The Role of the IMF in encouraging the Reform of Indonesia's Bankruptcy Law (Legal Analysis of Bankruptcy Decisions in the Commercial Court)

[1]Fahren, [2]Sunarmi[3] Tan Kamello, [4]Budiman Ginting
[1,2,3,4] Faculty Of Law, Universitas Sumatera Utara, Medan
E-mail: [1]Fahrenmarpaung59@gmail.com, [2]Sunarmi15@yahoo.co.id,
[3]Tankamelo77@gmail.com, [4]Budiman.gt.59@gmail.com

Abstract. *The simple proof principle is the principle used in proving that a Debtor is declared bankrupt. This principle has been regulated in Article 6 paragraph (3) of the Government Regulation in Lieu of Law Number 1 of 1998 which was later ratified as Law Number 4 of 1998 concerning Bankruptcy. This provision is continued in Article 8 paragraph (4) of Law Number 37 Year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Article 6 paragraph (3) of Law Number 4 Year 1998 reads: "Requests for bankruptcy statements must be granted if there are facts or conditions that are only proven that bankruptcy requirements as referred to in Article 1 paragraph (1) have been fulfilled." Article 1 paragraph (1) Law Number 4 of 1998 regulates the requirements for application for bankruptcy statements consisting of: 1) one debt that is due and payable, 2) there are 2 (two) creditors or more. However, in practice there are different interpretations of the provisions of the bankruptcy statements, which results in different decisions between the commercial court and the Supreme Court as the court of cassation in Indonesia. This occurs because of 2 (two) things, namely 1) there are no clear measurements or parameters regarding simple proof and 2) Indonesian bankruptcy law does not use insolvency tests to determine the financial conditions of a company which is declared bankrupt. This paper is derived from the results of the author's research in the form of a dissertation. The research method used in this study is normative legal research with a case approach using primary data, in the form of bankrupt decisions by commercial court and supreme court judges. The issuance of Government Regulation in Lieu of Law Number 1 Year 1998 is inseparable from the role of the IMF which requires reform of Indonesia's bankruptcy law. However, due to the deadline regarding the Letter of Intent between the Republic of Indonesia and the IMF, then the discussion of the Government Regulation in Lieu of Law Number 1 Year 1998 has not been maximally carried out by the Government of the Republic of Indonesia because it was limited in time so that it leaves legal problems including simple proof in the Indonesian bankruptcy law.*

Keywords: *Simple Proof, Commercial Court, Parameter, Insolvency Test, Bankruptcy Law*

INTRODUCTION

The principle or legal burden of proof is simple in the event of bankruptcy has been regulated or set as a legal norm in laws or regulations applicable bankruptcy ever in Indonesia or formerly *Nederlands Indie (*Elyta Ras Ginting, 2018: 29) , namely in:

1. Article 6 paragraph (5) *Faillissements-Verordening, Staatsblad* 1905 Number 217 *jo.Staatsblad* 1906 Number 348 which reads: "Declaration of bankruptcy is carried out, if ***it*** can ***easily*** be concluded that from events and circumstances it turns out that the debtor is unable to pay his debts and the existence of a request for bankruptcy. from the creditor and the debt collection submitted by the creditor concerned.
2. Article 6 paragraph (3) of the Government Regulation in lieu of Law Number 1 of 1998 which was later ratified as Law Number 4 of 1998 reads: "Requests for bankruptcy statements must be granted if there are facts or conditions that ***are simply proven*** that the

requirements for bankruptcy are declared as referred to in Article 1 paragraph (1) has been fulfilled.

3. Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy Law and Suspension of Debt Payment Obligations reads: "Requests for bankruptcy statements must be granted if there are facts or conditions that ***are simply proven*** that the requirements for bankruptcy as referred to in Article 2 Paragraph (1) have been fulfilled.

The Government Regulation in Lieu of Law Number 1 of 1998 is a transition period from *FV* to Law Number 37 of 2004 concerning Bankruptcy Law and Suspension of Debt Payment Obligations (Abbreviated as SDPO). This period is marked by decisions that have different interpretations of the notion of "debt". There are courts that interpreted debt in the narrow sense and some that interpreted in a broad sense . (Sutan Remy Sjahdeini, 2016 :186.) This can be seen from the bankruptcy case of PT. Asuransi Jiwa Manulife Indonesia. (Bagus Irawan, 2007: 123) and the case of Lee Boon Siong Against PT. Prudential Life Assurance as well as in cases submitted by American Express Bank, Ltd and friends who are international syndicated against PT. Ometraco Corporation.(M.Ali Boediarto, 1999: 9)

After the issuance of Law Number 37 of 2004 concerning Bankruptcy Law and Suspension of Debt Payment Obligations that the differences in interpretation of the notion of "debt" is still being debated even though its intensity has diminished. This occours because the insolvency model “Simply Doesn’t Pay” in the Government Regulation in Lieu of Law Number 1 of 1998 (GRLL) was continued in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

A debtor who is declared bankrupt is not necessarily bankrupt in the sense of having no money, but he may not want to pay. Furthermore, if after the opportunity is given to reconcile with creditors and debtors do not want to reconcile, the debtor is declared insolvent. According to J.B. Huizing said that this situation called the transition from the bankruptcy phase to the execution phase. (J.B.Huizink ,translator: Linus Doludjawa), 2004: 7)

This provision is found in Article 2 paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Syamsuddin Manan Sinaga called it the substantive conditions of a bankruptcy petition. (Syamsuddin Manan Sinaga, 2012 : 90)
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Particularly regarding Government Regulation Number 1 of 1998 concerning bankruptcy, it is imperfectly arranged. This happened because the time agreed upon by the Indonesian government and the IMF had approached the deadline so that the drafting of the Indonesian bankruptcy law was a bit hasty.

Indonesia has inherited the bankruptcy laws from the Dutch Indian Government contained in the *Faillissements-Verordening, Staatsblad 1905 Number 217 jo.Staatsblad 1906 No. 348* . *Faillissement-Verordening* (from the Dutch language which means *Bankruptcy Regulation*) must be replaced because it is no longer in accordance with the demands of the present age, especially in the business sector, so it needs to be replaced or updated. The mechanism has 2 (two) options, namely by establishing a new bankruptcy law or by issuing A Government Regulation in lieu of Law (abbreviated as GRLL). The selected option is through regulation has since time surge with the Letter of Intent that was signed between the Government of the Republic of Indonesia and the International Monetary Fund (IMF) . Historically, the substance of the GRLL was debated in parliament in the sense that some MPs wanted the amendment of the bankruptcy law to be discussed perfectly, but some MPs wanted the GRLL made by the government to be accepted given entering the deadline stipulated in the Letter of Intent signed by IMF and Government of the Republic of Indonesia. (Sutan Remy Sjahdeini, 2016: 35).

In 1997 the financial community internationally viewed Indonesia as a State that need financial help for affected by the economic crisis. In August 1997 the Rupiah, the currency of the

Republic of Indonesia, experienced a sharp devaluation. The value of the rupiah against the United States Dollar has fallen from Rp2,500 to 17,000 for each dollar. In the fall of 1997, the International Monetary Fund (IMF) engage at the request of the Government of the Republic of Indonesia to play a role in helping to finance the Republic of Indonesia .The IMF would be willing to provide assistance packages finances to the government of Indonesia if the government reformed the bankruptcy law. (Jerry Hoff, Indonesian *Bankruptcy Law, (translator: Kartini Mulyadi),* 2000 : 3)

The Government Regulation in lieu of Law Number 1 of 1998 (GRLL) was ratified on April 22, 1998 and takes effect after 120 days of promulgation. During the GRLL period many bankruptcy cases were tried at the Commercial Court at the Central Jakarta District Court. Many parties involved in this period were transnational, for example the bankruptcy case of PT. Asuransi Jiwa Manulife Indonesia (abbreviated: PT.AJMI), the International F inance Corporation (Abbreviated: IFC) and PT. Dharmala Sakti Sejahtera which is abbreviated as PT.DSS or DSS Limited Liability Company. (Emmy Yuhassarie, 2004: 21). The two companies called the first and second are foreign companies. PT AJMI is a subsidiary of The Manufacturers Life Insurance Company domiciled in Canada is incorporated under the laws of the State Canada. Manulife is a public company whose shares are owned by the people of Canada.

Therefore PT.AJMI's members have disrupted relations between Indonesia and Canada. The Canadian Prime Minister protested the decision of the Central Jakarta Commercial Court to the Government of the Republic of Indonesia. Canadian Foreign Minister Bill Graham also commented on this by saying that the Canadian Government would consider launching a retaliation against the Republic of Indonesia. Because it was considered not to show an adequate response related to the bankruptcy case of PT. Manulife Indonesia Life Insurance. Likewise Ferry de Kerckhove , the Canadian Ambassador accused the Government of the Republic of Indonesia of doing nothing to solve the case between Manulife Financial Corporation and its local partner Dharmala Group.(Sutan Remy Sjahdeini,2016:65).

Besides PT.AJMI, there is also the International Finance Corporation (IFC), an international organization with headquarters in Washington, DC. IFC is a subsidiary of the World Bank which provides a lot of assistance to the people of Indonesia, especially when Indonesia is experiencing an economic crisis.

Praiseworthy that Reports of World Bank said that the settlement bankruptcy in Indonesia, is the better. The World Bank specifically reports on Indonesia's progress in bankruptcy resolution. Indonesia is considered to have increased judicial and development reforms reflected in the World Bank's Doing Business data. (Yanuarius Viodeogo, 2019, at: 20:16)

METHOD

The type of research used in this research is Normative Legal Research or Doctrinal Research not Sociological Legal Research or Empirical Legal Research.(Suratman dan H. Philips Dillah, 2013:31). Normative legal research in this study is carried out by means of a statute approach and a case approach . Two kinds of approaches are used to find as much information as possible so that it can be analyzed in this article.

Sources of legal materials or data used in this study are primary legal materials, secondary legal materials and non-legal materials or tertiary legal materials obtained from literature studies and informant interviews.

Primary legal materials are legal materials or data that are authoritative in nature, meaning they have authority, for example laws and judge decisions, while secondary legal materials are publications about law that are not official documents, for example legal text books, legal dictionaries, comments on court decisions and so on. In addition, it is also

equipped with non-legal materials, namely those that are not legal material but closely related to research, including dictionaries. Primary legal materials, consisting of bankruptcy regulations or laws that have been in effect in Indonesia contained in Law Number 4 of 1998 and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. and other regulations and also various decisions of the Commercial Court and the Supreme Court Decision on Bankruptcy.

Analysis of legal materials or data is a very important activity in a study. This activity is in the form of a review of the results of legal material processing aided by theories that have been previously obtained. In this activity, researchers tend to use a qualitative analysis of legal materials that are prescriptive in nature. This analysis aims to provide arguments for the results of the research that has been carried out in the study.

Providing prescriptive analysis means providing an assessment of whether it is true or false or what should be according to the law regarding the facts or legal events from the results of the research. According to Peter Mahmud Marzuki that giving a prescription about something that should be, in legal research is essential because it is for this to do a research.(Peter Mahmud Marzuki, 2013 : 251)

How to draw conclusions on legal materials that have been collected, processed and analyzed in this study using inductive thinking logic and deductive. Handling of cases in court always begins with the induction step. The first step is to formulate facts, look for causal relationships, and apply the rule of law. Deductive reasoning is reasoning originating from the unclear duties of the legislature in drafting laws, so reasoning is needed. Practical disputes can be resolved deductively after interpreting the obscure rule of law.

RESULTS AND DISCUSSION

The Differences of Interpretation Between the Commercial Court and the Supreme Court

1. The Position Case: Receiver of PT DSS (Paul Sukran) vs PT. AJMI

Paul Sukran is a Curator/Receiver (The curator's duty in bankruptcy law is to administer and settle bankruptcy assets) from PT DSS who has been declared bankrupt by the Central Jakarta Commercial Court, Indonesia. PT.DSS is the abbreviation of PT Dharmala Sakti Sejahtera , a limited liability company. **(**M.Ali Boediarto, 2002: 13)

There are many bankruptcy cases that are decided by judges with different decisions between the judges of the first court and the Supreme Court as the cassation court or the highest court in Indonesia. The most popular example of different opinions is the case of PT.AJMI, PT. Prudential, and the others.

The PT.AJMI case arose from a request for bankruptcy of the Curator or Receiver of P T. Dharmala Sakti Sejahtera (hereinafter referred to as PT. DSS in a state of bankruptcy) based on a Central Jakarta Commercial Court Decision No.03 / PKPU / 2000 / PN.Niaga Jkt.Pst date June 6, 2000. Based on the Establishment of the Commercial Court dated December 21, 2000 Number 10 / Bankrupt / 2000, Paul Sukran, SH was appointed as Curator in the bankruptcy of PT.DSS. In this task, the curator/receiver carries out the management and settlement of the bankrupt assets and collects all assets of the debtor of PT. DSS including the collection of the bankrupt debts. On the basis of the "Joint Venture Agreement Deed" made by Jakarta Notary Mrs. Rukmasari Hardjasatya, SH on June 10, 1998, the party "PT. DSS "owns 40% of PT. Manulife Indonesia's Life Insurance mentioned in Article 4 of the Joint Venture Agreement Deed.(As stipulated in Article 1870 of the Indonesian Civil Code concerning Authentic Deed)

In Article X the Deed of Joint Venture Agreement stipulates that insofar as the company makes a profit and has obtained a surplus, it will be distributed to shareholders where PT. AJMI pays dividends of at least 30% of the total surplus in excess of

Rp. 100,000,000.00 as soon as possible after the report is made . Referring to the Joint Venture Agreement Deed and the existence of PT. AJMI for the period ended December 31, 1998 and 1999 made by the Independent Public Accounting Firm Ernst & Young, then PT. AJMI has obtained a surplus from a profit of Rp. 186,306,000,000.00 so that dividends must be distributed by PT. AJMI to shareholders is 30% x 186,306,000,000.00 is Rp. 55,891,800,000.00.

On the basis of the calculation of the Curator of PT. DSS / Paul Sukran, then PT. AJMI is obliged to pay dividends as follows: (1) Dividend debt of 40% Rp. 55,891,800,000.00 in the amount of Rp. 22,356,720,000.00 (2) Interest on dividends that have not been paid from January 1, 2000 to April 30, 2002, with a calculation of 20% per annum, namely Rp. 10,433,136,000.00 so that the total amount is Rp. 32,789,856,000.00. The curator had tried to collect dividend payment for the fiscal year 1999 plus the interest to PT.AJMI with the amount as mentioned above, but was unsuccessful, even though 2 (two) times had been given a Letter of Rebuke on 16 April 2002 and 2 May 2002.(in accordance with the provisions of Article 2 paragraph 1 of Law Number 37 Year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.)

In addition to having a debt to PT.DSS, PT. AJMI also has debts to other creditors, namely: 1. Eddy Salomon in the form of a cash cancellation policy, 2. Alaydrus in the form of a sum insured of Rp. 50,000,000.00, 3. Office of the Menteng Tax Service . One of these debts is due and can be payable. So that the bankruptcy requirements regarding the existence of two or more creditors or *concursus creditorum* have been fulfilled.

Based on the facts above because the obligation is not fulfilled in the form of debt payments on dividends and interest, the bankrupt curator of PT. DSS / Paul Sukran, SH on May 15, 2002, filed for bankruptcy to the Central Jakarta Commercial Court and requested the following verdict:*First*, receive and grant requests from the Curator Applicant PT. Dharmala Sakti Sejahtera- bankrupt debtor. *The* s*econd*, stating Respondent: PT. Asuransi Jiwa Manulife Indonesia (formerly PT Asuransi Jiwa Dharmala Manulife) is domiciled in Jakarta, bankrupt with all the legal consequences. *The third*, stating the legal and valuable confiscation of collateral that has been placed on the Respondent's assets in the form of: land and buildings as well as all accounts and deposits in the name of the Respondent (PT. Manulife Indonesia), both rupiah and US Dollar contained in: a. BCA, b. Bank Niaga, c. Standard Chartered Bank, d. American Express Bank, e. Citibank, f. ABN Amro and g. HSBC Bank, h. SBI certificates and entire portfolios: stocks, bonds and mutual funds. *The fourth*, Designate a Supervisor judge. And *The fifth*, appoint and designate Kali Sutan, SH as the Temporary Curator during the bankruptcy proceedings of the Respondent or Management in the PKPU process.(Yahya Harahap,2017:66)

2. The Decision of the Commercial Court in the Central Jakarta District Court Number 10 / Bankrupt / 2002 / PN.Niaga / Jkt.Pst dated June 13, 2002

The Central Jakarta Commercial Court in its decision No. 10 / Bankrupt / 2002 / PN. Niaga / Jkt.Pst dated June 13, 2002 granted Paul Sukran, SH's bankruptcy petition as Curator of PT. DSS with the following ruling:

> In the Exception: reject the exception of the Respondent/PT.AJMI. And in the main case: *First* grant the Petitioner's petition. *The second* stated that Respondent PT. Asuransi Jiwa Manulife Indonesia based in Jakarta, having its address at Jalan Pegangsaan Timur No. 1A, Cikini Jakarta Pusat, bankrupt. *The third* appointed Erwin Mangatas Malau, SH, Judge of the Central Jakarta Commercial Court, as Supervisory Judge. *The fourth* appointed Sutan Kali, SH as Curator/Receiver , which is located on Jl. Garuda II Slipi West Jakarta Anggrek as Curator/Receiver. *The fifth* set the amount of compensation for the Curator's service to be determined later, and the *Sixth* charged a case fee of Rp. 5,000,000.00 (five million rupiah).

The decision of the commercial court can be implemented because it is automatically binding despite legal remedies as stipulated in Article 6 Paragraph (5) of Law Number 4 Year 1998 concerning Bankruptcy and Suspension of Debt Payment Obligations.

3. The Decision of the Supreme Court Number 021 K / N / 2002 dated July 5, 2002

Upon the decision, the Respondent PT. AJMI and Other Creditors filed a request for cassation examination to the Supreme Court. (M.Ali Boediarto, 2002: 38) Based on the request, the Supreme Court in its Decision Number 021 K / N / 2002 dated July 5, 2002 granted the request for appeal of Bankruptcy Respondent of PT. AJMI and the other creditors. The Decision of the Supreme Court after adjudicating itself the contents granted the cassation petition for the Cassation Petitioners and then adjudicating the person whose ruling was, *First*, rejecting the Request for Bankrupt Statement from Bankrupt Petitioner Paul Sukran, SH as Curator of PT. Dharmala Sakti Sejahtera, Tbk. and *The second*, Punish the Cassation Respondent in the past Bankruptcy / Curator applicant in all court levels of Rp. 5,000.00 (five million rupiah).

To review the aforementioned PT.AJMI bankruptcy case, it is necessary to look at the legal norms governing the conditions of bankruptcy statements under Indonesian bankruptcy law. The legal norms for declaring bankruptcy are stipulated in Article 1 Paragraph (1) and Article 6 Paragraph (3) of Law Number 4 of 1998 concerning Bankruptcy . Article 1 (1) of the law determines that: *" The debtor who has two or more creditors and did not pay at least one debt due and billable, declared bankrupt by* a court decision authorized, *either on its own petition or at the request of one or more of its creditors* "and Article 6 paragraph (3) of the relevant law regulates simple proof, which stipulates that : *"A Petition for bankruptcy statements must be granted if there are facts or conditions that are simply proven that the requirements for bankruptcy are declared. as referred to in article 1 paragraph (1) has been fulfilled "*. The two articles are Article 1 paragraph (1) and Article 6 paragraph (3) of Law Number 4 of 1998 as a reference or parameter so that debtors can be declared bankrupt by the commercial court or the Supreme Court of the Republic of Indonesia. (As stipulate in Article 6 paragraph (3) of Law Number 4 of 1998 concerning Bankruptcy shows that the model of the Indonesian bankruptcy law is simply doesn't pay, not a test for insolvency).

The Commercial Court in this case believes the evidence is simple while the Supreme Court is the opposite. The two court institutions, namely the Commercial Court at the Central Jakarta District Court and the Supreme Court of the Republic of Indonesia when determining whether PT.AJMI's bankruptcy is based on the same provisions or the same parameter. The reference is as stipulated in Article 1 paragraph (1) and Article 6 paragraph (3) of Law Number 4 of 1998 concerning Bankruptcy but has different interpretations so that it resulting in different products. The consideration of the Commercial Court and the Supreme Court of the Republic of Indonesia regarding the conditions for fulfilling a bankruptcy statement can be referred to the requirements for requesting a bankruptcy statement contained in Article 1 paragraph (1) of Law Number 4 of 1998 concerning Bankruptcy. These requirements are 1) Respondent has a debt to the Petitioner, 2) Respondent has Debt that has matured and can be billed and 3) Respondent has Debt to Other Creditors. The description is below.

a. About the Respondent has a debt to the Petitioner

Every business needs capital in order to conduct its operations. The capital may be obtained from a variety of different sources,e.g. (1) by borrowing funds from private sources or on credit cards, (2) by capital contributions from the owners of the business, (3) by capital contributions from outside investors who thereafter become co-owners of the business. (Robert W.Hamilton,1994 : 328)

According to the commercial court's consideration that the Respondent's debt to the Petitioner can be known after the Respondent's Bankrupt Financial Report PT. AJMI for fiscal year 1999 made by Ernst & Young Public Accountants as Independent Auditors namely Consolidated Financial Statements December 31, 1999 and 1998. According to the Financial Statements the company obtained a surplus from a profit of Rp. 186,306,000,000.00 which must be distributed to shareholders in the amount of 30% thereof in the amount of Rp. 55,891,800,000,00 where PT. DSS has a 40% share composition so that it gets 40% x Rp. 55,891,800,000.00 to Rp. 22,356,720,000,00 and plus 20% interest x Rp. 55,891,800,000,00 = Rp. 10,433,136,000.00 so that all Rp. 32,789,856,000.00 (thirty two billion seven hundred eighty nine million eight hundred fifty six thousand rupiah).

The Commercial Court interprets debt in the broadest sense in which not only debt arising from credit agreement but also dividend arising from Joint Ventures between PT. DSS (40% or 1,800 shares), PT. AJMI (51% or 2,295 shares) and IFC / International Finance Corporation (9% or 405 shares) . The judges of the Commercial Court stated that dividends were equated with the debt must be owed by PT. AJMI to PT. DSS.

The Commercial Court's opinion on this matter is in accordance with the opinion of a legal expert namely Ricardo Simanjuntak who believes that it has become a permanent jurisprudence that the notion of debt is not only an obligation arising from a loan agreement to borrow money but also includes obligations arising from the agreement .(Ricardo Simanjuntak, 2003:22).The same opinion is from Fred B Tumbuan who interpreted debt in a broad sense.(Fred BG Tumbuan , 2005: 97). Fred BG Tumbuan, compiler of Perppu No. 1 of 1998 which believes that the debt that can be used as the basis for a bankruptcy petition is a debt that originates from both a law and an agreement. (*Sources* derived from the law are acts against the law (Article 1365 Indonesian Civil Code), commit an act without a power of attorney (Article 1354 Civil Code) and payment that is not required containing in Article 1359 to Article 1364 of the Indonesian Civil Code. With restrictions that natural agreement cannot be used as a legal reason for filing for bankruptcy. We know that the debt originating from the agreement referred to in Article 1234 of the Indonesian Civil Code, namely: (1) an agreement to give something, (2) an agreement to do something and (3) an action not to do something. According to the author, the concept of debt in the Indonesian Civil Code is also included in the definition of debt under bankruptcy law. However, according to the bankruptcy expert, this debt is settled through a bankruptcy procedure when the debt is due and can be collected.(Robert W. Emerson,J.D, 2004: 237).

Jerry Hoff , an adviser to the *International Monetary Fund* and the *World Bank* and also actively providing training on the enactment of The Government Regulation in lieu of Law Number 1 of 1998 that he believes that the definition of debt is an obligation arising either from a contract or from the law as intended in Article 1233 of the Indonesian Code Civil. There is an obligation to give something, and do or not do something (Article 1234 of the Civil Code). Creditors are entitled to carry out obligations by the Debtor. Debtor is required to carry out his obligations or achievements. (Jerry Hoff, 1999:16). Furthermore, Jerry Hoff interpreted debt as equal to obligation or achievement . Hoff added several examples of obligations arising from contracts are: *The first* is the obligation of a borrower to pay interest and to repay the principal of the loan to a lender . *The second* is :the obligation of a seller to deliver a car to a purchaser pursuant to a sale and purchase agreement. *The third* is the obligation of a builder to construct a house and deliver it to a purchaser and *the fouth* is the obligation of a guarantor to guarantee to a lender the repayment of a loan by a borrower.

By interpreting dividends as being equal to debt, the The Central Jakarta Commercial Court accepted PT. DSS curator's bankruptcy petition so that PT.AJMI was declared bankrupt with all its legal consequences. Here the Commercial Court at the Central Jakarta District

Court, Indonesia sets debt in a broad sense. The Commercial Court believes that the evidence in this case is simple proof.

b. Regarding Respondent Having Debt That Was Due and Payable

Debt due and due and payable from PT. AJMI according to the Commercial Court is a dividend of Rp. 40% x Rp. 55,891,800,000.00 is in the amount of Rp. 22,356,720,000 (twenty two billion three hundred fifty six million seven hundred twenty thousand rupiah) and the interest is 20% x 55,891,800,000.00 in the amount of Rp. 10,433,136,000.00 so that the total amount of Rp. 32,789,856,000.00 (thirty two billion seven hundred eighty nine million eight hundred fifty six thousand rupiah).

The debt was due and payable because the dividend is sourced from the company's profits in the period 31 December 1998 and 1999 and has been warned 2 (two) times, 26 April 2002 (Evidence: P-3) and 2 May 2002 (Evidence: P -4) by the bankrupt petitioner so that the Respondent Bankruptcy of PT. AJMI pay such dividends but still does not pay the Respondent bankruptcy so it can be concluded that the debt has been maturity and payable. The Commercial Court's considerations are as follows *: "Considering, that the dividend should have been paid in 1999, a summons was made by the Petitioner (Vide evidence P-3 and P-4), then the panel of judges is of the opinion that the debt was due and payable".*

Normatively, a Debtor is declared negligent in Article 1238 of the Civil Code. Article 1238 of the Indonesian Civil Code states that the debtor is declared negligent by a warrant or by such a deed, or based on the strength of the engagement itself, that is, if the engagement results in the debtor must be considered negligent with the elapsed time.(Mariam Darus Badrulzaman, 2015 : 22).

The warrant (*bevel*) referred to in Article 1238 of the Civil Code is an official written warning delivered by the Court Clerk that clearly states the creditor's insistence that the debtor performs an achievement within a reasonable time. The meaning of this warrant according to Mariam Darus Badrulzaman refers to *Arrest Hoge* Raad (The Supreme Court of the Netherlands*) on March 12, 1925, NJ 1925, 562 W. 1137*. Based on the above considerations, it is clear that Debtor debt was due and payable.(Mariam Darus Badrulzaman, 2015 : 23).

c. About the Respondent having Debts to The Other Creditors

To fulfill the requirement of *concursus creditorum* that derived from Latin, which means a combination of creditors who must exist to declare Debtor bankrupt. The debtor must have 2 (two) creditors or more. (Sutan Remy Sjahdeini, 2016 : 132) in bankruptcy law, the Petitioner has completed his petition by including several creditors, both individuals and tax authority, namely: 1. Eddy Salomon because the Respondent has a debt in the form of a cash cancellation policy that has not been paid to Eddy Salomon. 2. Alaydrus in which the Respondent has a debt in the form of payment of an underwriting of Rp. 50,000,000.00, and 3. The Menteng Tax Service Office is located at Jl. Sam Ratulangi No. 17 Central Jakarta.

When the case was heard in the Commercial Court at the Central Jakarta District Court and the The Supreme Court of the Republic of Indonesia that the applicable bankruptcy law was the Law No. 4 of 1998 as a substitute for *Faillissements-verordening, Stb. 1905 Number 217 jo. Stb. 1906 Number 348* (Bankruptcy Regulation is contained in the State Gazette Number 207 of 1905 in relation to the State Gazette Number 348 of 1906) itself does not regulate the definition of "debt". Therefore the Commercial Court on the one hand applies the law directly, 'as is' as a civil law tradition but on the other hand has interpreted the meaning of debt as not only debt in terms of borrowing money but more broadly than that of dividends, which are profits from companies that distributed to shareholders on *a pro rata principle,* that comes from Latin which means that the bankruptcy assets are collateral for creditors and will be distributed proportionately among them. *(*Bryan A. Garner, 2004:512).

The Supreme Court which received an appeal request from Petitioner I. PT. Asusansi Jiwa Manulife Indonesia (formerly PT. Asuransi Jiwa Dharmala Manulife) was represented by Philip Hampdem Smith and Adi Purnomo Widjaja, respectively as Directors located at Jl. Pegangsaan Timur No. 1 A, Cikini, Central Jakarta has given power of attorney to Ria Hetharia, SH and Sheila A. Salomo, SH, Advocates at the Law Offices of Hotma Sitompul & Associates, having their address at Jl. Martapura Number 3, Central Jakarta, based on Special Power of Attorney dated June 14, 2002.

Before canceling the Commercial Court's decision, the Supreme Court formally granted the Cassation Appellant's request because the petition had fulfilled the requirements determined by the laws and regulations, in particular Article 8 and Article 9 of the Indonesian Bankruptcy Law (The Law No. 4 of 1998) concerning the time limit for filing the petition for cassation, cassation memory and counter memory cassation. Article 8 states that the submission of a petition for cassation must be submitted no later than 8 days after the decision is determined by the court of first instance or the commercial court. Article 9 of the *Government Regulation in Lieu of Law Number 1 of 1998 (abbreviated as GRL /Peraturan Pemerintah Pengganti Undang-Undang* or *Perppu*) states that the petitioner for cassation must submit to the clerk of the court of first instance and to the counterpart of the cassation memory and a copy of the cassation request on the date the cassation request is registered.(M.Hadi Shubhan , 2014:383-384).

The Supreme Court in its Decision Number 021 K / N / 2002 dated July 5, 2002 could receive an appeal memory from PT.AJMI which was used as a legal reasoning of *the* decision, among others, arguing that 1) that the Joint Venture Agreement was not made at the RUPS-PT. AJMI. It can be explained that *RUPS is* an abbreviation *of Rapat Umum Pemegang Saham* and the meaning is a General Meeting of Shareholders. The General Meeting of Shareholders (GMS) is regulated in articles 63 to Article 78 of Law Number 1 of 1995 concerning Limited Liability Companies. And 2) that this case *cannot be proven simply* because of a share ownership dispute between Roman Gold Asset and PT. Dharmala Sakti Sejahtera / Petitioner bankrupt and 3) that this case is not simple because it must first be proven whether there is a dividend in 1999?

PT. AJMI is actually a bona fide company. According to PT.AJMI in the counter memory of its appeal, it said that the petition for bankruptcy submitted by Curator Paul Sukran as the Curator of PT. DSS was solely to bring down and destroy the Respondent Bankruptcy of PT.AJMI in fraudulent business competition because PT.AJMI was a company that was very healthy. This can be seen from the evidence of P-1 in the form of PT. Manulife Indonesia Life Insurance for the period ended December 31, 1999 and 1998 which was audited by the independent Public Accountant Ernst & Young.

If this is compared to United States corporate law then there must be established the general test for legality of a dividend as (1) the availability of "earned surplus" out of which the dividend may be paid and (2) a solvency test to be applied immediately after giving effect to the dividend. This can be seen from the provisions of Article 2 (1) of the MBCA / Model Business Corporate Act 1969 (Robert W. Hamilton, 1994: 440).

There is a difference in interpretation between the commercial court and the Supreme Court according to the author because the parameter of simple proof principle is somewhat ambiguous or weak as determined in Article 6 paragraph (3) associated with Article 1 paragraph (1) The Government Regulation in Lieu of Law Number 1 of 1998 /The Law Number 4 of 1998. Besides the insolvency model adopted by the Indonesian bankruptcy law in particular Law Number 4 of 1998 is "*Simply Doesn't Pay*" which does not refer to the financial condition of the company to determine bankrupt debtors. This is different from the insolvency model with the Insolvency Test which must be held a test of the company's financial situation. To assess the financial condition or the level of solvency of a debtor or a

legal entity must be determined through the Insolvency Test. (Elyta Ras Ginting, *Hukum Kepailitan*, 2018: 117). The insolvency test model for determining a bankrupt debtor can be found in the bankruptcy law of the United States and the Anglo Saxon countries or the Common Law System in general.

The amendment of the *FV* to Government Regulation in Lieu of Law (GRLL) Number 1 Year 1998 is necessary because if using the *FV* it is very difficult to bankrupt the Debtor. This is related to the agreement between the Republic of Indonesia and the IMF in order to reform the Indonesian bankruptcy law. Therefore the *FV* is amended by including Article 6 paragraph 3 of the GRLL on Simple Proof. However, because the regulation is unclear and there is no insolvency test, it gives rise to different interpretations between the commercial court judge and the Supreme Court of the Republic of Indonesia.

d. Differences In Interpretation of Requirements of Bankrupty

Below are summarized of the decision of the Central Jakarta Commercial Court (JCC) and the Supreme Court of Republic of Indonesia (SCRI). Of the 31 cases, there are only four cases that show the same opinion between the Jakarta Commercial Court and the Supreme Court of the Republic Indonesia. If it is made the percentage is only around 0.13 percent between the Central Jakarta Commercial Court and the Supreme Court which have the same opinion regarding the same matter regarding the bankruptcy requirement.

Researcher did not collect many decisions but only collect what was needed and then some of them were taken because this research is juridicial normative.

No	Case Number		Opinion		Object Being Examined		Bankrupt/No	
	CJCC	SCRI	CJCC	SCRI	Substance	Formality	Bankrupt	No
1	5/Pailit/1988	1 K/N/1998	c	c		√		√
2	14/Pailit/1998	5/K/N/1998	c	s	√		√	
3	16/Pailit/1998	7/K/N/1998	c	c	√			√
4	29/Pailit/1998	5/K/N/1999	s	c	√			√
5	30/Pailit/1998	7/PK/N/1999	s	c		√		√
6	6/Pailit/1999	7/K/N/1999	c	c		√		√
7	7/Pailit/1999	3/K/N/1999	s	c	√			√
8	14/Pailit/1999	12/K/N/1999	c	s	√		√	
9	23/Pailit/1999	14 /K/N/1999	c	s	√		√	
10	26/Pailit/1999	15/K/N/1999	s	c	√			√
11	30/Pailit/1999	34/K/N/1999	c	S	√		√	
12	31/Pailit/1999	20/K/N/1999	s	c	√			√
13	32/Pailit/1999	19/K/N/1999	c	s	√		√	
14	34/Pailit/1999	22/K/K/N/1999	c	s	√		√	

15	41/Pailit/1999	24/K/N/1999	c	s	√		√	
16	42/Pailit/1999	24/K/N/1999	s	c	√			√
17	68/Pailit/1999	43/K/N/1999	c	s	√		√	
18	70/Pailit/1999	44/K/N/1999	s	s	√		√	
19	12/Pailit/2000	12/K/N/2000	c	s	√		√	
20	26/Pailit/2000	19/K/N/2000	c	s	√		√	
21	71/Pailit/2000	34/K/N/2000	c	s	√		√	
22	77/Pailit/2000	36/K/N/2000	c	s	√		√	
23	81/Pailit/2000	6/K/N/2000	s	c	√			√
24	2/Pailit/2001	21/K/N/2001	c	s	√		√	
25	10/Pailit/2001	20/K/N/2001	s	c	√			√
26	12/Pailit/2001	22/K/N/2001	s	c	√			√
27	10/Pailit/2002	21/K/N/2002	s	c	√			√
28	13/Pailit/2004	8/K/N/2004	s	c	√			√
29	52/Pailit/2009	824K/2009	s	c	√			√
30	48/Pailit/2012	704 K/2012	s	c	√			√
31	13/Pailit/2014	8/K/N/2014	s	c	√			√

This table shows the differences in opinion between the Central Jakarta Commercial Court and the Supreme Court of the Republic of Indonesia regarding the requirements for a bankruptcy decision. The same opinion is only found in serial numbers 1, 3, 6 and 18. The similarity of opinion can be in the form of a substance problem, namely regarding the conditions for bankruptcy or merely a procedural or formality issue.

CONCLUSION

Based on research on cases in PT.AJMI's bankruptcy (No. 10/Pailit/2002), The Prudential (No.13/Pailit/2004) , PT.Cipta Televisi Indonesia (52/Pailit/2009) , and other cases as shown in the table above except serial numbers 1, 3, 6 and 18, there are differences in interpretation of the conditions for bankruptcy requests. This is because there are no clear parameters regarding the definition of "debt" and the conditions for applying for bankruptcy. This happened because there was not enough time to formulate these parameters. Discussions on the draft law are hampered by the time limit agreed between the Indonesian government and the International Monetary Fund. In addition, differences in interpretation of bankruptcy requirements were caused by the absence of insolvency test to determine bankruptcy Debtors. The requirements for bankruptcy under Indonesian bankruptcy law are formal. One or a company can be declared bankrupt as long as the formal conditions of the bankruptcy conditions have been fulfilled even though the company is still solvent. So the

petition for bankruptcy is filed by the applicant such as the right to claim the bankruptcy Respondent. If the debt is not paid by the Debtor, the Debtor is declared bankrupt but has not been declared insolvent. Bankrupt debtor will be declared insolvent if a debt settlement proposal is not submitted by the bankruptcy Debtor at the creditors meeting. The use of the "Insolvency Test" is better used than the "Simply Doesn't Pay" model. This is necessary to avoid a solvency company is declarated bankrupt.

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