arguments of their Legal suit and the arguments against it. They can use the evidence provided by the Civil Procedure Code which regulates norms. If needed, the parties can still bring in one or more experts.

Differences in interpretation and differences of opinion between one Commercial Court and another or between the Commercial Court and the Supreme Court are sometimes considered controversial decisions. A few decisions, however, are also responded to by the community as controversial decisions such as the decision of PT. Telkomsel. In this case, the applicant for bankruptcy was a company named PT. Prima Jaya Informatika (PJI) while the defendant for the bankruptcy was a company named PT. Cellular Telecommunications (Telkomsel). The bankruptcy applicant was a Limited Liability Company that was established for a long time in accordance with the applicable legal rules in Indonesia, namely the Deed of Establishment No. 11 dated April 4, 2011. This has subsequently been adjusted to Law no. 40 of 2007 concerning Limited Liability Companies. It was also a company engaged in Information Technology, among others as a distributor and sales of cellular phone vouchers and cellular phone starter packs, having its domicile in North Jakarta and having its office at Graha MIK 8th Floor, Taman Perkantoran Kuningan, Setiabudi Selatan Street, Jakarta.

The bankruptcy applicant in carrying out its business activities had entered into a legal agreement with the bankruptcy respondent as stated in the Cooperation Agreement on the Sale of Telkomsel Products between PT. Cellular Telecommunications and PT. Prima Jaya Informatika vide No. PKS-Telkomsel OKS.59/LG.05/SL-01/VI/2011, according to which PT. JPI was appointed as a distributor of the pre-approved Refill Voucher Prima Card. This agreement was based on the provisions of Article 5.1 of the Cooperation Agreement concerning the Sale of Telkomsel Products and both companies had agreed to keep the agreement valid for 2 (two) years from June 1, 2011, to June 1, 2013.

According to the provisions of Article 7.2 of the Cooperation Agreement, the bankruptcy Respondent PT. Telkomsel was obliged to provide Refill Vouchers specifically for sports in a fair and minimum amount. It was also agreed that PT. Prima Jaya Informatics would sell 120,000,000 (one hundred and twenty million) vouchers consisting of Rp. 25,000.00 (twenty-five rupiah) and Rp. 50,000.00 (fifty rupiahs) each year. The provisions of Article 7.3 of the Cooperation Agreement also stated that the bankruptcy Respondent was obliged to provide a sports-themed Prepaid Starter Card in the amount of at least Rp. 10,000,000 (ten million) annually to be sold by the bankruptcy Applicant PT. ISP. The mechanism for submitting and taking product allocations was determined from the beginning by the bankruptcy Respondent and the obligations of each party were in accordance with the agreement. Hence, there was no issue to run the business smoothly without any problems.

However, at the beginning of the second year, according to the Petitioner, a problem arose, namely when the bankruptcy applicant PT. PJI submitted 2 (two) Buy messages, (1) first Buy Message No. PO/PJI-

AK/VI/2012/00000027 dated June 20, 2012, amounting to Rp. 2,595,000,000.00 (two billion five hundred ninety-five million rupiahs) and (2) second Buy Message No. PO/PJI-AK/VI/2012/00000028 dated June 21, 2012, amounting to Rp3,025,000,000.00 (three billion twenty-five million rupiahs). The first message was addressed to the Bankrupt Respondent PT. Cellular Telecommunications with the following details: (a) Prime Cards of 200,000 at a price of @ Rp. 1,000.00 totaling Rp. 200,000,000.00, (b) Vouchers of 25,000 nominations of 80,000 at a price of @ Rp. 24,000,00 totaling Rp. 1,920,000,000.00, and (c) Voucher nomination 50,000 as much as 10,000 at a price @ Rp. 47,500,00 totaling Rp. 475,000,000.00.

The second Buy Message was also addressed to the Bankrupt Respondent PT. Cellular Telecommunications with the following details: (a) Prime Card of 200,000 at a price of @ Rp. 24.000,00 totaling Rp. 2,16,000,000.00, and (b) Voucher of 50,000 nominations of 10,000 at a price of @ Rp 47,500,00 Total Rp 475,000,000.00. these messages violated the mechanism for Submission and Withdrawal of Telkomsel Voucher and Prima Card Allocations, as it was regulated by a mutual agreement in PT Telkomsel's letter dated March 27, 2012 stating a few norms , namely: (1) PT. Prima Jaya Informatika should submit a Buy Message (PO) no later than Wednesday at 10.00 WB at the latest, (2) Buy Messages sent will then be subject to an approval process and PT. Prima Jaya Informatika can only make payments after receiving information that the PO submitted has been approved, (3) Payment for the PO would be made on Monday no later than 12.00 WB, and (4) Pick-up of goods should be carried out no later than 2 (two) days after Buy Message payments.

When the Buy Messages (POs) were received by the Bankrupt Petitioner (PT. Prima Jaya Informatika), the Bankrupt Respondent (PT. Telkomsel) issued a rejection via two Emails: (1) first Email dated June 20, 2012 for the rejection of Buy Message No. PO/PJI-AK/VI/2012/00000027 dated June 20, 2012, stating that PT. Telkomsel did not receive Messages regarding the distribution of PRIMA products, therefore it is not liable to fulfill the allocation request; and (2) second Email dated June 21, 2012, rejecting the Puchase Message No. PO/PJI-AK/VI/2012/00000027 dated June 21, 2012, stating to temporarily stop the allocation of PRIMA products.

Not accepting the argument, the Bankruptcy Petitioner PT. Prima Jaya Informatics considered the amounts of both Buy Messages (PO) as the debt of the Respondent, PT. Telkomsel. The debt matured to a total of Rp. 5,260,000,000.00 (five billion two hundred and sixty million rupiah) on June 25, 2012. The Bankruptcy Applicant PT. Prima Jaya Informatika attempted to collect the debt from the Bankrupt Respondent PT. Telkomsel by conveying the first and last warning on June 28, 2012, to implement the Cooperation Agreement Telkomsel PKS No.: PKS.591/LG.05/SL-01/VI/2011 dated June 1, 2012. However, until this bankruptcy petition was registered at the Jakarta Commercial Court Center, the Respondent PT. Cellular Telecommunications had not paid its debts.

It was shared with the court that PT. Cellular Telecommunications already had outstanding debts to other creditors, namely PT. Extent Media Indonesia for the Implementation of Mobile Data Content Service Cooperation. This was proven from outstanding Invoices and thus the evidences (proofs) fulfilled the requirements of bankruptcy as stipulated in Article 2 paragraph (1) of Legal No. 37 of 2004.

On the basis of these facts, because the Respondent Bankruptcy, PT. Telkomsel had not fulfilled its obligations and that he was guilty for the non-compliance of the cooperation agreement since he had failed to sell the Refill Vouchers and Prepaid Prime Cards, the Bankruptcy Applicant PT. Prima Jaya Informatika filed an application for bankruptcy to the Central Jakarta Commercial Court, requesting the following decision: First, accepting the petition of bankruptcy; second, declaring the Respondent for Bankruptcy: PT. Cellular Telecommunications, with all legal consequences; third, to appoint a Commercial Judge at the Central Jakarta Commercial Court as the Supervisory Judge to take up the bankruptcy process of the Bankrupt Respondent. The fourth request was to appoint Brothers. Feri S. Samad, SH., MH as Curator in the bankruptcy process of the Bankrupt Respondent; the fifth request was to determine that the Curator's Fee will be determined later after the Curator has finished carrying out his duties; . and finally, to direct the Bankrupt Respondent to pay the court fees a well. When the case was discussed, there were seen differences in interpretation of simple evidences between judges at the Commercial Court and the Supreme Court as well as advocates. It was due to the fact that there were no clear parameters regarding simple proof norms in the bankruptcy procedural Legal and the Suspension of Obligation for Payment of Debts. Hence, the judges were given full discretion to deal this matter in a concrete atmosphere ([Damaryanti, Sebayang, & Annurdi, 2018](#)). Moreover, PT. Telkomsel was a company that was still healthy but could be bankrupted. This happened because the Indonesian bankruptcy legal regime adhered to the "Simply Doesn't Pay" model instead of the "Insolvency Test". The absence of this Insolvency Test was detrimental to the debtor.

Seeing the controversies and the complications, it was therefore necessary to explore further what exactly was the reason for the simple existence of Legal No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. A solvent company can go bankrupt and there can be different interpretations in applying the principle of simple proof in bankruptcy Legal as well as the answers/responses and evidence of the respondent for bankruptcy. Such legal issues and their interpretations are the subjects of the current study.

Research Method

The type of research used in this research is normative legal research or doctrinal research. The normative legal research in this study was carried out using a statutory approach and a matter approach. There are two kinds of approaches used to find as much information as possible that is being

researched so that it can be analyzed to solve a predetermined problem. With the evidentiary program approach, on the other hand, this research was also carried out using a civil procedural approach. The nature of this research was prescriptive, which was to answer pre-determined problems. The research design used in this study adopted three types of approaches: the legal approach, the matter approach, and the conceptual approach. The legal approach and the matter approaches were carried out by reviewing several Legal prevailing in Indonesia, including Legal No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. It also studied a few past decisions of the Commercial Court and the Supreme Court. While the conceptual approach wa carried out by examining books, journals and other scientific works related to the topic of this research. The matter approach required the need to determine the ratio of decisions / legal reasons used by judges to arrive at their decisions, followed by the conceptual approach to triangulate or verify these judgements in the light of the existing legal rules. The researchers also referred to the principles of Legal and the views of past research scholars or legal doctrines on this subject.

By making use of these three approaches, it was hoped that we would be able to collect interpretive information about simple evidence applicable to Legal No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations in Indonesia. Such information could also be analyzed by applying theories that have been determined in this study. Moreover, the sources of legal materials used in this study were primary legal materials, secondary legal materials, and non-legal or tertiary legal materials obtained from literature studies and interviews. In order to facilitate the classification of legal materials into primary, secondary, and legal materials, the materials were obtained in the form of Commercial Court Decisions and various Acts and Laws, such as *Faillissements-Verordening Staatsblad* of Year 1905 No. 217 jo.; *Staatsblad* of 1906 No. 348; Government Regulation in Lieu of Legal No. 1 of 1998/Legal No. 4 of 1998, and Legal No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, and so on. These Laws were compiled and classified to support the previously determined formulation. This methodology was in compliance with the recommendations of [Joni Emirzon \(2007\)](#) who emphasized on the need of legal research sources in order to solve legal problems in any research study.

Results

Commercial Court at the Central Jakarta District Court in the matter of PT. Telkomsel had accepted the bankruptcy petition from PT. Prima Jaya Informatika (PT.PJI) and before making its decision, considered the facts which were the basis of its decision (*ratio decidendi*), including the exception of the bankruptcy Respondent. The Respondent's exception concerned three things, namely: first, the exception of the authority that the Central Jakarta Commercial Court was not authorized to examine and

hear the matter. Second, it was an application for a vague statement of bankruptcy (*Exceptio obscurum Libelum*), and Third, exception without rights or reasons because there was no debt that was due (*Exceptio Onrechtmatige of Ongegrond*).

In the subject matter of the bankruptcy, in essence, it was necessary to provide an answer to the question whether the bankruptcy Respondent's obligations had arisen after the bankruptcy Applicant made payments on the PO approved by the bankruptcy Respondent. The actions of the bankruptcy Respondent, which had not given approval to the bankruptcy applicant's PO, cannot be said to have caused a loss to the bankruptcy applicant. Such loss will only arise if after the bankruptcy Applicant had made a payment, and the bankruptcy Respondent had not provided the products that have been paid for.

The Panel of Judges rejected all exceptions of the Respondent for bankruptcy on the following grounds, namely: first, that the quo matter was a petition for a declaration of bankruptcy, and the petitioner's bankruptcy petition according to the Panel met the requirements according to the Bankruptcy Legal and PKPU. Hence, it should be submitted through the Commercial Court and subjected to the provisions of the relevant Legal. In this case, Legal No. 37 of 2004 concerning bankruptcy and Postponement of Debt Payment Obligations was the special Legal (*lex specialist*). The second exception of the bankruptcy was that the Respondent's claim was seen as the vague exception of the matter. Further, the consideration of the Panel of Judges in the subject matter considered a requirement of two elements for the declaration of bankruptcy: 1) Existence of one debt that has matured and is collectible and 2) Existence of other creditors.

The facts were once again put before the Commercial Court. The bankruptcy applicant sent to the bankruptcy Respondent (two) Buy Messages, namely No. PO/PJI/AK/VI/2012/ 00000027 dated June 20, 2012, amounting to Rp. 2,595,000,000.00 and No. PO/PJI-AK/VI/2012/00000027 dated June 21, 2012, amounting to Rp. 3,025,000,000.00); the total amounts coming to Rp. 5,62,000,000.00 (five billion six hundred and twenty million rupiahs). The Respondent had replied with two Emails, dated June 20, 2012, and June 21, 2012, whose contents were unable to fulfill the request for allocation and temporarily suspended the allocation of prime products.

The Central Jakarta Commercial Court considered the key articles of simple proof, namely Article 2 paragraph (1) concerning the requirements for a declaration of bankruptcy and Article 8 paragraph (4) of Legal No. 37 of 2004 concerning simple evidence. The conditions for granting the declaration of bankruptcy according to the Commercial Court, in this matter, were 1) "There is one debt that has matured and can be collected" and 2) "there is another creditor". Both of these conditions were fully met. The consideration of the Panel of Judges of the Commercial Court in the

main matter was as follows. First, that the "sale and Buy object" was in the form of vouchers and starter packs, in accordance with the statement of the Petitioner's Expert, namely Dr. Johanes Johansyah, SH.MH, including goods that can be valued in money. If the goods were not submitted, according to the agreement agreed upon by the applicant and the Respondent, it would be considered a "debt" in the broadest sense, thus the definition of "debt" was also fulfilled. Second, the statement of Expert Dr. Johanes Johansyah, SH.MH. explained that when a debt can be said to be due and collectible if the date has been determined in the agreement to deliver the money or goods or services. However, if the date is not stated in the agreement, what is seen are the actions that the maturity date was declared and debt was determined according to the Bankruptcy Act.

The element "the existence of other creditors" was denied by the Respondent for bankruptcy PT. Telkomsel by submitting evidence T.13 in the form of payment of PT.Extent Media Indonesia's invoices for the period August 2011 to October 2011 and evidence T.14 concerning proof of payment of Cancellation of Netting Invoice Inv-TSEL No. 010/IX/2012 August 2012 period. Based on this denial, the Commercial Court considered that because evidence T.13 and evidence T.14 were photocopies and did not have the originals, the documentary evidence could not be considered must be set aside (MARI Decision No. 3609 K /Pdt/1985, dated December 4, 1987). Therefore, the argument of the applicant that in addition to having a debt to the Petitioner of the two POs amounting to Rp. 5,62,000,000.00 (five billion six hundred and twenty million rupiahs), he also has a debt to Other Creditors, namely PT. Extent Media Indonesia in the amount of Rp. 40,326,213,794.00 (forty billion three hundred twenty-six million two hundred thirteen thousand seven hundred and ninety-four rupiah) was not accepted.

• *The decision of the Commercial Court at the Central Jakarta District Court No. 48/Palit/2012/PN Niaga.Jkt.Pst dated September 14, 2012*

Based on the considerations above, the Commercial Court at the Central Jakarta District Court handed down its decision as follows: "In Exception, the court rejects the exception of the Bankrupt Respondent in its entirety. The main points of the case are namely: First, granting the petition for a declaration of bankruptcy from the Petitioner to the Respondent for bankruptcy in its entirety. Second, declaring that the Respondent was Bankrupt, namely PT Telekomunikasi Selular, a Limited Liability Company was engaged in the telecommunications type business, last known having its address in Jakarta, having its address at Wisma Mulia Mezzanine Floor-19, Gatot Subroto Street No. 42, South Jakarta-12950 bankrupt with all the legal consequences. Third, the court appointed Sutoto Adiputro, SH., MH, Commercial Court Judge at the Central Jakarta District Court as Supervisory Judge.

Fourth, the court appointed (a) Feri S.Samad, SH.MH., Curator & Registered Administrator as shown in the Certificate of Registration of Curator and Administrator No. AHU.AH.04.03-27 having an office at Royal Palace C.10

Jalan Prof. Supomo No. 178 A South Jakarta, (b) Edino Girsang, SH, Curator & Registered Administrator as shown in the Certificate of Registration of Curator and Administrator No. SBPKP AHU.AH.04.03-21 having an office at the Office of Curators and Management at Menara Thamrin, MH. Thamrin Street Kav 3, Central Jakarta, (c) Mokhammad Sadikin, the Curator and Management registered according to the Certificate of Registration for Curators and Management No. SBPKP AHU.AH.04.03-28 having an office at the Curator and Management Office on Setiabudi Timur I Street, No. 20 South Jakarta as Curator for the Respondent for bankruptcy. Fifth, the court ordered the bankruptcy Respondent to pay court fees in the amount of Rp416,000.00 (four hundred and sixteen thousand rupiahs).

• *Considerations of the Supreme Court of the Republic of Indonesia*
Subsequent to the decision of the Central Jakarta Commercial Court, the defendant PT. Telkomsel filed a legal cassation for the reasons contained in its memorandum of cassation, among others: first, the Panel of Judges of the Central Jakarta Commercial Court matter No. 48/Palit/2012/PN, Niaga.Jkt.Pst dated September 14, 2012, did not understand or was very wrong in understanding the Legal engagement. The Cassation alleged that the Respondent/Bankrupt Petitioner PT. Prima Jaya Informatika did not fulfill its obligation to achieve the sales target of 10,000,000 (ten million rupiahs) of the prepaid card, whereas of May 31, 2012, the Respondent of Cassation was only able to sell 524 (five hundred and twenty-four) prepaid cards or only 8% of the original prepaid card sales plan target. Second, the Respondent also did not pay the Buy Message No. PO/PJI-AK/V/2012/00000026 dated May 9, 2012, amounting to 4,800,000,000.00 Rupiah (four billion eight hundred million rupiahs) even though the Message had been approved and was due on Monday, June 25, 2012. Third, that the Respondent had not made any deposit or payment in the amount of 2,595,000,000.00 Rupiah (two billion five hundred and ninety-five million rupiahs) for Buy Message No. PO/PJI/AK/VI/2012/00000027 dated June 20, 2012, and also did not make a payment of 3,025,000,000.00 Rupiah (three billion two five million rupiahs) against Buy Message No. PO/PJI-AK/VI/2012/00000027 dated June 21, 2012. Hence, it was not possible for the Respondent of Cassation to claim the receivables amounting to 5,62,000,000.00 Rupiah (2,595,000,000.00 Rupiah + Rp. 3,025,000,000.00 Rupiah). The Cassation Respondent himself has not made any payments to the Cassation Petitioner in connection with the two Buy Messages.

Fourth, that the examination of this matter cannot be carried out simply as intended by Article 8 paragraph (4) of the UUK-PKPU and therefore the examination of this matter was not the authority of the Commercial Court at the Central Jakarta District Court but had to be examined and decided through the District Court. The Cassation Petitioner rejected two POs, namely, Buy Message No. PO/PJI/AK/VI/2012/00000027 dated June 20, 2012, amounting to 2,595,000,000.00 Rupiah (two billion five hundred ninety-five million rupiahs) for Buy Message and Buy Message No. PO/PJI-AK/VI/2012/00000027 dated June 21, 2012, amounting to Rp.

3,025,000,000 Rupiah and Refill Vouchers as much as 120,000,000 Rupiah a year or until June 2012 which has been agreed upon.

Fifth, that the Petitioner for Cassation was a very healthy and well-managed Telecommunication company which continued to generate profits, as revealed in the 2011 Financial Report. The audited report showed a profit of 12,823,670,058,017.00 Rupiah (twelve trillion eight hundred and two thirty-three billion six hundred and seventy million fifty-eight thousand and seventeen rupiah). It can be commented here that the Cassation Petitioner's view was in line with the opinion of experts such as Sutan Remy Sjahdeini who said that the universally applicable principle was that a debtor is eligible to be declared bankrupt only if the debtor is in a state of insolvency. According to various bankruptcy Legals in various countries, the condition that the debtor is in a state of insolvency is one of the absolute requirements for a debtor to be declared bankrupt by the court. On the other hand, if the total value of the debtor's assets still exceeds the total amount owed, the debtor is still in a solvent state and therefore cannot be declared bankrupt by the court.

According to the Supreme Court, the judges in the lower court had misapplied the Legal. The proof, in this matter, was not simple because the debt problem had been denied by the bankruptcy Respondent/Cassation Petitioner. The Supreme Court's consideration read thus: "Considering that the reasons for the cassation can be justified because after carefully examining the *judex facti*/Central Jakarta Commercial Court decision, it turns out that *judex facti* has wrongly applied the Legal because it is true that there is a debt of the Respondent to the Petitioner, but this matter requires simple proof. Because the Petitioner's argument regarding the existence of the Respondent's debt to the Petitioner turned out to be refuted by the Respondent (bankrupt), so it does not meet the provisions as stipulated in Article 8 paragraph (4) concerning Legal No. 37 of 2004 concerning Bankruptcy and Postponement of Obligation for Payment of Debt". Hence, based on the above-mentioned legal considerations, the Supreme Court handed down its decision consisting of the "Trial" and "Self-Judgment" sections as described below.

a. The decision of the Supreme Court of the Republic of Indonesia No. 704 K/Pdt.Sus/2012 dated November 21, 2012

In the "Trial" session, the Supreme Court decided: First, to grant the cassation request from the Cassation Petitioner PT. the Cellular Telecommunications. Second, canceling the Decision of the Commercial Court at the Central Jakarta District Court No. 48/Pailit/2012/PN.Niaga.Jkt. Pst dated September 14, 2012. In the session on "Judging Yourself", the Supreme Court decided: First, rejecting the Petitioner for Bankruptcy in its entirety, Second, to punish the Cassation Respondent/Bankrupt Petitioner to pay court fees at all levels of court which in this cassation level is set at 5,000,000.00 Rupiah (five million rupiah).

b. Considerations of the Review Board regarding the Curator Fee

The considerations of the Panel of Judges for PK were as follows: First, that the Panel of Judges Examining Matter No. 48/Pailit/2012/PN.Niaga.Jkt.Pst dated September 14, 2012, have determined the curator fee, In accordance with the Decree of the Minister of Justice No. M.09-HT.05.10 of 1998 September 22, 1998. In Article 2 paragraph (1) the Decree of the Minister of Justice was made in accordance with Legal No. 4 of 1998 which was declared no longer valid by Legal No. 37 of 2004. Article 2 paragraph (1) of the Regulation of the Minister of Justice states "that in the event that the application for a declaration of bankruptcy was rejected at the level of cassation or review, the amount of the curator fee was determined by the judge and charged to the debtor".

This was contrary to Article 17 paragraph (3) of Legal No. 37 of 2004 which stated "The costs as referred to in paragraph (2) (the bankruptcy decision was canceled) and were charged to the Applicant for the declaration of bankruptcy or to the Petitioner and Debtor in the comparison determined by the Panel of Judges. Second, the Panel of Judges regarding the curator fee should be stipulated in accordance with the Minister of Legal and Human Rights Regulation No. 1 of 2013 concerning Guidelines for Rewards for Curators and Management. Third, the curator fee in the decision on Matter No. 48/Pailit/2012/PN.Niaga.Jkt.Pst jo. No. 704 K/Pdt.Sus/2012 the curator was submitted with a bankruptcy fee of 587,232,227,000.00 Rupiah (five hundred eighty-seven million two hundred twenty-seven thousand rupiahs) with a calculation of 1% of 587,232,227,000.00 Rupiah without any details regarding the work that has been done, the capabilities and tariffs of the Curator; Fourth, that the authority to determine the burden to whom the curator fee was paid as the authority of the Panel of Judges.

c. Supreme Court Review Decision No. 43 PK/Pdt.Sus-Pailit/2013 dated 26 June 2013

PT. Prima Jaya Informatika as the bankruptcy applicant, who lost in the cassation examination, did not file a judicial review but instead filed a review of the Central Jakarta Commercial Court Decision No. 048/Palit/2012/PN Niaga.Jkt.Pst dated January 28, 2013, which has permanent legal force. The determination of the Commercial Court, in this matter, concerns the amount of the Curator Fee, which according to PT. Telkomsel is not legally grounded.

Stipulation of the Central Jakarta Commercial Court No. 048/Palit/2012/PN Niaga.Jkt.Pst dated January 28, 2013, also determined the fee for the Curator Team due to its bankruptcy and the bankruptcy costs of PT. Telkomsel. The Commercial Court determined that the Curator Team Fee was 293,616,000,000.00 Rupiah (two hundred ninety-three billion six hundred and sixteen million rupiahs) which was charged to the Petitioner PT. Prima Jaya Informatics and Bankrupt Debtor PT. Cellular Telecommunications each half of which is 146,808,000,000.00 Rupiah (one hundred and forty-six billion eight hundred and eighty-eight million rupiahs) and Bankruptcy Fees in the bankruptcy process of PT. Cellular

Telecommunications in the amount of 240,500,000,000.00 Rupiah (two hundred and forty billion five hundred million rupiahs) which is charged to the Bankrupt Petitioner PT. Prima Jaya Informatics and PT. Cellular Telecommunications, each amounting to 120,250,000,000.00 Rupiah (one hundred twenty billion two hundred and fifty million rupiah).

The decision of the Supreme Court in the Judicial Review No. 43 PK/Pdt.Sus-Pailit/2013 dated June 26, 2013, canceled the Decision of the Central Jakarta Commercial Court No. 048/Palit/2012/PN Niaga.Jkt.Pst dated January 28, 2013, whose ruling was partly "adjudicate." The first granted the petition for judicial review from the petitioner for judicial review of PT. the Cellular Telecommunications. Second, the Central Jakarta Commercial Court Decision No. 048/Palit/2012/PN Niaga.Jkt.Pst jo. Was canceled vide Supreme Court Decision No. 704 K/Pdt.Sus/2012 dated January 31, 2013. Meanwhile, in the "Retrial" section, the first clause stated the names of Petitioners: 1. Ferri S. Samad, SH., MH, 2. Edino Girsang, SH and 3. Mohamad Sadikin, SH/The Curator Team of PT. Cellular Telecommunications (in bankruptcy) was not acceptable. Second, the Respondents for Judicial Review/Curator Team was penalized to pay court fees at all levels of court and judicial review, which in the Judicial Review Examination was set at 10,000,000.00 Rupiah (ten million rupiah).

The source of the debt, in this matter, was an agreement in the form of "achievement" which according to the petitioner for bankruptcy was not implemented by the Respondent PT. Telkomsel. In principle, according to the author, there was no obligation from the Petitioner because it had not been approved by the Respondent and the price had not been paid by the Petitioner PT. Prima Jaya Informatika (PT.PJI) but the Commercial Court at the Central Jakarta District Court granted the bankruptcy petition from PT. Prima Jaya Informatika by considering the requirements for the petition for a declaration of bankruptcy referred to in Article 2 paragraph (1) of Legal No. 37 the Year 2004 concerning Bankruptcy and PKPU which consisted of: First, the Respondent had a debt to the Petitioner. Second, the Respondent had debts that have matured and can be billed to the petitioners, and third, the respondents have Debts to Other Creditors.

d. Considerations of the Judges of the Commercial Court in Matter No. 48/Pailit/2012/Pn.Niaga.Jkt.Pst dated September 14, 2012 as stated below

Regarding the Respondent Having Debt to the Applicant, the Respondent's debts to the bankruptcy applicant as contained in the petition were (1) Buy Message No. PO/PJI-AK/VI/2012/00000027 dated 20 June 2002 amounting to 2,595,000,000.00 Rupiah (two billion five hundred ninety-five million rupiahs) and (2) Buy Message No. PO/PJI-AK/VI/2012/00000028 dated June 21, 2012, amounted to 3,025,000,000.00 Rupiah (three billion twenty-five million rupiahs) for a total of 5,260,000,000.00 Rupiah (five billion two hundred and sixty million rupiah). The debt was also considered by the Commercial Court with the second element or condition, namely "there is one debt that has matured and can be collected". Regarding the "debt" in this matter, it was

not actually debt in the form of a sum of money as stated above but was a debt due to the bankruptcy Respondent not being willing to sell the Starter Card Voucher and Refill Card, the value of which has stated above (5,260,000,000.00 Rupiah, five billion two hundred and sixty million rupiah).

The case under study can summarized thus:

1. Since a debt is to be valued in money, the definition of debt according to the Commercial Court, was in rather a broad sense, with reference to Article 1234 of the Civil Code and Article 1458 of the Civil Code as well as expert opinions including that of Gunawan Wijaya, Sutan Remy Sjahdeini, and Johannes Johansyah, and Yan Apul. In this matter, Article 1234 of the Civil Code was an article on forms of achievement in an agreement while Article 1458 of the Civil Code is the principle of consensual agreement of the parties in a sale and Buy agreement. In accordance with the expert opinion that the Agreement with the bankruptcy Respondent has agreed to deliver the goods in the form of a Starter Card Voucher and a Refill Voucher to the bankruptcy Applicant where the price and type of goods had been agreed upon. Therefore, the Panel of Judges of the Commercial Court was of the opinion that "objects of sale and Buy" in the form of Vouchers and Prime Cards in accordance with expert testimony, including goods can be valued in money. Therefore, if the goods are not delivered in accordance with the conditions agreed upon by the Petitioner and the Respondent, it is a "debt" in the real sense. Thus, the definition of "debt" was fulfilled.

2. An interesting conclusion was that the Respondent was seen having debts and that such debts were mature and could be billed to the applicant. The consideration of the Commercial Court regarding "debts that have matured and is collectible" can be seen from the consideration of evidence PP-9 = evidence T-7 (a) namely the First and Last Warning Letters (sumasi) sent by the Petitioner to the bankruptcy Respondent on 28 June 2012 No. 022/P/KC.VI/2012, then Buy Message No. PO.PJI-AK/VI/2012/00000027, dated June 20, 2012, eventually resulted in a debt of 2,595,000,000.00 Rupiah (two billion five hundred ninety-five million rupiahs) which has matured on June 25, 2012, and the following for Buy Message No. PO.PJI-AK/VI/2012/00000028, dated June 21, 2012, amounting to 3,025,000,000.00 Rupiah (three billion twenty-five million rupiahs) which matured on June 25, 2012. With a subpoena by the Petitioner to the Respondent for bankruptcy and the Respondent still not willing to approve the sale of Refill Vouchers and Prepaid Prime Cards to the bankruptcy applicant, the debts of the bankruptcy Respondent have matured and can be collected.

3. Moreover, regarding the respondent having debts to other creditors, the Petitioners had argued had that there is another Creditor, namely PT. Extent Media Indonesia with a debt of 40,326,213,794.00 Rupiah (forty billion three hundred twenty-six million two hundred

thirteen thousand seven hundred ninety-four rupiahs) and in the trial Other Creditors have submitted evidence in the form of KL-1 to KL-7 evidence which did not exist in the original trial but the debt was admitted by the bankruptcy Respondent to have been fully paid. Be based evidence T-13 and evidence T-14 which did not exist in the original.

Discussion

The Commercial Court considered that evidence T-13 and evidence T-14 could not prove the payment of the bankruptcy Respondent to the Other Creditors because the original T-13 and T-14 evidence were not shown in court so that the two pieces of evidence did not need to be considered and were ruled out. This is the exclusion of the documentary evidence which was only a photocopy in accordance with the Supreme Court's Decision No. 3609 K/Pdt/1985, dated December 4, 1987. Therefore, the bankruptcy Respondent was deemed not to have made any payments to Other Creditors. Therefore, the conditions for the *concursum creditorum* in this matter were still being met.

The evidence in this matter according to the Commercial Court can be proven simply. The consideration of the Commercial Court reads: "Considering, that from the description above, it turns out that the bankruptcy applicant can prove the existence of facts or conditions that are proven simply that the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) of Legal No. 37 of 2004 concerning Bankruptcy and the Suspension of Debt Payment Obligations has been fulfilled so that the Petitioner's application has legal grounds and therefore have to be granted Article 8 paragraph (4) of Legal No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations";

Sutan Remy Sjahdeini is of the opinion that Article 8 paragraph (4) of the Bankruptcy Legal - Postponement of Debt Payment Obligations regarding this simple proof is a norm that requires judges to have a bankruptcy matter examined in the Commercial Court, even if the matter is not simple but is also examined at the Commercial Court. The Commercial Court is not obliged to reject bankruptcy matter. Facts and circumstances that cannot be proven simply remain his responsibility and it is not because of such a fact that the Bankruptcy Judges have to first ask the parties to request a decision from the District Court. (Onakoya & Olotu, 2017).

The author does not agree with Sutan Remy Sjahdeini mentioned above, because bankruptcy matter is a special civil matter that has special procedural laws. For this reason, bankruptcy cases have their own register book in addition to the general civil registration book. Bankruptcy Legal has a special procedural Legal, both proof and grace period. It is known that the bankruptcy matter is in the form of an application, not a Legalsuit. If the matter submitted is judged to be unable to be resolved by simple evidence, then the matter becomes the authority of the general court so that the matter is entered into the general civil register book (Shubhan, 2019).

Sebastian Pompe is of the opinion that an ex-party bankruptcy petition is as if it were examined in an ordinary civil suit which is marked by the existence of replicas and duplicates as well as evidence from the bankruptcy Respondent. Bankruptcy Legal in Indonesia is a form of application that is essentially in the form of an ex-party where the evidence is brief and the procedure generally have to be carried out briefly. (Jerry Hoff, 1999). Peter J.M. Declercq in his book Netherlands Insolvency Legal as cited by Ricardo Simanjuntak for simple proof by using the term prima facie evidence or evidence that can be used as a reason for the applicant to file for bankruptcy which is no longer in question, which with this evidence provides an illustration of the debtor's inability (Nainggolan, 2020).

Andriani Nurdin argues that this simple proof tends to protect certain creditors. The Bankruptcy Act is more used to force the "debtor" to pay the debt even though the debtor is in a healthy position. Dahlan Iskan, Former Minister of State-Owned Enterprises Dahlan Iskan insinuated PT Telekomunikasi Indonesia Tbk because its subsidiary PT Teleomunikasi Seluler (PT Telkomsel) was declared bankrupt by the Commercial Court. According to Dahlan Iskan, the current Legal does not consider the fact that the financial condition of PT. Telkomsel is actually still healthy but the court declared bankrupt.

The variety and reaction of the opinions above illustrate the attitude of the commercial court and the Supreme Court. This is sourced from the legal norms of simple evidence, which are not clear in their editorial and substance. In the future, it needs to be formulated so that there will be no more differences in interpretation or at least it can reduce differences in interpretation between the judge and the parties represented by their advocates.

The difference in interpretation between the Commercial Court and the Supreme Court in general in terms of legal theory and philosophy can be studied from the ideas or opinions of John Austin on the one hand and Ronald Dworkin. John Austin as the main character of classical Legal Positivism prioritizes legal certainty which has clearly separated Legal and morals. Legal positivism was born as a reaction to natural Legal. The moral principles of natural Legal initiated by Thomas Aquinas were rejected outright because they were considered transcendent, ahistorical and unscientific. Meanwhile, Ronald Dworkin teaches that Legal and morals are inseparable when judges face hard matter. Legal as Integrity Theory developed by Dworkin teaches that there are 3 (three) values that are closely related to integrated Legal, namely justice, fairness and procedure due process (Creation, 2009).

These two theories seem contradictory where John's Legals Command of Sovereign Theory is strictly between Legal and morals while Ronald Dworkin's Legal as Integrity states that Legal and morals are inseparable, which is closer to justice. Whether we realize it or not, this also happens in the practice of bankruptcy Legal in Indonesia. Some judges adhere to the Legal as an Message from the authorities that have to be applied as

according to John Austin's theory for legal certainty and this is in sync with the civil Legal system adopted by Indonesia. This view has been built for a long time since Indonesian judges studied Legal in college. In general, John Austin's Legal Positivism was applied at the first level of the Commercial Court, although some of them even used interpretations that could broaden or narrow the sound of the bankruptcy Legal. In the matter of PT. Telkomsel, for example, the judge expanded the definition of debt. The state of default of the Debtor was declared as a debt by the Central Jakarta Commercial Court which received many criticisms from various parties.

At the cassation level of the Supreme Court, the application of the procedural Legal for proving bankruptcy is generally applied through the interpretation method due to the unclear norms of simple proof. The Supreme Court seems to have adopted the Legal as Integrity Ronald Dworkin Theory with its constructive interpretation method. Bankruptcy decisions at the Commercial Court level are interpreted to fulfill the public's sense of justice and legal needs. In the matter of PT. Telkomsel. The Supreme Court has interpreted the meaning of debt after it was first misinterpreted by the Central Jakarta Commercial Court. The Supreme Court interprets the debt by asking the question, "Is it true that there is a debt of the Respondent to the Petitioner in this matter which requires proof that is not simple". When the Supreme Court corrects the decision of a subordinate court, in principle, the Supreme Court here has made an interpretation because it seeks to give the exact meaning of a word, phrase or sentence in the article of the Legal in question.

The legal view of the Legal as put forward by Soetandyo Wignjosoebroto and Sudikno Mertokusumo means that the Legal is the same as the Legal which is the product of the legislature. Furthermore, according to Van Dijk, as cited by Sudikno Mertokusumo, in the teachings of the *Trias Politica*, there is no place for customary Legal as a source of Legal. Montesquieu's view that judges in a strict separation of powers are merely mouthpieces of the Legal or "*bouche de la loi*". In the teachings of popular sovereignty J.J. Rousseau has no place for customary Legal as a source of Legal. This is different from the practice in England and America where the laws have never been codified, where judges can make Legal Be based customary Legal or judge made-Legal.

According to Kelik Wardiono, there are 3 (three) major paradigms that influence legal science, namely the rational paradigm (the rational Legal) which is expressed in the form of legal positivism, the moral paradigm (the ideal Legal) which is embodied in the natural Legal school and the scientific paradigm (the scientific Legal). / Empirical Legal) which later became a reference for the legal philosophy of social jurisprudence and pragmatic legal realism. This fact is believed to also influence the thinking of judges in examining bankruptcy matter (Hilgers, 2003).

Problems that occur in the application of simple evidence according to the Substitute Government Regulation No. 1 of 1998/Legal No. 4 of 1998 concerning Bankruptcy and Legal No. 37 of 2004 concerning Bankruptcy

and PKPU in the practice of commercial justice have also given birth to a dilemma that have to be chosen between 2 (two) the option of whether the Indonesian Bankruptcy Legal regime adheres to the Insolvency Test or Simply Doesn't Pay model in determining a person in bankruptcy. Problems with the application of the Legal occur because 2 (two) Bankruptcy Legal, namely Government Regulation in Lieu of No. 1/1998 and Legal No. 37/2004, do not explicitly regulate simple evidence. This indecision, for example, was conveyed by Hotman Paris Hutapea in a one-day seminar on bankruptcy Legal on October 16, 2003, which was initiated by the Center for Legal Studies. Hotman Paris Hutapea commented as follows:

“In a very well-known bankruptcy matter, namely the Manulife Matter, the Cassation Council canceled the decision of the Commercial Court and rejected the bankruptcy petition on the grounds that it was the authority of the General Court because the matter was not simple, even though the matter was actually very simple because it was clear that the legal issue had to be decided. On the other hand, the Commercial Court hears many matter whose subject matter is much more complicated than Manulife's, and even unconsciously, the Commercial Court of Justice often applies non-simple evidence. So, a clearer formula is needed on the meaning of "simple evidence" as referred to in Article 6 paragraph (3) of the Bankruptcy Legal”

The Simple Doesn't Pay model adopted by the current Indonesian Bankruptcy Legal regime is too formal in nature but more flexible, whereas the Test Insolvency model is too rigid and requires a relatively long period of time to prove the assets of the debtor who is no longer able to pay his debts. Experts or public accountants are needed to audit the debtor company/the Respondent for bankruptcy which requires high costs and a relatively long time. The Bankruptcy Legal-Position of Debt Payment Obligations itself has provided a time frame for making a decision since the bankruptcy matter was registered by the Petitioner at the Young Commerce Registrar. With the complexity of bankruptcy matter today, the author is more inclined to use the Insolvency Test model for the upcoming Indonesian Bankruptcy Legal. ([Moisio et al., 2021](#)).

Conclusion

At the cassation level of the Supreme Court, the application of the procedural Legal for proving bankruptcy is generally applied through the interpretation method due to the unclear norms of simple proof. Whether we realize it or not, this also happens in the practice of bankruptcy Legal in Indonesia. Some judges adhere to the Legal as a message from the authorities that have to be applied according to John Austin's theory for legal certainty and this is in sync with the civil Legal system adopted by Indonesia. This view has been built for a long time since Indonesian judges studied Legal in college.

In general, John Austin's Legal Positivism was applied at the first level of the Commercial Court, although some of them even used interpretations that could broaden or narrow the sound of the bankruptcy Legal. In the matter of PT. Telkomsel, for example, the judge expanded the definition of debt. The state of default of the Debtor was declared as a debt by the Central Jakarta Commercial Court which received many criticisms from various parties. The Bankruptcy Legal - Suspension of Debt Payment Obligations concerning simple evidence is a norm that requires judges to have a bankruptcy matter examined in the Commercial Court, even if the matter is not simple but is also examined in the Commercial Court.

The Commercial Court is not obliged to reject bankruptcy matter. Facts and circumstances that cannot be proven simply remain its responsibility and it is not because of such a fact that the Bankruptcy Judges have to first ask the parties to request a decision from the District Court. Problems that occur in the application of simple evidence according to Government Regulation in Lieu of No. 1 of 1998 / Legal No. 4 of 1998 concerning Bankruptcy and Legal No. 37 of 2004 concerning Bankruptcy and Postponement of Obligation to Pay Debt in the practice of commercial courts have also given birth to a dilemma that have to be chosen between 2 (two) options whether the Indonesian bankruptcy Legal regime adheres to the Insolvency Test or Simply Doesn't Pay model in determining a person in bankruptcy. Problems with the application of the Legal occur because 2 (two) Bankruptcy Legals, namely the Substitute Government Regulation No. 1 of 1998 and Legal No. 37 of 2004 do not explicitly regulate simple evidence.

Observing the current bankruptcy matter in the Commercial Courts in Indonesia which are considered quite complex both on a national and transnational scale, the authors are more inclined to use the Insolvency Test model in the future bankruptcy Legal (*ius constituendum*) to make it easier to see evidence of a Bankruptcy matter include simple evidence or ordinary evidence.

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