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Legal Analysis of the Mechanism for Examining Bankruptcy Cases and Its Issues in Commercial Court Practice from the Perspective of Law No. 37 of 2004

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Abstract

Bankruptcy is a legal mechanism for settling debts when a debtor is unable to fulfill their obligations. In Indonesia, bankruptcy is regulated by Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which aims to provide legal certainty, justice, and balanced protection for debtors and creditors. This study aims to analyze the bankruptcy case examination process under this law and the effectiveness of its implementation in commercial courts. The study focuses on the examination stages, principles of proof, and the role of judges in determining bankruptcy requirements. The method used is normative juridical with a statutory and conceptual approach, utilizing primary, secondary, and tertiary legal materials, as well as qualitative analysis. The results of the study indicate that normatively, the bankruptcy process is simple, fast, and low cost, with the main requirement of two creditors and one debt that is due. However, in practice, obstacles still exist, such as the misuse of bankruptcy petitions, weak debtor protection, and differences in judicial interpretation. Therefore, improvements to regulations and judicial practices are needed to make the bankruptcy system

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fairer and more effective.

Keywords: Bankruptcy, Case Examination, Debtor

INTRODUCTION

The development of the economic and business sector in the era of globalization has led to an increase in trade activities, investment, and cooperation relationships among business actors. In conducting business activities, entrepreneurs do not always rely solely on internal capital but also require financial support from other parties through legal relationships between creditors as providers of funds and debtors as recipients of financing.[1]

Such legal relationships generally arise through agreements that regulate the rights and obligations of the parties involved. In civil law, agreements are regulated under Article 1313 of the Indonesian Civil Code (KUHPerdata), while the requirements for the validity of an agreement are regulated under Article 1320 of the Indonesian Civil Code. A legally valid agreement has binding legal force for the parties as stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code, which reflects the principle of pacta sunt servanda, meaning that each party is obligated to perform its duties and obligations in accordance with the agreement that has been mutually agreed upon.

However, in practice, the implementation of debt obligations does not always proceed as expected. Debtors may experience difficulties in fulfilling their obligations due to both internal and external factors, such as poor management, economic conditions, market changes, or circumstances beyond their control (force majeure). The inability of a debtor to fulfill its obligations may result in a default (wanprestasi) as regulated under Article 1238 of the Indonesian Civil Code, which provides creditors with the right to demand fulfillment of obligations or compensation based on Article 1243 of the Indonesian Civil Code.[2] The problem of a debtor's inability to repay debts does not only affect the relationship between debtors and creditors but may also impact the continuity of business activities. Therefore, a legal mechanism is required to provide a fair resolution and legal certainty for all parties involved. One of the mechanisms available is through the institution of bankruptcy.

In the Indonesian legal system, bankruptcy is regulated under Law Number 37 of 2004

[1] Munir Fuady, Hukum Pailit dalam Teori dan Praktek (*Bankruptcy Law in Theory and Practice*), (Bandung: Citra Aditya Bakti, 2017), pp. 1–3.
[2] M. Yahya Harahap, Segi-Segi Hukum Perjanjian (*Aspects of Contract Law*), (Bandung: Alumni, 1986), pp. 60–62; see also the Indonesian Civil Code, Articles 1238 and 1243.

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concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU). Based on Article 1 point 1 of Law Number 37 of 2004, bankruptcy refers to a general seizure of all assets belonging to a bankrupt debtor, where the management and settlement of such assets are carried out by a curator under the supervision of a supervisory judge. Furthermore, Article 2 paragraph (1) of Law Number 37 of 2004 stipulates that a bankruptcy petition may be submitted if the debtor has at least two creditors and there is a debt that has become due and payable.[3]

In the increasingly complex dynamics of the business world, the legal relationship between debtors and creditors in the form of debt obligations is an inevitability that cannot be avoided. Essentially, these obligations arise from agreements that bind the parties as regulated by the principle of pacta sunt servanda, which requires each party to fulfill the agreed-upon obligations.[4] However, in practice, not all debtors are able to meet their obligations on time, whether due to internal factors like mismanagement or external factors such as economic crises, market fluctuations, and force majeure.[5] This situation ultimately creates legal problems that need to be resolved through a structured mechanism that provides legal certainty, namely through bankruptcy proceedings.

Bankruptcy is a legal mechanism aimed at carrying out a general seizure of all a debtor's assets to be fairly distributed to creditors according to the principles of paritas creditorum and pari passu prorata parte. In the Indonesian legal system, the rules concerning bankruptcy are comprehensively regulated in Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. This law was introduced as an update to previous regulations, with the goal of creating a more effective, transparent bankruptcy system that can meet the needs of the modern business world.[6]

Normatively, Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations states that a bankruptcy petition can be granted if the debtor has at least two creditors and there is a debt that has fallen due and can be collected. The examination of bankruptcy cases should also be done simply, quickly, and at low cost, with the commercial court's decision issued

[3] Jono, Hukum Kepailitan (*Bankruptcy Law*), (Jakarta: Sinar Grafika, 2015), pp. 3–5; see also Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Article 1 point 1 and Article 2 paragraph (1).
[4] Article 1338 paragraph (1) of the Civil Code.
[5] Subekti, *Contract Law* (Jakarta: Intermasa, 2005), p. 5.
[6] Sutan Remy Sjahdeini, *Bankruptcy Law: Understanding Law Number 37 of 2004 concerning Bankruptcy and PKPU.* Jakarta: Pustaka Utama Grafiti, 2010, pp. 2–5.

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no later than 60 days after the petition is filed.[7] In practice, the implementation of these provisions still faces various challenges, such as the misuse of bankruptcy petitions as a pressure tool against debtors, differences in judges' interpretations regarding simple evidence, and the still suboptimal protection for debtors who still have business prospects. In addition, bankruptcy cases involving foreign elements also raise issues related to jurisdiction and the recognition of court decisions in other countries.[8]

These problems show that there is a gap between the legal norms set out in regulations and their implementation in practice. Therefore, a thorough study is needed to analyze the bankruptcy case examination process based on Law Number 37 of 2004 and to evaluate the effectiveness of its application in achieving justice and legal certainty for the parties involved. This study is expected to contribute ideas to the development of bankruptcy law in Indonesia, especially in creating a legal system that is more responsive to the dynamics of the business world and global legal developments.

Based on that background, the problem studied in this research focuses on how the mechanism for handling bankruptcy cases according to Law No. 37 of 2004 works and what issues arise in the practice of handling bankruptcy cases.

METHOD

This study uses a normative juridical method, which is legal research that focuses on examining legal norms in legislation and other written legal sources. This method aims to understand and analyze legal principles, the legal system, and the synchronization between norms, especially those related to bankruptcy law. The study examines Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations as the main legal material, supported by relevant legal literature.

The normative juridical research method in this study refers to the opinions of Soerjono Soekanto and Sri Mamudji, who stated that normative legal research is research conducted by examining library materials or secondary data as the basic material to study legal rules, principles,

[7] Article 8 paragraph (5) of Law Number 37 of 2004 *Concerning Bankruptcy and Suspension of Debt Payment Obligations.*
[8] M. Hadi Shubhan, *Bankruptcy Law: Principles, Norms, and Practice in the Courts,* Jakarta: Kencana, 2019. Pp. 75–85

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systematics, and synchronization.[9] This research views law as norms written in legislation as well as various legal doctrines found in literature. Therefore, this study focuses on analyzing the provisions of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, along with other relevant legal sources, to gain a deep understanding of bankruptcy case examination.

This research uses a statute approach and a conceptual approach. The statute approach is carried out by examining regulations related to bankruptcy, while the conceptual approach studies legal principles and doctrines such as justice, legal certainty, and usefulness. The legal materials used consist of primary sources (Law No. 37 of 2004), secondary sources (books, journals, and expert opinions), and tertiary sources (legal dictionaries and encyclopedias). Data collection is done through literature review, and then analyzed qualitatively using grammatical, systematic, and teleological interpretations to assess the alignment between legal norms and bankruptcy practices.

DISCUSSION

Mechanism for handling bankruptcy cases according to Law No. 37 of 2004

The Commercial Court is a special court within the General Courts that has the authority to examine and decide cases in the business field, especially bankruptcy, Suspension of Debt Payment Obligation (PKPU), and Intellectual Property Rights (IPR) disputes. This court was established in response to Indonesia's economic crisis through Government Regulation in Lieu of Law No. 1 of 1998, which later became Law No. 4 of 1998 and was refined with Law No. 37 of 2004 on Bankruptcy and PKPU. Its goal is to provide a faster and more specialized resolution for business disputes. Initially, the Commercial Court was only in the Central Jakarta District Court, but it was later expanded to several cities based on Presidential Decree No. 97 of 1999, including Medan, Surabaya, Semarang, and Ujung Pandang (Makassar), with authorities covering bankruptcy, PKPU, and IPR cases like copyrights, trademarks, and patents.[10]

The establishment of the Commercial Court cannot be separated from the economic crisis experienced by Indonesia in 1997–1998, which caused many companies to face financial difficulties and become unable to fulfill their payment obligations to creditors. This condition demonstrated that the existing debt settlement mechanisms under the legal system at that time

[9] Soekanto, Soerjono and Sri Mamudji. 2015. *Normative Legal Research: A Brief Overview*. Jakarta: Rajawali Pers. Pp. 23–24

[10] Presidential Decree No. 97 of 1999 *Concerning The Establishment Of Commercial Courts In Several District Courts.*

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were insufficient to provide adequate legal certainty for the parties involved. In response to this situation, the government issued Government Regulation in Lieu of Law (Perpu) No. 1 of 1998 concerning Amendments to Bankruptcy Law, which was later ratified as Law No. 4 of 1998.

Law No. 4 of 1998 became the initial legal basis for the establishment of the Commercial Court as a specialized court with authority to examine and decide bankruptcy cases. The establishment of this institution aimed to create a business dispute resolution system that was simpler, faster, and capable of providing legal certainty for both creditors and debtors. However, along with the development of business activities and the increasing complexity of business relationships, these provisions were later improved through Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

Based on Law No. 37 of 2004, the Commercial Court has absolute jurisdiction to examine and decide applications for bankruptcy declarations and applications for Suspension of Debt Payment Obligations. In bankruptcy cases, the Commercial Court has the authority to determine whether a debtor fulfills the requirements to be declared bankrupt as stipulated in Article 2 paragraph (1) of Law No. 37 of 2004, namely that the debtor has at least two creditors and fails to pay at least one debt that has become due and payable.

Furthermore, the Commercial Court also has the authority to handle PKPU cases as a debt settlement mechanism that provides an opportunity for debtors to restructure their payment obligations to creditors. Through the PKPU mechanism, debtors are given the opportunity to submit a composition plan so that business activities can continue while the interests of creditors remain protected.

At the beginning of its establishment, the Commercial Court only existed within the Central Jakarta District Court. However, in order to improve the effectiveness of business dispute resolution and expand public access to justice, the government expanded the existence of Commercial Courts through Presidential Decree No. 97 of 1999 to several regions, namely Medan, Surabaya, Semarang, and Ujung Pandang (Makassar).

In addition to bankruptcy and PKPU cases, the authority of the Commercial Court also includes the settlement of Intellectual Property Rights (IPR) disputes, such as copyright, trademark, and patent cases. This authority demonstrates that the Commercial Court plays a strategic role in providing legal protection for economic activities, including the protection of intangible assets that have economic value for business actors.[11]

[11] Rachmadi Usman, *Intellectual Property Rights Law: Legal Protectioggn and Its Dimensions* (Bandung: Alumni, 2003), pp. 15–17.

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Although it already has a clear legal foundation, in practice the Commercial Court still faces various challenges, such as differences in judges' interpretations regarding the concept of simple evidence in bankruptcy proceedings, the potential misuse of bankruptcy petitions as a pressure mechanism against debtors, and the issue of balancing protection between creditors' interests and the continuity of debtors' businesses. Therefore, a study of the mechanism for examining bankruptcy cases in the Commercial Court based on Law No. 37 of 2004 is important to assess the effectiveness of bankruptcy law implementation in Indonesia.

Bankruptcy is a legal situation declared by the court,gg alap-alap involving a general seizure of all the debtor's assets to be used to pay off debts to creditors.[12] This definition is regulated in Article 1 number 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which states that the management and liquidation of bankrupt assets are carried out by a curator under the supervision of a supervisory judge. The purpose of bankruptcy is to provide protection to creditors through the fair distribution of the debtor's assets. This distribution is based on the principle of paritas creditorum, meaning all creditors essentially have the same standing, and the principle of pari passu prorata parte, meaning the proceeds from the liquidation of the bankrupt assets are distributed proportionally according to each creditor's claims.

Furthermore, bankruptcy also serves as a collective way to prevent individual creditors from taking enforcement actions that could harm other creditors. With bankruptcy, all debt collection and repayment processes are handled through a single forum, namely the commercial court, creating order, legal certainty, and efficiency in resolving debt disputes. In practice, the management and settlement of the bankrupt debtor's assets are carried out by a curator, who is a party appointed by the court to manage and settle the bankrupt debtor's assets.

The curator carries out their duties under the supervision of a supervising judge whose job is to ensure that the bankruptcy process runs according to the applicable law. This shows that bankruptcy isn't just administrative, but also has a strong judicial dimension. From a legal doctrine perspective, bankruptcy doesn't always mean the debtor is absolutely unable to pay (insolvent). In the Indonesian legal system, declaring someone bankrupt focuses more on meeting the formal requirements set by law, namely having more than one creditor and having debts that are due and collectible.[13]

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[12] Munir Fuady, *Bankruptcy Law in Theory and Practice* (Bandung: Citra Aditya Bakti, 2017), p. 3.
[13] Sutan Remy Sjahdeini, *Bankruptcy Law: Understanding Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations* (Jakarta: Pustaka Utama Grafiti, 2010), p. 65

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Thus, a debtor can be declared bankrupt even if they still actually have assets or the ability to pay, as long as the conditions are met. In a broader context, including from the perspective of international civil law, bankruptcy can also involve foreign elements, such as the presence of foreign creditors or the debtor's assets located in different jurisdictions. This brings its own complexities, especially regarding the recognition and enforcement of cross-border bankruptcy rulings. Therefore, understanding bankruptcy is important not just on a national level, but also within the framework of an increasingly developing global legal system. In this way, bankruptcy can be seen not only as a mechanism for seizing a debtor's assets, but also as a legal instrument aimed at creating justice, certainty, and usefulness in resolving legal relationships between debtors and creditors.

Requirements for Filing for Bankruptcy

Filing for a bankruptcy declaration is the first step in the bankruptcy process and must meet certain requirements. Basically, the rules about bankruptcy requirements are set out in Article 2 paragraph (1), which states that a debtor can be declared bankrupt if two main elements are met: there is more than one creditor, and there is debt that is due and collectible but hasn't been paid. These two conditions are cumulative, so both must be met at the same time for the court to approve the bankruptcy petition.[14]

The Debtor Has Two or More Creditors

The first requirement for a bankruptcy application is having at least two creditors (concursus creditorum). This provision shows that bankruptcy is a mechanism for handling debt collectively, not just for the benefit of one creditor. Having more than one creditor is necessary so that the debtor's assets can be distributed fairly according to the principle of paritas creditorum, which means equal standing among creditors. Proof of having two or more creditors can come from different legal relationships as long as it can be simply demonstrated in a commercial court. However, in practice, issues often arise regarding the existence of potential creditors or creditors who have not actively made claims. Therefore, judges play an important role in assessing the validity and existence of creditors to determine if the concursus creditorum requirement is met.[15]

[14] Law Number 37 of 2004 *Concerning Bankruptcy and Suspension of Debt Payment Obligations,*
[15] M. Hadi Shubhan, *"The Requirement of Two Creditors in a Bankruptcy Application and the Problems of Proving It."* Vol. 18 No. 4 (2011), p. 521

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Not Paying at Least One Debt That Has Matured and Can Be Collected

The condition for filing a second bankruptcy petition is having a debt that has matured and can be collected but is not paid by the debtor, which shows a breach of obligations without the need to prove insolvency. It's enough to show that there is at least one debt meeting these criteria. In bankruptcy law, debts include all monetary obligations arising from contracts, laws, or court decisions. The proof is done in a simple way to support a fast and efficient process, although in practice there are often disputes about the existence or amount of debt. Additionally, bankruptcy can involve foreign elements like creditors or assets abroad, which raises issues of jurisdiction and recognition of decisions.[16] Since Law No. 37 of 2004 doesn't yet regulate cross-border bankruptcy, its implementation still faces obstacles and needs international legal harmonization.

Bankruptcy Case Examination Process

The examination process for a bankruptcy case is an important step in determining whether a debtor can be declared bankrupt or not. This process must be carried out based on the principles of simplicity, speed, and low cost. This is intended to provide legal certainty and efficiency in resolving debt disputes through the commercial court. Although the bankruptcy mechanism is designed to provide protection for creditors' interests in obtaining repayment of their claims, the examination process must also continue to take into account the interests of the debtor. This is because a bankruptcy decision has extensive legal consequences, namely the transfer of the authority to manage and settle the debtor's assets to the curator under the supervision of the supervising judge. Therefore, bankruptcy proceedings must be conducted carefully to prevent injustice, particularly against debtors who still have the ability to maintain the continuity of their business operations.

Filing a Petition

The initial stage of the bankruptcy process starts with filing a petition for a declaration of bankruptcy with the Commercial Court by a creditor, debtor, or the public prosecutor for the public interest. The petition must be accompanied by evidence showing that the requirements for bankruptcy are met according to the applicable laws and regulations. Once the petition is registered, the court is required to set a hearing date no later than 3 (three) days from the registration date. This rule reflects the principle of speed in bankruptcy law to provide legal

[16] Law Tribune Journal. *Debts That Are Due and Collectible as the Basis for a Bankruptcy Application.* Vol. 22 No. 1 (2010), P. 215

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certainty, prevent the debtor's financial condition from worsening, and protect the interests of creditors. Summoning the parties is also done quickly so that the examination process can proceed effectively and efficiently.[17]

Case Examination

The examination of bankruptcy cases by the Commercial Court is carried out quickly, simply, and efficiently. Unlike ordinary civil cases, the judge only simply examines whether the conditions for bankruptcy are met, namely the existence of a debt that has matured and can be collected as well as the presence of more than one creditor (concursus creditorum). The principle of simple proof aims to speed up the case resolution process without deeply examining the debtor's financial condition. However, in practice, applying this principle often faces obstacles if there is a dispute over the existence or amount of debt that requires further proof.[18]

In the examination of bankruptcy cases, the Commercial Court judges have an important role in determining whether the requirements for a bankruptcy petition have been fulfilled as regulated under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU). The examination is conducted based on the principle of simple proof, in which the judge only needs to establish the existence of facts or circumstances indicating that the debtor has at least two creditors and that there is a debt that has become due and payable. If these requirements are fulfilled, the bankruptcy petition may be granted by the Commercial Court.

Court Decision

The final stage of bankruptcy case examination is the court decision. According to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the decision must be made no later than 60 days after the application is filed, as an implementation of the principles of legal certainty and efficiency.[19] The court decision can either approve or reject the bankruptcy petition. If approved, the debtor is declared bankrupt and all of their assets are placed under general seizure managed by a curator under the supervision of a supervisory judge. This decision also limits the debtor's authority to manage their assets. A Commercial Court decision in a bankruptcy case may, in principle, either grant the petition for a declaration of bankruptcy or reject the petition. If the bankruptcy petition is granted, the debtor is legally

[17] Article 6 paragraph (4) and paragraph (5). *Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.*
[18] *Ibid.* Article 8 paragraph (4)
[19] Ibid. Article 8 paragraph (5)

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declared bankrupt, and from the moment the decision is pronounced, a general attachment is imposed over all of the debtor's assets. Subsequently, the management and liquidation of the bankruptcy estate are no longer carried out by the debtor, but are instead conducted by the curator under the supervision of the supervising judge in accordance with the provisions of Law Number 37 of 2004.

Issues in the Practice of Bankruptcy Case Examination

Legal Analysis of Bankruptcy Case Examination

Regulations regarding bankruptcy in Law Number 37 of 2004 on Bankruptcy and PKPU basically emphasize three main principles: simple, fast, and low-cost. These principles are intended to provide legal certainty as well as efficiency in settling debts between debtors and creditors. However, in practice, these principles actually give rise to several weaknesses that affect substantive justice.

Simple Proof

The concept of simple proof is a distinctive feature in bankruptcy case examinations. According to the law, judges only need to provide simple evidence of the existence of two or more creditors and a debt that has fallen due and can be collected. Normatively, this concept aims to speed up the examination process without going through the complex proof required in regular civil cases. However, in practice, this concept can cause serious issues. Judges tend to focus only on the formal aspects of evidence, without thoroughly examining the debtor's financial condition. As a result, assessing the debtor's ability to pay (solvency) is often overlooked. In fact, the essence of bankruptcy shouldn't just be based on the existence of due debt, but also on the debtor's overall inability to meet their obligations. This overly formalistic approach could blur the main purpose of bankruptcy law itself, which is to provide a way to settle debts fairly and proportionally between the parties.

Potential for Abuse

The ease of filing for bankruptcy, which only requires simple proof, opens up the possibility of abusing the bankruptcy system. In practice, bankruptcy petitions are often used as a pressure tool by creditors against debtors. Additionally, bankruptcy can be exploited as part of an unhealthy business strategy, for example, to undermine competitors or to force debtors to pay quickly without going through a fair negotiation process. This shows that the function of bankruptcy has

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shifted from being a debt resolution tool to a tool for certain interests that can harm others.[20] This situation reflects an imbalance in applying the principles of justice and good faith in bankruptcy law.

Weak Protection for Debtors

One of the main criticisms of the bankruptcy system in Indonesia is the weak legal protection for debtors. Under Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), a debtor can be declared bankrupt simply by meeting formal requirements, such as having debt that is due and collectible, without considering whether the debtor is still solvent. This means that debtors who actually still have the financial ability to continue their business can still potentially be declared bankrupt. As a result, bankruptcy can actually harm not only the debtor, but also other parties like workers, business partners, and even the wider economy. In addition, alternative mechanisms like Postponement of Debt Payment Obligations (PKPU), which are supposed to serve as a debt restructuring tool, haven't been used to their full potential in practice.[21] This further weakens the debtor's position when facing a bankruptcy petition. Also, one issue is that creditors and/or bankrupt debtors don't know when the curator's report to the supervising judge is posted on the info board at the commercial court registry.

Obstacles in Practice

In the practice of handling bankruptcy cases based on Law Number 37 of 2004 concerning Bankruptcy and PKPU, there are several obstacles that can potentially affect the quality of decisions and the achievement of justice for the parties involved. These obstacles include the following:

Lack of Judicial Caution

One of the important principles in bankruptcy case examination is the judge's caution in assessing the facts and evidence presented by the parties. However, in practice, the relatively short bankruptcy case examination process (due to strict time limits) often leads judges to focus more on meeting formal requirements rather than the substance of the case. This situation can

[20] SASI Journal (Pattimura University). *"Abuse of Circumstances in Bankruptcy Application Procedures at the Commercial Court"* Vol. 24 No. 1 (2018). P. 11
[21] Journal of Law & Development (FH UI). Ahmad Yani, *"Bankruptcy Law Problems in Debtor Protection."* Vol. 44 No. 3 (2014). P. 356

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result in a bankruptcy ruling being issued without deeply considering the debtor's financial condition in a comprehensive way. In fact, bankruptcy has broad legal consequences, including the loss of the debtor's right to control and manage their assets. Therefore, a lack of caution by the judge can create risks of injustice, especially for debtors who actually still have the ability to fulfill their obligations.[22]

Different Interpretations Regarding Simple Proof

Law No. 37 of 2004 requires "simple proof" in bankruptcy cases, meaning it is enough to prove that there are at least two creditors and that there is one debt that is due and collectible.[23] However, in practice, this concept of "simple proof" often leads to multiple interpretations among judges. This difference in interpretation can be seen from the variations in commercial court rulings in cases with similar characteristics. Some judges interpret simple proof narrowly (formalistically), while others take a broader view, looking at the substance of the debtor-creditor relationship. This inconsistency creates legal uncertainty, which can ultimately harm both parties, creditors and debtors alike, because it makes it hard to predict court decisions.

Lack of Legal Protection for Debtors

In Indonesia's bankruptcy systems, there tends to be a situation where creditors hold a more dominant position compared to debtors. This is evident from the relatively easy requirements for filing a bankruptcy petition, which only need simple proof as stipulated in the law.[24] As a result, debtors can potentially be declared bankrupt even if their financial condition has not fully shown insolvency (permanent inability to pay). These systems show that Indonesia needs more transparent and balanced regulations to ensure fairness and legal certainty. Besides that, protection mechanisms for debtors, like restructuring efforts through PKPU, aren't always used to their full potential or can even be overlooked during the review process.[25] This lack of protection can open up opportunities for creditors to misuse bankruptcy institutions as a pressure tool against debtors. That's why a balance between the interests of creditors and debtors is

[22] Rachmadi Usman. *The Dimensions of Bankruptcy Law in Indonesia.* Jakarta: Gramedia Pustaka Utama. 2012.
[23] M. Hadi Shubhan, Bankruptcy Law: Principles, Norms, and Practice in the Courts (Jakarta: Kencana, 2019), p. 56
[24] Ferry Fathurohman. 2021. *"Juridical Analysis of Debtor Protection in the Indonesian Bankruptcy System".* Arena Hukum Journal, Vol. 14, No. 2.
[25] *IUS QUIA IUSTUM, "Asymmetry of Protection between Creditors and Debtors in Bankruptcy Law,"* Vol. 23 No. 1 (2016), p. 30

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needed to achieve fairness and legal certainty.

CONCLUSION

Based on the discussion, bankruptcy cases under Law No. 37 of 2004 are designed with the principles of being fast, simple, and efficient to provide legal certainty in debt resolution. The process is also limited by strict timelines so it doesn't drag on. However, in practice, its implementation tends to be formalistic because judges focus more on meeting formal requirements (two creditors and one due debt) without delving into the debtor's financial condition in depth. This causes the solvency aspect to often be overlooked. In addition, the ease of filing for bankruptcy opens up the possibility of misuse as a pressure tool by creditors, so the function of bankruptcy shifts from a debt resolution tool to an instrument for certain interests. On the other hand, protection for debtors is still weak, because debtors who still have the potential to run a business can still be declared bankrupt. So, even though the bankruptcy system is normatively efficient and provides legal certainty, in practice there are still weaknesses that affect substantive fairness. Therefore, regulations and court practices need to be improved to create a balance between the interests of creditors and debtors.

Based on issues in bankruptcy practice, improvements are needed both normatively and practically. Among them: First, the simple proof provisions in Law No. 37 of 2004 need to be revised so that they are not just formal, but also consider the debtor's financial condition in a substantive way to ensure actual insolvency; Second, judges need to be more careful in evaluating evidence such as financial statements, cash flow, and the debtor's business prospects so that bankruptcy decisions are not just based on formal requirements but also on the real ability to pay; and Third, the PKPU mechanism needs to be optimized as a means of debt restructuring before bankruptcy, and rules need to be strengthened to prevent abuse of bankruptcy petitions by enforcing principles of good faith and penalties for improper petitions. In this way, the bankruptcy system is expected to become fairer, more balanced, and provide legal certainty for all parties.

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