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Application of the Principle of Justice in Settlement of Bankruptcy Application Cases in accordance with Law 37/ 2004 concerning Bankruptcy and PKPU

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Abstract

Indonesia has faced during the pandemic an increase in the number bankruptcy cases while several companies applied for postponement of payment obligations from the Commercial Courts. This study aimed to examine the principle of justice vested in Law Number 37 of 2004 concerning Bankruptcy and PKPU (suspension of payment obligations) and whether the application for bankruptcy and PKPU were in accordance with the principle of justice. The normative juridical method with a Statute Approach was used in this research study. The study found that principle of justice in Law Number 37 of 2004 concerning Bankruptcy and PKPU meant where bankruptcy institution would provide a sense of justice for parties, especially for debtors and all creditors in settling debts through bankruptcy institutions. Findings also revealed that the verdicts in bankruptcy petition cases were not able to apply the principle of justice, especially for debtors whose businesses were still running. The study recommended to make amendments in the conditions set for bankruptcy in Law 37/2004, should be simplified, without any insolvency test on the debtor's business or his financial condition.

Key words:
Principle of justice, bankruptcy, Indonesia, Law 37/2004, insolvency.

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Introduction

The COVID-19 pandemic is responsible for turning a number of companies to undergo a series of economic difficulties and finally go bankrupt (L, 2021; Teo, 2020). Several companies applied for postponement of payment obligations (PKPU), while a few decided to seek bankruptcy status from the Commercial Courts (Reftiana, 2020). According to Case Investigation Information System (SIPP), there was a sudden rise of PKPU and Bankruptcy applications cases at all five (5) Commercial Courts in Indonesia, viz., Medan, Semarang, Surabaya, Makassar and Central Jakarta. An easy solution often adopted by a few countries is the adoption of temporary measures on bankruptcy until the crisis is over or the number of bankruptcies reduce (Rahman, 2020). For example, countries like Hong Kong, India, Malaysia, New Zealand, Japan, Singapore, and South Korea have signed Temporary Measures in Bankruptcy and Insolvency Laws for Asia Pacific. Australia also initiated relief measures for financially distressed businesses in its jurisdiction. Temporary measures on bankruptcy are implementation of such specific temporary rules or instructions that aim to regulate the financial activities of companies over a certain period and provide instructions to minimize potential risks often leading to the avoidance of bankruptcy. The primary objective for the implementation of temporary measures is to protect the economy and provide a safety net to the business sector and minimize the impact of the economic crisis (Mei, 2021; Teo, 2020).

Such temporary measures on bankruptcy have proven to be effective in reducing bankruptcy rates up to 64% as evident in literature (Mei, 2021; Teo, 2020). In the Indonesian legal system, bankruptcy is manifest in Articles 1131 and 1132 of the Civil Code which fixes the debtor's responsibility to pay for his debt to all creditors. This bankruptcy law deals with accounts payable is a very fair, fast, open and effective process (Republik Indonesia, Desember, 2020). This paper aimed to examine the implication of the principle of justice in the norm of Law Number 37 of 2004 concerning Bankruptcy and PKPU. It also tested whether the application of the principle of justice be applicable in the practice of resolving cases of bankruptcy application

Literature Review

Meaning of Bankruptcy

The origin of the word bankruptcy is the Dutch word "*faillet*", which is a derivation of the French word "*faillite*" meaning strike or payment jam. The English term bankruptcy is defined as judicial attachment of the entire assets of a debtor for the benefit of his joint creditor (Sitomorang, 1993). It means the inability of the debtor to pay his debts that have matured. Article 1 point 1 of Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligation, abbreviated UUK-PKPU, define bankruptcy as “general confiscation of all assets of a debtor to pay off his

debts to creditors". Thus, when a court passes a verdict, it results in a general confiscation of all existing and future assets of the debtor who is declared bankrupt (Indonesia., 2004). For this reason, the legal application of the UUK-PKPU must be carried out in accordance with the principles of bankruptcy that have been regulated in the general explanation of the UUK-PKPU, namely: the principle of balance, the principle of business continuity, the principle of integrity and the principle of justice (Anisah, 2008).

The principle of justice in the UUK-PKPI is interpreted that the provisions for dealing with bankruptcy can fulfill a sense of justice for the parties concerned (Irianto, 2015). This principle of justice is to prevent the occurrence of arbitrariness of the debt collectors who seek payment of their respective claims against the debtor, regardless of the other creditors.

Legislations Regarding Bankruptcy in Indonesia

Indonesia has evolved at least three laws and regulations governing Bankruptcy (Indonesia., 2004; Sjahdeini, 2016; Soekarso, 1993). The first law was the Government Regulation in Lieu of Law (PERPU) No. 1 of 1998 concerning Amendments; followed by a second one, the Law on Bankruptcy upgraded to Law no. 4 of 1998 (Hoff, 1999); and finally Act 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, PKPU (hereinafter referred to as "Act 37/2004") on November 18, 2004. (N. A. S. Sinaga, N. , 2016; S. Sinaga, 2012). However, recently, the Indonesian Supreme Court vide Decree Number 3/KMA/SK/I/2020 upgraded Law 37/2004 by framing New Guidelines for the Handling of Bankruptcy and Suspension of Debt Payment Obligation Proceedings, dated January 14, 2020 ("**Decree 3/2020**"). This Decree provides technical and practical guidelines for the application of bankruptcy and PKPU proceedings (Indonesia., 2004).

Act 37/2004 provides no definition of bankruptcy except that it interprets bankruptcy as a general confiscation of debtor's assets, existing and future, whose management and settlement should be carried out by a supervisory judge appointed by the Law. The general purpose of bankruptcy law is to provide a common forum for classifying the rights of various types of creditors to the assets of the bankrupt debtor, if the assets are not sufficient to pay all the creditors (Eipstein, 1993). Meanwhile, Susanti Adi Nugroho (2018) describes the objectives of bankruptcy with the establishment of UUK-PKPU as a legal institution for bankruptcy in Indonesia, namely: to guarantee an equal distribution of the debtor's assets among his creditors; to prevent debtors from committing acts that may harm the interests of their creditors; and to provide protection to debtors who have good intentions than their creditors, by obtaining debt relief.

Bankruptcy Regulations in Act 37/2004

Article 2 paragraph (1) of Act 37/2004 requires that a bankruptcy application can be admitted only if the debtor has 2 (two) or more

creditors; secondly, the debtor is not able to pay off at least one debt. In addition, Act 37/2004 also does not recognize the principle of *nebis in idem*, which means that if an application for bankruptcy is rejected, it can be applied again. This may be seen as a legal vacuum in Act 37/2004, which is responsible for relaxation given to many potential bankruptcy cases. This weakness of Act 37/2004 also makes an impact on creditors. Article 56 paragraph (1) of Act 37/2004 limits the creditor's right of execution of the mortgage object and suspends the right for maximum 90 days after the debtor is declared bankrupt. Due to this inconsistency in the regulation, the judicial courts cannot give a verdict to execute the mortgage object, thus adversely making an impact on the creditor (Saputra, 2020; Syahnaz, 2018). This is seen as one of the many flaws of Law 37/2004 and much research and discussions are going on to examine whether these weaknesses of Act 37/2004 can be resolved.

Problem Statement

One of the most severe issues during the COVID-19 pandemic was the inability to pay debts by several companies leading to their bankruptcy (Yamali, 2020). The Indonesian Central Statistics Agency stated that during the third quarter of 2020, when the pandemic was at its peak, 66.09% of companies had already experienced a decrease in revenue. Due to the decline in the companies' income, they were unable to pay debts to creditors (Ayuni, 2020). The Employers' Association of Indonesia (Asosiasi Pengusaha Indonesia or APINDO) states that during the COVID-19 pandemic, 1,298 cases of suspension of debt payment obligation (Penundaan Kewajiban Pembayaran Utang or PKPU) and bankruptcy were registered with the government agencies as compared to 959 cases during the 2018-2019 period. Since Act 37/2004 did not have any direct provisions for PKPU and Bankruptcy, the government had to immediately issue a regulation for the extension of moratorium period to avoid PKPU and bankruptcy cases (Budiono, 2019; Damlah, 2017).

There are many facets of the problem namely, the increase in PKPU and bankruptcy cases was partly due to the ease of filing bankruptcy requirements; secondly there is no limit to the number of submission as they can be done repeatedly; third, the Act 37/2004 had many flaws. An urgent need is felt of the revision of Law 37/ 2004 as the law itself has emerged as a legal instrument which does not provide legal certainty, especially in protecting the sustainability of debtors' business aspects. It is therefore required that the Law 37/2004 should be amended to solve debt problems in a fair, fast, open, and effective manner. Problems have also arisen with Law 37/ 2004 for creditors who are given to understand that they would not be able to get the payment of their debts, when the Debtor bankrupts himself taking advantage of the weakness of Law 37/2004 and to avoid payments. In such a case, it is inconvenient to divide the assets of the company to pay off the debts or it is difficult for the individual debtor to pay off the debt and prefers the mechanism for the distribution of assets

of the company through a court mechanism (Gunawan, 2009; Hartono, 2008).

As a result of these inconsistencies and the time involved, there were 747 companies declared bankrupt in August 2021, which is a drastic increase from 551 companies in 2020 and 280 companies in 2019 and 193 companies in 2018 (Artanti, 2021). The Law 37/2004 now has been running for more than 17 years, and despite many problems for debtors who filed bankruptcy applications, there are still efforts made to provide benefits to bankrupt debtors, so that if debtors are still capable of doing business, their bankruptcy can be avoided. This study made 2 (two) problem formulations namely, first, the meaning of the principle of justice in the norm of Law Number 37 of 2004 concerning Bankruptcy and PKPU; second, the application of the principle of justice in the practice of resolving cases of bankruptcy application.

Method

A normative legal research method with the objective to examine applicable normative law taking a conceptual and case based approach was used in this study (Soekanto & Mamudji, 2003). While the statutory approach helped in understanding the Law of 37 / 2004, the conceptual and case-based approach helped to study the social and financial implications of the law. The analysis of the data was carried out through qualitative methods, which required a descriptive-analytical approach. The data compilation and analysis adopted the deductive reasoning methods in order to make legal conclusions from general to specific. The data was collected from primary, secondary, and tertiary legal material. The primary legal data included the Law of the Republic of
Indonesia Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations and the Regulation of the Financial Services Authority of the Republic of Indonesia Number48/POJK.03/ 2020 jo. Regulation of the Financial Services Authority of the Republic of Indonesia Number 11/POJK.03/2020 and various other amendments. The secondary data was obtained from various previous research studies, case histories and books, articles, and legal reports. The tertiary legal data was used for providing instructions/explanations on primary and secondary data.

Results

The current study examined the principle of justice in the light of Law Number 37 of 2004 concerning two proceedings: Bankruptcy and PKPU. The Law No. 37 of 2004 regarding Bankruptcy and Suspension of Debt Payment Obligations (Law 37/2004) does not make any discrimination between the two applications. The proceedings for both bankruptcy and PKPU are similar, except that it is determined by type of the debtor. Law 37/2004 requires that the debtor should have two or more creditors, and at least one debt must be due and payable. The Law also requires that the

debt must be claimed, meaning that the amount owed by the debtor shall not be subject to any complex evidentiary process.

The Indonesian Supreme Court recently issued Supreme Court Decree Number 3/KMA/SK/I/2020 regarding Guidelines for the Handling of Bankruptcy and Suspension of Debt Payment Obligation Proceedings, dated January 14, 2020 ("Decree 3/2020"). Decree 3/2020 provides technical and practical guidelines for the application of bankruptcy and PKPU proceedings. We note that the number of bankruptcy and PKPU proceedings was increasing earlier this year even before the COVID-19 outbreak. Now with more businesses in default due to the pandemic, we can expect these proceedings to pick up again after businesses resume activities.

Being in a bankruptcy or PKPU proceeding does not necessarily mean that the debtor will have to be liquidated, as there are avenues for creditors to agree to the restructuring of a debtor's obligations. The debtor in a bankruptcy or PKPU proceeding can offer a composition plan to its creditors, which is subject to a vote by the creditors before the liquidation of assets is carried out. In consideration of current economic conditions, where a debtor's liquefied assets may yield a lower rate of return than might otherwise be expected, creditors may be more willing to agree to a settlement on the debtor's obligations. This could be an opportunity for creditors to be more active in participating in creditor meetings held as a result of a bankruptcy or PKPU decision.

The Bankruptcy and PKPU proceedings under Law 37/2004 are favorable to creditors for their fast track and quick adjudication. The statutory requirements under Law 37/2004 is that bankruptcy and PKPU proceeding cases must be resolved in 60 and 20 calendar days respectively from the date of application. These proceedings can take place in Indonesia's five Commercial Courts, in Jakarta, Makassar, Medan, Surabaya and Semarang. Another benefit to the creditors is that the creditor meetings now could be convened online using digital meeting platforms after the bankruptcy or PKPU proceedings have been admitted in the commercial courts. The creditors are also benefited by the maximum temporary PKPU period granted to the Debtor. During this period, the debtor can present and negotiate a composition plan with its creditors, the success of which determines whether the debtor goes into bankruptcy. If the creditors do not agree to the composition plan offered by the debtor during the period of the PKPU, the court will declare the debtor bankrupt. The Indonesian bankruptcy or PKPU proceedings recognizes three types of creditors: Preferred creditors, who enjoy special rights conferred by law to grant these creditors preference over other creditors; secured creditors, who hold specific security over specific assets/property from the debtor as a guarantee for the repayment of the debtor's debt – also known as separated creditors who have the right to execute the security they hold vide Law 37/2004; and unsecured creditors, which is the category for all other creditors.

Law 37/2004 allows the Debtor to apply for the Suspension of the Obligation for Payment of debt (PKPU) through litigation in any of the Commercial Courts in Indonesia. Article 222 paragraph (2) of law number 37 of 2004 states that "Debtors who cannot or expect not to be able to continue paying their debts that are due and can be collected, can request a postponement of debt payment obligations, with the intention of submitting a reconciliation plan which includes an offer to pay part or all of the debt. to Creditors." PKPU is an opportunity to buy some time in paying debts through a commercial judge's decision where creditors and debtors are also given the opportunity to negotiate related to their debts.

This study also assessed the application of the principle of justice in the practice of settling a bankruptcy case. As was evident in the archival browsing, being an inseparable part of the civil law, the Indonesian bankruptcy law (Law 37/2004 may be said to be a sub-system of national civil law and an integral part of civil procedural law. Most of the content of this bankruptcy law regulates the management and settlement of bankrupt assets. Therefore, bankruptcy law is a complete agreement with regulations regarding confiscation and execution which are regulated in civil procedural law and material security law.

The principles of Indonesian bankruptcy law are generally regulated in Article 1131 and 1132 of the Civil Code, while the specific principles are contained in Law no. 37 of 2004. Article 1131 is also called the principle of equal position of creditors (*Paritas Creditorium*) and Article 1132 is called the principle of *pari passu prorate perte*, i.e. all creditors have the same rights over the assets of the debtor, unless there are reasons legitimate to take precedence (S. Sinaga, 2012).
On the other hand, the specific principles of Indonesian bankruptcy are stated in the provisions of Law 37/ 2004, also called UUK-PKPU, which clearly regulated a number of bankruptcy principles. These principles include the principle of balance, the principle of business continuity, the principle of integration, and the principle of justice. The principle of justice in bankruptcy law implies that the provisions regarding bankruptcy must be able to fulfill a sense of justice for the parties concerned. This principle of justice is to prevent the occurrence of arbitrariness by the collectors who seek payment of their respective claims against the debtor, without regard to other creditors.

One of the provisions of the law states that the debtor is eligible for bankruptcy if he is not able to pay off at least one debt, though it may be payable. Bankruptcy law however does not regulate the bankruptcy of debtors who do not pay their obligations only to one of their creditors. In this case, the debtor must be in a state of insolvency. Additionally, the absence of an insolvency test in Indonesian bankruptcy law is a weakness. As a result, debtors who still have sufficient wealth to pay their debts can easily be declared bankrupt by the court for not paying their debts. Hence, there are many bankruptcy cases in which the bankruptcy is granted to the

debtor who was actually very capable and had the ability to pay off the debts, but the court very easily declared the debtor bankrupt.

An example of such a decision was evident in the case of the bankruptcy of a debtor by the name of PT. Telkomsel. The verdict was given by the Central Jakarta Commercial Court. Even though at the cassation level the statement of bankruptcy against PT Telkomsel was annulled by the Supreme Court of the Republic of Indonesia

Case Decision No. 704 K/Pdt.Sus/2012 between PT. Telekomunikasi Selular with PT. Prima Jaya Informatika

PT. Prima Jaya Informatika is a company engaged in the field of Information Technology, being a distributor and selling agent of cellular phone vouchers and starter packs. The company filed a bankruptcy petition to PT. Telekomunikasi Selular, on the ground that PT. Telekomunikasi had defaulted in the payment of a bill worth Rp. 5,260,000,000, - (five billion two hundred and sixty million rupiah). This amount was the payment of the sale proceeds of Telkomsel products between PT. Prima Jaya Informatika with PT. Telekomunikasi, where PT. Prima Jaya Informatika was appointed as the distributor for the top-up voucher prima card. In addition to having a payment bill to PT. Prima Jaya Informatika, PT. Telekomunikasi also had a bill to PT. Axtent Media Indonesia for the implementation of the Mobile Data Content service collaboration, amounting to Rp. 40,326,213,794 (forty billion three hundred twenty-six million two hundred thirteen thousand seven hundred ninety-four rupiah).

The requirements for bankruptcy were deemed to have, therefore, PT. Prima Jaya Informatika filed an application for bankruptcy to PT. Telekomunikasi through the Commercial Court at the Central Jakarta District Court. The bankruptcy applicant requested the Commercial District Court to give a decision: 1) Granting the petition for a declaration of bankruptcy of the bankruptcy applicant in its entirety; 2) declaring the Respondent PT. Telekomunikasi Selular bankrupt with all its legal consequences.

The petition for bankruptcy filed by PT. Telecommunications as the Bankrupt Respondent principally included the following concerns and issues:

1. that the bankruptcy petitioner's petition for declaration of bankruptcy was based on Bankrupt Respondent's refusal to give *approval* to the two Purchase Orders (PO) submitted by the Bankrupt Petitioner in the execution of the agreement and the sale of Telkomsel products;
2. that Article 24 of the cooperation agreement clearly regulated that if a dispute occurred it must be resolved by deliberation and if within 1 month the parties cannot resolve the dispute, the parties agree to take the dispute to the South Jakarta District Court;

3. that the ambiguity of the bankruptcy petition filed by the bankruptcy petitioner can be seen in the claim in the bankruptcy petitioner's summons dated 28 June 2012 to the bankruptcy respondent as the basis for filing the bankruptcy petition where the claim in the bankruptcy petition was asking the bankruptcy applicant to carry out a cooperation agreement regarding the sale of products. In the petition for the declaration of bankruptcy, it was argued as if there was a debt or obligation that can be stated in debt and has matured.
4. whereas such petition for declaration of bankruptcy was vague because the Bankruptcy Applicant acknowledged that the subject of the dispute was the implementation of the cooperation agreement and not related to the existence of debts or obligations that can be stated in debt. Whereas what was stated by the Bankruptcy Applicant as debt in his bankruptcy petition was actually a *Purchase Order* (PO) or goods order letter issued by the Bankrupt Petitioner to the Bankrupt Respondent which in no way constituted evidence of any debt or obligation of the Bankrupt Respondent to the Bankrupt Petitioner.
5. that in the cooperation agreement it was never stated that the *Purchase Order* (PO) was a proof of payment or proof of invoice to the Bankrupt Applicant. Moreover, in the cooperation agreement, it was clear that the obligation of the Bankrupt Petitioner to deposit funds into the Bankrupt Respondent's account if he wished to obtain goods provided by the Bankrupt Respondent.
6. that in the absence of debt as referred to in Article 1 point 6 of Law no. 37 of 2004 which was the main issue in this petition for a bankruptcy statement, the petition for a bankruptcy statement submitted by the Bankrupt Petitioner was vague and unclear.

Regarding the petition for bankruptcy, after trial and evidence, the Commercial Court at the Central Jakarta District Court issued a decision, Number 48/bankruptcy/2012/PN.Niaga.JKT.PST dated September 14, 2012, which was partially, in exception, rejecting the Exception of the Bankrupt Respondent in its entirety. The main points of the case were: 1) To grant the petition for a declaration of bankruptcy from the bankruptcy applicant against the bankruptcy respondent in its entirety; 2) declare the plaintiff namely PT. Telekomunikasi Selular: a limited liability company engaged in the telecommunications service business in South Jakarta, for bankruptcy with all the legal consequences, Upon the approval of the bankruptcy petition, PT. Telekomunikasi Selular (in bankruptcy) filed a Cassation to the Supreme Court, by filing an objection in its memorandum of cassation which essentially argued that: 1) The Panel of Judges of the Commercial Court case No. 48/Pailit/2012/PN.Niaga.Jkt.Pst did not understand or were very wrong in understanding the law of Indonesian engagements/agreements; 2) The Council of Commercial Judges case No. 48/Pailit/2012/PN.Niaga.Jkt.Pst did not understand or was very wrong in considering the meaning of debt that had matured and was collectible; 3) that the considerations were very confusing and tended to be arbitrary by the Commercial Court Judges against other creditors; 4) The Panel of Judges of the Commercial Court was clearly unable to state the legal basis

for the legal considerations of its decision in a precise and correct manner; 5) The Petitioner for Cassation was a very healthy and well-managed telecommunications company that continued to generate profits, which was based on the 2011 audited financial statements and recorded a profit of Rp. 12.823.670.058.017 (twelve trillion eight hundred twenty-three billion six hundred seventy million fifty-eight thousand and seventeen rupiah);

Against the appeal filed by the bankrupt debtor PT. Telekomunikasi Selular, the panel of judges at the Supreme Court of the Republic of Indonesia, finally granted the cassation request from PT. Telekomunikasi Selular and cancelled the decision of the Commercial Court at the Central Jakarta District Court Number: 48/palit/2012/PN.Niaga.JKT.PST, dated September 14, 2012, with following legal considerations: after carefully examining the decision of the *Judex Facti*/Central Jakarta Commercial Court , it turns out that *Judex Facti* has misapplied the law, because whether it is true that there is a debt of the Respondent to the Petitioner, in this case, requires proof that is not simple, because the Petitioner's argument regarding the existence of the Respondent's debt to the Petitioner has been denied by the Respondent, so that it does not meet the provisions as regulated in Article 8 paragraph (4) concerning Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

Therefore, in this case regarding the truth of the debt of the Bankrupt Respondent to the Bankrupt Petitioner, it required a complicated and not simple proof so that the petition for bankruptcy from the Petitioner did not meet the provisions of Article 8 paragraph (4) above so that the settlement must be done through the District Court and not through the District Court. Commercial Court;

Discussion

The consideration of the panel of judges in the case and its decision mentioned above is indeed in line with the requirements of Article 2 of Law. 37/2004 concerning Bankruptcy and PKPU in order to declare bankrupt, namely, that the debtors must two or more creditors and had not paid off at least one debt and that the debt had matured and could be collected. According to Article 6 paragraph (3) of the UUK-PKPU, it could be interpreted that the application for bankruptcy must be granted if there were facts or circumstances that were simply proven to be declared bankrupt as referred to in Article 1 paragraph (1 UUK-PKPU) was fulfilled. This study found that the legal considerations from the Panel of Judges at the cassation level did not consider whether the debtor company was still capable or not, but what was taken into consideration was the unclear debt between PT. Telekomunikasi Selular with PT. Prima Jaya Informatika was right. This was in accordance with the provisions of Article 8 paragraph (4) of the UUK-PKPU which stated that a declaration of bankruptcy must be granted if there were facts or circumstances that were simply proven that

the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) of the UUK-PKPU had been fulfilled.

To guarantee legal certainty, especially the existence of the debt, it must first be proven whether there was a debt or not. So, the legal considerations given by the panel of judges were not solely because of the assets of PT. Telekomunikasi Selular was great. The consideration whether the company was solvent or not was not a legal consideration in this case. This was because in the provisions of the bankruptcy law, we do not recognize any insolvency test against a debtor who would be declared bankrupt. However, based on Article 2 paragraph (1) of the UUK-PKPU, there were only 2 requirements for bankruptcy, namely: 1) a debtor who has two or more creditors and 2) has not paid off at least one debt that had matured and could be collected.

The legal considerations from the panel of judges at the cassation level were of the view that whether there was debt or not in a *quo* case was not a simple matter. It must be proven first at the District Court and not at the Commercial Court. This is in line with the previous decisions of the Supreme Court of the Republic of Indonesia, namely: Cassation Decision No. 14 K/N/2001 dated April 3, 2001, in the case between Teddy Thohir, Heru Sajito, Setiadhi Lukman, Joey H. Wihardja against PT. Karabha Digdaya, in which the legal consideration read: "considering…whether there is a debt in the form of unpaid salaries by PT. Karabha Digdaya to the cassation applicants still needs further examination. A similar situation was evident in the case of Simple Evidence in Cooperative Bankruptcy filed by employees, as found in a case study of bankruptcy of Sekar Tanjung Dairy Industry Cooperative Center (Fauzi, 2021).

In this case, facts or circumstances could not be proven simply as referred to in Article 6 paragraph 3 of Law no. 4/1998. Similarly, in another case between PT. Prudential Life Assurance against Mr. Lee Boon Sion, with his legal consideration, the Cassation Decision No. 08K/N/2004 dated June 7, 2004, stated "that the Respondent also denies the Respondent's debt to the Petitioner so that the Respondent's debt to the Petitioner is past due and can be billed as one of the requirements in Article 1 paragraph 1 of the Bankruptcy Law. cannot be proven simply, therefore the petition for bankruptcy submitted by the Petitioner must be rejected and the dispute between the Petitioner and the Respondent should be submitted to the District Court". Additionally, it is also evident that regarding the conditions for the existence of debt, the UUK-PKPU does not specify the amount of the debtor's debt that can be filed for bankruptcy. Hence, it is questionable whether any petition can be filed for bankruptcy regarding the amount of debt without any limitation. If so, the creditors can freely propose debtors to file for bankruptcy. As a result, many debtors who actually have large assets are bankrupted by one of their creditors who only has debts that are far below the debtor's asset.

However, Article 1 of the Draft Law on Bankruptcy, had regulated the limitation in terms of a percentage of debtor's assets that could be filed for bankruptcy. The Article 1 of the Draft Law on Bankruptcy had stipulated that bankruptcy must be applied to debtors who were no longer able to pay their debts, and their remaining assets were only 25% of the debtor's total wealth. The Article ignore the condition to see whether debts had matured and could be collected, without an *insolvency test* for the debtor to be bankrupted. This shows that Indonesian bankruptcy law is more directed at making it easier to bankrupt debtors without considering the ability to pay or the financial *solvency* of the debtor to be bankrupted, so that bankruptcy is positioned more as a tool to collect debt.

This finding is in line with the view of Gurrea-Martínez and Loh (2020) who said that one of the reasons for the abolition of the *insolvency test* was the condition for bankruptcy of debtor and to ensnare the debtors who had failed to pay debts, especially to banks, because it involved public funds in large quantities. However, Gurrea-Martínez and Loh (2020) was of the opinion that even though the *insolvency test* was not listed in the UUK-PKPU, the judge in deciding the petition for a declaration of bankruptcy must consider the larger interest (*overwegend*) between the interest of the applicant/creditor and the respondent/debtor. This is also in line with Teo (2020), who believed that although the *insolvency test* was not regulated in the UUK-PKPU, the Supreme Court could make legal reform, by conducting an *insolvency test* for debtor who would be bankrupt (Campbell, 1992).

Conclusion

Easy bankruptcy filings were suspected to be the cause of the high number of bankruptcies in the pandemic era, in addition to the absence of laws and regulations that provided a clear and firm legal umbrella for bankruptcy relaxation. Based on Article 2 paragraph (1) of Act 37/2004, it has been stated that filing bankruptcy required that the debtor has at least two creditors and that there is one debt that is due and can be collected. This provision is considered easy because if it has been proven that the party proposed for bankruptcy has met these requirements, the judge is obliged to decide on bankruptcy based on Article 8 paragraph (4) of Act 37/2004. Referring to Article 8 paragraph (7) of Act 37/2004, the bankruptcy decision is also instantaneous, which means that the execution of the decision can be carried out even though there are legal remedies submitted.

The study realizes the importance of overcoming the increasing number of bankruptcies based on the flaws of Act 37/2004, Indonesia should also follow what other countries have done to reduce the number of bankruptcies. They have exercised limitations on rights to existing bankruptcy regulations. In Indonesia, too, there is a need to exercise restrictions on Act 37/2004. The limitations of that right should be regulated and immediately applicable to measures on bankruptcy.

The study also recommends that the Indonesian bankruptcy law needs to include conditions for an *insolvency test* for debtor to be bankrupt. This amendment can help to avoid the existence of companies that are financially very capable or *solvent* but can be bankrupted by creditor only. This is necessary because the requirements for bankruptcy are very easy. It will also avoid any inconsistency on the part of the judge in deciding whether the debtor is solvent or not. However, this *insolvency test* requirement must be proven in a simple way, because otherwise it would be difficult for creditors to bankrupt large companies, especially for debtors of private companies.

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