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Petition and Simple Proof of Claim in Bankruptcy Cases

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Abstract

Bankruptcy is submitted to the Court in the form of a "petition", not a "lawsuit". This raises a debate whether in the bankruptcy case there is a dispute or not. Apart from that, it is also motivated by the vague norms contained in Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment; as a result, there are multiple interpretations of the word "simple" in proving bankruptcy cases. Based on the background of the problem, the problems discussed are: why is the process of solving a bankruptcy case filed in the form of a "Petition", and what is the concept of a simple proof system in a bankruptcy case? The purpose of this study is to understand and analyze the form of "petition" in a bankruptcy case, and to find the concept of a simple proof system in a bankruptcy case. The research method used in the framework of writing this article is a normative legal research method. The results of the study found juridical facts that in a bankruptcy case there is actually no dispute, so it is submitted to the court in the form of a "petition", not a "lawsuit". In addition, it is also found that the meaning of the concept of a simple proof system in a bankruptcy case contains only simple meanings in proving the occurrence of debt; it does not include evidence as a whole in the process of resolving a bankruptcy case.

1. Introduction

Bankruptcy law in Indonesia is regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations and has been promulgated in the State Gazette of the Republic of Indonesia of 2004, Number: 131 (hereinafter referred to as UUKPKU). UUKPKPU replaces *Perpu* (Govnernment Regulation) Number 1 of 1998 concerning Amendments to the Bankruptcy

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Regulations regulated in the Bankruptcy Ordinance *Staatsblad* of 1905 Number: 217 in conjunction with *Staatsblad* Year 1906 Number: 348. Government Regulation Number: 1 Year 1998 was later stipulated as law by Law Number 4 Year 1998. "UUKPKPU contains both material law and formal law"[3].

Article 2 paragraph (1) UUKPKPU, determines: "A debtor who has two or more Creditors and does not pay in full at least one overdue debt can be declared bankrupt by a Court decision, both on his/her own "petition", (quotation marks and bold print are from the author) or at the request of one or more creditors ". This provision clearly and unequivocally stipulates that the bankruptcy process is submitted to the Court in the form of a "Petition", not a "Lawsuit". Based on the article 6, a request for a bankruptcy statement is submitted to the Chairman of the Court. "The evidence in a bankruptcy case is unique when compared to that in a civil case in general, namely there is a simple proof system"[4]

The juridical problem is that bankruptcy cases are submitted to the court in the form of a petition not a lawsuit, and the system of "simple proof" in bankruptcy cases. "The simple proof system in a bankruptcy case has no clear definition and boundaries in the UUKPKPU"[5]. This article will discuss why a bankruptcy case is filed in the form of a petition? And what is the concept of a simple proof system in a bankruptcy case?

2. Material and Method

The type of research conducted in order to write this article was normative legal research. "Normative legal research is commonly referred to as library research which is conducted by examining secondary data."[6] The secondary data studied were primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal materials used are Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, Civil Procedure Law in HIR / RBg., while the secondary legal materials are legal journals, and to a lesser extent, legal literature, as well as legal dictionaries as tertiary legal materials. The type of approach used was the statutory approach and the conceptual approach. The technique of collecting legal materials was carried out by the documentation method, which was done by collecting all documented legal materials. The legal material collection tool used was a camera to document all legal materials; in addition, it was equipped with a notecard made either manually or electronically.

All legal materials that have been collected were then subject to editing, and then systematically described. The results were analyzed with content analysis. Content analysis was carried out on all legal materials so that answers to the problems raised in this article could be found.

3. Findings and Discussion

3.1. The term "Petition and Lawsuit"

There are two terms used in the civil case settlement process in court, namely the terms "Petition" and "Lawsuit". The term petition is used when the case filed and will be resolved by the judge is unilateral (*ex-parte*), that is, the issue submitted for resolution by the court does not contain a dispute (undisputed matters), but solely for the interests of the petitioner.[7] Based on the petition submitted, the judge will give a "determination" (Cf. Thronson, 2018). Unlike the case with a lawsuit,

[3] *Mantili, 2015*
[4] *Couwenberg, 2001.*
[5] *Hackney et al., 2018*
[6] *Van Hoecke, 2011*
[7] *Segal, 1984*

the term lawsuit is used, when the case filed and will be completed by the judge was a dispute or disagreement between the contending parties, and based upon the lawsuit filed, the judge will give the "Decision".

3.2. Bankruptcy Procedure Law

Based on the function criteria, the division of law can be divided into material law and formal law (Cf. Chimni, 2018). Material law is the rules that give rights and obligations, while formal law is the law that regulates how to implement material law, so it is called procedural law (Cf. Rusakova et al., 2020). Material civil law is regulated in the Civil Code (*Burgelijke Welboek*), and formal civil law is regulated in the *Herziene Indinesishe Reglemen*t / *Reglement voor de Buitengewesten* (*HIR*/*R.Bg*). The question that arises is whether UUKPKPU is included in the criteria for material law or formal law or both? To answer this question, it is necessary to first examine the substance of the UUKPKPU and its explanation. From a close perspective, the substance of the UUKPKPU contains material law as well as formal law. This can be seen from the legal principles stated in the general explanation of UUKPKPU. In the general explanation, it is explained that UUKPKPU is based on several principles, and one of them is the principle of "integration". The definition of the principle of integration in UUKPKPU implies that the formal legal system and its material law constitute an integral part of the civil law system and national civil procedural law (Cf. Trevino, 2021). Based on the general explanation of the UUKPKPU, it can be seen that the UUKPKPU contains legal norms both material law and formal law regarding bankruptcy and postponement of debt payment obligations. Thus, the procedural law that applies in the Commercial Court in resolving bankruptcy cases is UUKPKPU. Furthermore, if there are things that have not been regulated in the UUKPKPU, the ordinary civil procedure law contained in the *Herziene Indinesishe Reglemen*t/*Reglement voor de Buitengewesten* (*HIR*/*R.Bgapplies*) would be applied (Antonopoulo, 2021). Between UUKPKPU and *HIR*/*RBg*., the principle of preference namely *Lex specialis de rogat lex generalis* is applied. This principle means that a special law overrides a general law.

Based on UUKPKPU article 2 paragraph (1), as already mentioned in the background of the problem above, the bankruptcy process is submitted in the form of a "petition", so there are "petitioners" and "respondents". In a bankruptcy case the parties that can apply for bankruptcy have been regulated in detail in Article 2 of the UUKPKPU, namely the debtor itself, the prosecutor's office in the case of public interest, in the event that the debtor is a bank, securities company, Stock Exchange, Clearing Guarantee Institution, Depository and Settlement Institution, Insurance Companies, Reinsurance Companies, Pension Funds or State Owned Enterprises engaged in the public interest with the issuance of Law No. 21 of 2011 concerning the Financial Services Authority (hereinafter referred to as OJK), petitions for a statement of bankruptcy can only be submitted by OJK. The Respondent for Bankruptcy is a debtor, both individuals and legal entities.

The form of "Petition" in a bankruptcy case when linked to the form of "Petition" in an ordinary / general civil case looks very different. The difference is very basic, because the "petition" in ordinary civil cases is one-sided, and does not contain a dispute (undisputed matters), while the "petition" in a bankruptcy case appears to have two parties, namely the petitioner and the respondent. The juridical problem is, does the bankruptcy case submitted to the court in the form of “petition” contain a dispute or not? To find out about this, it is necessary to explore the meaning of the dispute first.

Disputes can have legal and non-legal dimensions[8]. A dispute with legal dimensions occurs when there is a violation of the law or there is a loss which can be prosecuted by the fulfillment in court. Disputes that are just ordinary differences of opinion without any laws or regulations being violated are disputes with non-legal dimensions; therefore, they cannot be prosecuted in court.

[8]*Hartini & Gorda, 2020*

The term petition in a bankruptcy case contains a juridical consequence, that with the form of a petition in filing for bankruptcy, it indicates that there is no dispute, meaning that there is no legal violation that results in losses. Although it is called a "Petition", it is different from "Petition" in the context of ordinary civil cases which are examined and resolved in the District Court which is only one-sided and solely for the benefit of the applicant.

In the context of a civil case, the meaning of "dispute" means that it is related to the litigation dispute resolution process, so that there are applicants and defendants. On the other hand, in a bankruptcy case, there is actually no dispute in the meaning and relation to the litigation process, therefore the form is not "Lawsuit", but "Petition", but an anomaly occurs in the form of "petition", because the Commercial Court in its decision did not use the term "Determination", but "Decision". Supposedly, if the legislators obeyed the principle, then the petition must be the final product in the form of "Determination" (Bankruptcy), not "Decision" of bankruptcy.

The petition for bankruptcy is submitted to the Commercial Court located within the General Court. To date, there are only five Commercial Courts throughout Indonesia. The five Commercial Courts are listed below in sequence.

1) The Commercial Court located within the Central Jakarta Court.
2) The Commercial Court located within the Medan District Court.
3) The Commercial Court located within the Semarang District Court.
4) The Commercial Court located within the Surabaya District Court
5) The Commercial Court located within the Makassar District Court.

Furthermore, the establishment of a Commercial Court will be regulated by a Presidential Decree, taking into account the needs and readiness of the necessary resources.

3.3 Simple Proof of Bankruptcy

The definition or limitation of simple proof is not found in the UUKPKPU. The mandate to use a simple proof system is expressed in Article 8 paragraph (4) of UUKPKPU which stipulates: "the petition for a bankruptcy statement must be granted if there are facts or circumstances that simply prove that the requirements to be declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled". Furthermore, in the elucidation of Article 8 paragraph (4) UUKKU explains: that what is meant by "simple proven facts or circumstances" is the fact of two or more creditors and facts of overdue and unpaid debts. The difference in the amount of debt owed by the applicant for bankruptcy and the respondent for bankruptcy does not prevent the decision to declare bankruptcy.

The obstacles encountered in the petition of simple proof in bankruptcy cases tend to be caused by Human Resources, in this case the judges' insufficient knowledge of the understanding of simple proof".[9] The development of the petition of procedural law that has been used in the examination of bankruptcy cases at the Commercial Court is still using the HIR / R.Bg provisions.[10] This statement indicates that an anomaly has occurred again in the bankruptcy procedure, because in a bankruptcy case, a simple proof system should be applied, which refers to Article 8 paragraph (4). In principle, "The principle of proceeding in UUKPKPU is a fast process, then followed up with a decision that is *uitvoorbaar bij voorrad*."[11]

The problem that arises in line with the development of civil relations is that it is troublesome to measure the difficulty level of a state of debt, in addition to no simple parameters provisions. This is what prompts the judge to accept the request for bankruptcy as long as there are facts of the debt,

[9] *Dietzenbacher et al., 2020*
[10] *Pedram, 2021*
[11] *Noonan et al., 2019; Abdunayimova, 2020*

and the debt has matured".[12] Based on this discussion, it can be seen that the essence of the trial to prove a bankruptcy case is only proof of two elements, namely, 1) whether the Debtor has debts that have matured and can be collected and not paid, even though they are due, and 2). The existence of minimal two creditors. "The proving process in a bankruptcy case trial is carried out in a simple manner, so there is no need for legal rebuttals. These rebuttals are usually carried out in ordinary civil proceedings."[13] "A noteworthy to mention that the petition of this simple proof has "irregularities", in which proceedings before the Commercial Court in this bankruptcy case appears to have the process of providing responses and a process of proof that leads to the usual civil proceedings in the case of a lawsuit, where there is an opportunity for the defendant to file exceptions, answers, rebuttals, conclusions and evidences".[14] Such bankruptcy court proceedings are of course not in accordance with the requirements for the imposition of a bankruptcy decision as regulated in Article 2 paragraph (1) of UUKPKPU, because whether a Debtor can be declared bankrupt or not actually only requires simple or concise proof.

The word "simple" should be understood by judges when handling bankruptcy cases. In relation to this "simple" word, the Supreme Court has issued Circular (SEMA) Number 7 of 2012 dated September 12, 2012 concerning the enactment of the formulation of the results of the 2016 Supreme Court Chamber plenary meeting as a guideline for the implementation of duties for the judiciary. The results of the meeting of the Special Civil Chamber in number 25 which stated that the criteria or parameters of proof can simply be seen in the explanation of article 8 paragraph (4) of the UUKPKPU, and the parameter is at "the time of proof of debt". Moving on from the SEMA above, the word "Simple" means that evidence of debt is carried out simply, for example by showing a debt agreement, so it is not proof of the debtor's ability, nor is it proving as a whole in the bankruptcy trial proving case.

In the debate about the simple meaning in the context of this simple proof, it will be very important to use the hermeneutic interpretation of law. Legal hermeneutics is a philosophical teaching regarding the understanding of something, or a method of interpretation of texts where methods and techniques of interpreting it are carried out holistically within the frame of the relationship between text, context, and contextualization.[15] Hopefully this interpretation can complement existing interpretations.

From the hermeneutic optics of the law, the word "Simple" implies that the settlement of bankruptcy cases is carried out based on the principle of a fast and effective trial. Here, it is not deliberately stated that it is fair and open, because the settlement of cases in the District Courts is already fair and open, while fast and effective is deliberately called, because the period for settlement of bankruptcy cases at the Commercial Court has been determined quickly, namely with the existence of the "time frame", meanwhile for the settlement of cases at the District Court the time frame is not determined. The goal is to immediately be able to save the borrowed assets by committing general confiscation, so that debtors with bad intentions cannot hide their assets. This is in line with the philosophy of bankruptcy, which is to settle debts between debtors and creditors, because the debtor is unable to pay his/her debts anymore. A bankruptcy decision will accelerate the distribution of debtor's assets to its creditors. Simple proof of the existence of debt becomes very meaningful, because without debt it is impossible to apply for bankruptcy.

[12] *Altman et al., 2019*
[13] *Mandelbaum, 2020*
[14] *Tiranda, 2020*
[15] *Hamidi, 2011*

4. Conclusion

As an answer to the problems discussed in this article, we can finally conclude the following two points. First, in a bankruptcy case, there is actually no "dispute", as is the definition of a dispute in an ordinary civil case. In ordinary civil cases, disputes can be resolved by litigation or non-litigation. Because the meaning of dispute is different, the bankruptcy process based on UUKPKPU is submitted to the Commercial Court in the form of a petition, not a lawsuit. Second, a simple proof in a bankruptcy case is not actually related to simple proof of the bankruptcy case as a whole, but only simple proof regarding the existence of debt.

Based on the conclusions stated, it is suggested as follows. Firstly, it is recommended that a bankruptcy decision use the term "determination", not "decision", because a bankruptcy case is filed in court in the form of a petition. Secondly, preferably, the word "must" in article 8 paragraph (4), be replaced by the word "can", so that the wording of that article becomes: "petition for bankruptcy statement" can "be granted if there are facts or circumstances which simply prove that the requirements to be declared bankruptcy as referred to in Article 2 paragraph (1) has been fulfilled.

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