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DYNAMICS AND REGULATIONS OF SIMPLE EVIDENCE IN BANKRUPTCY DECISIONS

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Abstract

Simple proof, also known as circumstantial proof, although it is called that, but understanding this phrase is not easy. UUK-PKPU does not provide further explanation regarding what is meant by simple proof. Simple evidence regulations are regulated in article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and PKPU. The simple evidentiary arrangements in bankruptcy petitions currently face various problems in their implementation. Simple evidentiary arrangements which are based on article 8 paragraph (4) which refers to article 2 paragraph (1) of Law Number 37 of 2004. Simple evidentiary arrangements which are only based on article 8 paragraph (4) of Law Number 37 of 2004 often give rise to Differences in judges' decisions and other problems often cause complaints about bankruptcy applications because the applicant is unable to provide simple evidence. Article 8 paragraph (4) of Law Number 37 of 2004 cannot be accepted as approval of applications that cannot be proven simply, this can be seen from the phrase article 8 paragraph (4) which does not mention rejection of applications that cannot be proven simply, but rather must grant requests that can be proven simply. Apart from being regulated in Law Number 37 of 2004, simple evidence is also regulated in several regulations issued by the Supreme Court, including the Decree of the Chairman of the Supreme Court (SKMA) Number 109/KMA/SK/IV/2020 concerning the Implementation of the Guidelines for Settlement of Bankruptcy Cases and Postponement of Debt Payment Obligations andSupreme Court Regulation no. 4 of 2019 concerning Procedures for Settlement of Simple Claims.

Keywords: Simple Proof, Bankruptcy and PKPU, Regulations.

A. INTRODUCTION

Based on Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, bankruptcy is defined as the process of including all of the Bankrupt Debtor's assets carried out by the Curator under the supervision of the Supervisory Judge. The aim of bankruptcy law is based on the principle of pari pasu pro rata partem (equal distribution) to regulate the payment of debtors' debts in a fair, balanced and orderly manner, as well as ensuring that creditors receive an appropriate distribution of the debtor's assets. According to Michael Murray and Harris Jonson, the aim of bankruptcy law is based on the principle of pari pasu pro rata partem (equal distribution) as the main legal principle in bankruptcy. The purpose of bankruptcy is to regulate procedures for debt repayment by debtors who are unable to pay their debts in a fair, balanced and orderly manner and ensure that creditors will receive a balanced and appropriate distribution of the debtor's assets.[1]

So, the purpose of bankruptcy is to distribute the bankruptcy debtor's assets to his creditors as a form of paying off the debtor's debts to his creditors, namely that the debtor can no longer continue his business. PKPU aims to reach an agreement between the debtor and his creditors so that the debtor can continue his business. The aim of PKPU is to enable debtors to continue

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their business even if they experience difficulties in payments and to avoid bankruptcy.[2]A PKPU application can be submitted by a debtor or creditor for a debtor who is unable to pay off his debt which is due and collectible. The PKPU application is submitted to the Commercial Court where the debtor is located, signed by the applicant and his lawyer, and accompanied by a list stating the nature, amount of the debt and the debtor's claims along with sufficient evidence.[3]The debtor's application for PKPU is based on several factors, namely: to prevent bankruptcy; the debtor can still continue his business; and PKPU has time, economic and juridical benefits.[4]

According to Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, Bankruptcy occurs when all of the Debtor's assets are confiscated by the curator under the supervision of the Supervisory Judge in accordance with the provisions regulated in this law.

Bankruptcy occurs when there is a legal relationship based on a loan agreement, and the debtor is unable to pay his debts to two or more creditors, one of whom has the right to claim which has matured, as regulated in Article 2 paragraph (1) of the Bankruptcy Law, which states: "A debtor who has two or more creditors and does not pay in full at least one debt that is due and collectible, is declared bankrupt through a court decision, either at his own request or at the request of one or more of his creditors."

One of the unique and different things in bankruptcy cases is simple proof, which is different from civil cases in general. This simple proof is one of the things that differentiates bankruptcy cases as part of special civil cases. To achieve bankruptcy, namely the general confiscation of all of the debtor's assets as collateral for the repayment of his debts to creditors, the UUK-PKPU stipulates that simple evidentiary elements must be fulfilled in the bankruptcy examination.[5]

When a company experiences bankruptcy, this is caused by a legal relationship based on a loan agreement where the debtor is unable to pay his debts to two or more creditors, one of whom has a claim that is due.[6]The same thing also happens to insurance or coverage, where an agreement between two or more parties in which the insurer agrees to provide compensation to the insured due to loss, damage or legal liability to a third party that the insured may suffer, caused by a in the event of an uncertain event, or to provide payment to an insured person.[7]UUK-PKPU still provides an opportunity to file for bankruptcy of insurance companies. Bankruptcy applications for insurance companies, reinsurance, pension funds or BUMN operating in the public interest could previously only be made by the Minister of Finance, but since the enactment of Law Number 21 of 2011 concerning the Financial Services Authority (hereinafter referred to as the OJK Law) in Article 55 Jo . Law Number 40 of 2014 concerning Insurance (hereinafter referred to as UUP) in Article 50.6, this authority is transferred to the Financial Services Authority (OJK).[8]

An application to declare bankruptcy must be approved if there is clear evidence that the requirements for declaring bankruptcy have been met. This is based on the provisions of Article 2 Paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt

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Payment Obligations. A bankruptcy decision has serious legal consequences for the debtor. The debtor can file legal action against the decision, and there is a possibility that the bankruptcy decision will be cancelled. Legal action can be taken by parties who feel that the court's decision is not in line with expectations, with the aim of canceling the decision of the lower level court to a higher level court.

In order to achieve bankruptcy, namely the confiscation of the debtor's assets as payment of his debts to creditors, the Bankruptcy Law stipulates that simple evidentiary elements must be met in the examination of bankruptcy cases. According to Article 8 paragraph (4) of the Bankruptcy Law, it is stated: "The application to be declared bankrupt must be approved if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as intended in Article 2 paragraph (1) have been fulfilled." The explanation in Article 8 paragraph 4 of the Bankruptcy Law clarifies that "facts or circumstances that are simply proven" refers to having two or more creditors and a debt that is due but not paid. A large difference in the amount of debt between the party filing for bankruptcy and the party filing for bankruptcy will not prevent the decision to declare bankruptcy.

This article explains that in bankruptcy cases, the debtor who is to be declared bankrupt must simply prove that the debtor has two or more creditors, the debt is due and can be collected, then the judge can decide to declare the debtor bankrupt. Simple proof is often referred to as summary proof.[9]This simple proof is a requirement regulated in article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations jo. Article 6 paragraph (3) Law No.4 of 1998 jo. Perpu No. 1 of 1998, which states: The application for declaring bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as intended in article 2 paragraph (1) have been fulfilled.[10]

According to Elijana, simple proof in bankruptcy cases refers to the process of examining evidence in bankruptcy applications.[11]However, in practice at the Commercial Court, this often becomes more complicated than what is regulated in article 8 paragraph (4) of the Bankruptcy Law. Victorianus MH Randa Puang considers that there are often different interpretations or inconsistencies among the Panel of Judges regarding the meaning of simple evidence.[12]

In resolving civil cases, one of the judge's duties is to check whether the legal relationship that is the basis of the lawsuit actually exists. For this reason, the judge must objectively seek the truth of the events involved through evidence. The purpose of evidence is to discover the truth of an event and to determine the legal relationship between the two parties and determine decisions based on evidence.[13]Likewise, in cases of bankruptcy applications at the Commercial Court, the judge will decide the case based on the evidence and facts at trial. Bankruptcy is a general investment in all debtor assets whose management is carried out by a curator under the supervision of a supervisory judge in accordance with the Bankruptcy Law.[14]"Simple proof" as regulated in Article 8 paragraph (4) of the Bankruptcy Law, is that the application declaration must be granted if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as regulated in Article 2 paragraph (1) have been fulfilled.

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According to these provisions, it is clear that in Article 2 paragraph (1) of the Bankruptcy Law, the things that must be proven in simple terms are the bankruptcy requirements, namely: 1). There are two or more creditors who have claims that can be collected in court.[15]"Creditors" here include concurrent creditors, separatist creditors, and preferred creditors; 2). There are debts that are due and payable that are not paid in full by the debtor. This means that there is an obligation to pay debts that are due, either because they have been agreed upon, because of a delay in the collection time as agreed, because of the imposition of sanctions or fines by the authorized institution, or because of a decision by a court, arbitrator or arbitration panel.[16]

What is meant by "simple proven facts or circumstances" is the fact that there are 2 (two) or more creditors and the fact that the debt is overdue and unpaid. Even though the amount of debt alleged by the bankruptcy applicant and the bankruptcy petition is different, this does not prevent the court from declaring bankruptcy. Bankruptcy itself is when the debtor is unable to pay his debts to his creditors. Deteriorating finances of the debtor's business are usually the cause. Bankruptcy is a court decision that causes all of the debtor's assets to be confiscated, both existing and future assets. The curator is responsible for selling the assets to pay the debtor's debt proportionally and in accordance with the creditor structure, under the supervision of the supervising judge.[17]

The purpose of this bankruptcy law in general is for the interests of the business world in resolving debt problems fairly, quickly, openly and effectively. According to ST. Remy Sjahdeini, "bankruptcy law is needed to regulate how to distribute the proceeds from the sale of the debtor's assets to pay off the debts of each creditor based on the order of their respective priorities. Before being announced to the creditors, the debtor's assets are first placed under general confiscation by the court."[18]

Based on this, debtors tend to prefer to submit a PKPU application rather than bankruptcy proceedings. Article 2 paragraph (1) of the Bankruptcy Law and PKPU regulates the requirements for bankruptcy with simple proof, namely that the debtor has two or more creditors and has not paid in full at least one debt that is due and collectible. So, if the conditions for bankruptcy can be proven simply, then the supervisory judge must declare bankruptcy for the debtor, without considering whether the debtor is solvent or insolvent. For example, the Commercial Court decided the bankruptcy of PT Telekomunikasi Selular Tbk by PT Prima Jaya Informatika, which then on September 14 2012 through No. 48/PAILIT/2012/PN. NIAGA/JKT.PST declared bankrupt.[19]Likewise with the bankruptcy of PT Asuransi Jiwa Manulife which was requested by PT Dharmala Sakti Sejahtera, which then on June 13 2000 through Decision No. 10/Pailit/2002/PN.Niaga.JKT was declared bankrupt.[20]Likewise with the bankruptcy of PT Prudential Life Assurance which was requested by Lee Boon Siong, which then on April 23 2004 through Central Jakarta Commercial Court Decision No. 13/Pailit/2004/PN.Niaga.JKS.PST was declared bankrupt.[21]The bankruptcy decisions for these three companies show that the requirements for debtors to be declared bankrupt by the court are very simple. The requirements for bankruptcy applications make it easier for debtors to be declared bankrupt, even though they are actually in a solvent state. Therefore, it can be said that the Bankruptcy Law and PKPU are more profitable for creditors.[22]

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B. RESEARCH METHODS

This research is included in the category of normative legal research and is descriptive in nature. The object of this research is related to simple evidence in bankruptcy and PKPU cases. Only secondary data was used in this research, and data analysis was carried out qualitatively. The method for drawing conclusions in this research is carried out deductively, that is, conclusions are based on general provisions to specific provisions.

C. DISCUSSION

1. Proof According to Civil Law and Bankruptcy Law

Evidence in civil procedural law basically also has a juridical meaning where this only applies to parties who participate in the case or obtain rights from them. Thus, proof in the juridical sense does not always lead to absolute truth because this allows for confessions, testimony, or letters which may become evidence from the opposing party.

According to Achmad Ali and Wiwie Heryani in their book, the law of evidence is the entire rules regarding evidence that uses valid evidence with the aim of achieving the truth through the judge's decision.[23]Thus, the law of evidence is an important stage in the case process because the results of the evidence can determine the truth of a claim or rebuttal in a civil case.[24] According to Zainal Asikin, in civil procedural law, the law of evidence has a very important role. We all know that procedural law or formal law aims to maintain and maintain material law. Formally, the law of evidence regulates how evidence is carried out as contained in RBg and HIR. On the other hand, materially, the law of evidence regulates whether proof using certain pieces of evidence can be accepted in a trial, as well as the evidentiary strength of those pieces of evidence.[25]

Regarding the law of evidence, there is something called the burden of proof, including in civil law. When talking about the burden of proof, M. Yahya stated that the burden of proof is directly related to the issue of dividing the burden of proof by the Panel of Judges. Where is the burden of proof placed on the plaintiff and defendant, and what issues is the plaintiff's responsibility to prove, as well as what part is the defendant's responsibility in proving.[26]

It is important to pay attention to the burden of proof, as explained by Zainal Asikin in his book, there are several theories regarding the burden of proof which serve as guidelines for judges:[27]

a. Subjective legal theory (rights theory) states that every person who claims to have a right must be able to prove that claim.
b. According to objective legal theory, a judge must apply legal rules to existing facts to determine the truth of the events presented to him.
c. The theory of procedural law and the theory of justice, the focus is on the attitude that the judge must have which must be "fair and balanced" in providing opportunities for the parties to present evidence. The judge must divide the burden of proof on both parties equally and fairly so that the chances of winning between the parties are the same.

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The law of evidence also has general principles, as stated by M. Yahya that the principles of evidence are the basis for the application of evidence which must be followed by all parties, including judges.[28]These principles include seeking and upholding the truth formally, confession ending the case examination, evidence that is not logistical in nature, facts that do not need to be proven, evidence from opposing parties, and approval of evidence.[29]

Regulations regarding the burden of proof are also regulated in the fourth part of the Civil Code. Article 1865 of the Civil Code states that every person who claims to have a right or rejects another person's right must prove this claim. In other words, the burden of proof is determined by the party making the claim or right.

Based on the explanation of the evidence above, there are interesting things about proof in bankruptcy cases, where proof of bankruptcy is carried out simply in accordance with Article 8 paragraph (4) UUK-PKPU. The Bankruptcy Application must be approved if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt in accordance with Article 2 paragraph (1) have been fulfilled. Therefore, proof in bankruptcy cases is specific and differentiates it from the proof process in other ordinary civil cases.

Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations regulates the bankruptcy principles stated in the Explanation of the Bankruptcy Law, namely the principle of integration, the principle of balance, the principle of justice and the principle of business continuity.

Regarding the principle of balance, it states that this law only regulates several provisions of the principle of balance, on the one hand there are provisions that can prevent the occurrence of protection of bankruptcy institutions' institutions by dishonest debtors, on the other hand there are provisions that can prevent the protection of institutions and institutions from occurring. bankruptcy by creditors who do not have good intentions.[30]Regarding the bankruptcy requirements that can be submitted to the court, they must at least fulfill several elements as explained in Article 2 paragraph (1) of the Bankruptcy Law which provides the following provisions: Debtors who have 2 (two) or more creditors and have not paid off at least one of their debts. is due and can be collected, declared bankrupt by court execution, either at its own request or at the request of one or more creditors.

The explanation of Article 2 paragraph (1) of the Bankruptcy Law shows that judges make decisions based on simple evidence. The simple proof process in a bankruptcy petition must be in accordance with Article 8 paragraph (4) of the Bankruptcy Law which states that "A request for a bankruptcy declaration must be granted if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as intended in Article 2 paragraph (1) have been met." fulfilled."

The Bankruptcy Law only stipulates that simple proof must be in accordance with Article 2 paragraph (1) of the Bankruptcy Law. These bankruptcy requirements indicate the existence of two or more creditors and debts that are due but not yet paid. However, the Bankruptcy Law does not provide details about how simple proof is carried out, so this is the authority of the judge handling the bankruptcy case.[31]

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2. Dynamics of Simple Evidence in Bankruptcy Cases in Indonesia

One of the requirements for filing bankruptcy with the commercial court is that you must at least fulfill several elements as regulated in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UU PKPU). This article states that "A debtor who has two or more creditors and does not pay in full at least one debt that is due and collectible, is declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors." The definition of bankruptcy contained in Article 1 point 1 of the PKPU UUK and related to the requirements for submitting a bankruptcy statement as explained in Article 2 paragraph (1) of the PKPU UUK, states that bankruptcy involves a debtor who has two or more creditors and does not pay one debt. which is due and the debt can be collected, the debtor can be bankrupted through a court decision with the placement of a general confiscation of the bankrupt debtor's assets which is managed and resolved by the Curator and Administrator under the supervision of the Supervisory Judge.[32]

According to Zainal Asikin in Robert's book, simple evidence in examining a Bankruptcy Application does not need to be tied to the evidentiary system and evidence set out in civil procedural law.[33]The principle of simple proof has existed since bankruptcy law was first implemented in Indonesia through Faillisesment Verdictening. Simple proof in bankruptcy is regulated in Article 5 paragraph (5) Failisement Verification. Therefore, simple proof is nothing new in bankruptcy law in Indonesia.[34]

The aim of this is to prevent a decrease in the value of the debtor's assets due to a protracted bankruptcy process, because the process of examining and determining a bankruptcy case can take a long time. This simple proof often results in losses for creditors. Debtors who do not have good intentions can easily file for bankruptcy to escape their debts to their creditors, as long as the debtor meets the requirements to be declared bankrupt as regulated in the Failisement Verordening.

In view of these difficulties and due to pressure from the international financial institution, the International Monetary Fund (IMF), a revision of the Failisement Verordening was carried out so that Indonesia could revise and form regulations and legislation to improve its economy.[35]Therefore, Legislation or Perpu Number 1 of 1998 Jo was issued. Law Number 4 of 1998. Simple proof is also maintained and regulated in Article 6 paragraph (3) Number 4 of 1998 which states that[36]"The Bankruptcy Application must be granted if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as regulated in Article 1 paragraph (1) have been fulfilled."

The method for providing simple evidence in a bankruptcy petition is regulated in Faillissements-verordening, Staatsblad 1905:217 juncto Staatsblad 1906:348), Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Law on Bankruptcy, which was later enacted into Law Law based on Law Number 4 of 1998. Faillissements-verordening determines that simple proof will be carried out regarding the existence of events or circumstances that show the debtor has stopped paying his debts, and if an application for a bankruptcy declaration is submitted by someone's creditor, then that

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creditor has the right to collect. Under Faillissements verordening, simple proof that the debtor has stopped paying must be done simply (summier). This means that the government is not bound by the evidentiary system and evidence specified in the civil procedural law when examining bankruptcy applications.

In the Civil Procedure Law, evidence does not use the negative stelsel proof system according to the law. In the process of data prosecution, the main goal is to find formal truth. In the Bankruptcy Procedure Law, there are specificities in terms of evidence, namely using simple evidence. However, this simple concept is still relative, as is the principle of the "Judicial Trilogy". Simple proof is the ability of both debtors and creditors to prove several things related to bankruptcy. However, in the regulations regarding simple evidence, more detailed regulations have not been found.

In a Bankruptcy Petition, simple proof can be seen from UUK-PKPU Article 8 paragraph (4) which concerns the factors used to provide simple proof. Simple evidentiary procedures in bankruptcy cases are not specifically regulated in UUK-PKPU. However, if converted from Article 8 paragraph (4) UUK-PKPU, the simple evidentiary procedure in Bankruptcy cases is: 1) The applicant must prove that the Debtor has two or more Creditors; 2) The applicant must prove that the Debtor has not made full payment of at least one debt that is due and collectible; 3) The applicant must prove that he or she has the capacity to file a Bankruptcy Petition. Then, the first procedure is that the applicant must prove that the Debtor has two or more Creditors in accordance with Article 1 number 2 UUK-PKPU. The second procedure is to prove that the Debtor has not made full payment of at least one debt that is due and collectible. The third procedure concerns the capacity to fill out a bankruptcy application which is based on Article 2 paragraph (2), paragraph (3), paragraph (4) and (5) of the UUK-PKPU.

Evidence for the third element above is proven through evidence that is in accordance with the Civil Code and takes into account other provisions in UUK-PKPU Article 299 which states that the applicable procedural law is the Civil Procedure Law, unless otherwise specified in UUK-PKPU. Therefore, evidence in bankruptcy cases must refer to Article 1866 of the Civil Code, namely written evidence, witness evidence, allegations, oaths and confessions. However, according to Prof. Dr. Sri Redjeki Hartono, SH, the bankruptcy statement is examined briefly if in making the decision no evidence is required as regulated in book IV of the Civil Code, and it is sufficient if the event has been proven with simple evidence. In judicial practice in bankruptcy cases, often only using documentary evidence and witnesses. Until now, the burden of proof in bankruptcy cases is borne by the applicant, especially when the applicant is a creditor. Sometimes, it is difficult to fulfill simple proofs in Bankruptcy, especially when the Creditor has to prove that the Debtor has a debt that has not been paid by the Debtor. This becomes difficult if the debt is complex, as in the case of Syndicated Loans.

During the validity period of Faillissements verordening, the application of simple proof is to prove that the debtor is no longer able to pay his debts because his business is no longer operational. Apart from that, it can also be proven that the debtor's assets are no longer sufficient to pay his debts and some creditors agree that the debtor is declared bankrupt. Thus, there is sufficient evidence to declare the debtor bankrupt.

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Apart from that, Article 8 paragraph (4) of the PKPU UUK also regulates simple proof. The article states: "A request to declare bankruptcy must be approved if there are sufficient facts or circumstances to prove that the requirements for declaring bankruptcy in accordance with Article 2 paragraph (1) have been fulfilled." According to the Explanation to Article 8 paragraph (4) of UUK PKPU, this simple proof refers to the fact that there are two or more creditors and a debt that is due but not paid. Even though there is a large difference in the amount of debt claimed by the bankruptcy applicant and the bankruptcy petition, this will not prevent the issuance of a decision to declare bankruptcy. Based on the existence of two or more creditors and debts that are due without being paid, the judge must decide on the bankruptcy application from the creditor or debtor without paying attention to the amount of debt the debtor owes to the creditors. So, as long as the debtor's debt to the creditor has been proven simply, the judge must grant the bankruptcy petition. Therefore, the process of examining bankruptcy applications at the Commercial Court can be carried out simply without having to follow the procedures and evidence regulated in civil procedural law in general. The process of resolving a bankruptcy application at the Commercial Court is also faster than civil cases in general at the District Court, that is, it must be pronounced no later than 60 days after the date the application for bankruptcy is registered.

According to Article 299 of UUK-PKPU, if there are no other provisions in UUK-PKPU, then the law that applies in bankruptcy cases is civil procedural law, namely HIR/Rbg. Therefore, HIR/Rbg in bankruptcy case procedural law is considered general law or lex generalis, while UUK-PKPU is considered special law or lex specialis. Thus, there are similarities and differences between simple proof and proof in ordinary civil cases, where both aim to find formal truth in the trial.[37]

Simple proof in accordance with Article 1 Failisement Verordening is sufficient proof that: 1). the debtor stops paying; 2). the debtor refuses to pay; 3). have more than one creditor; and 4). the debtor does not fulfill his obligations to his creditors, either in the form of goods or money. Simple proof according to Article 1 paragraph (1) of Law 4/1998 is proof that: 1). there are two or more creditors; 2). there is at least one debt that is not paid by the debtor; 3). the debt is due and can be collected; and 4). has been declared bankrupt by court decision. Meanwhile, according to Law no. 37 of 2004, Debtors who have two or more creditors and do not pay in full at least one debt that is due and collectible, will be declared bankrupt through a court decision, either at their own request or at the request of one or more of their creditors. According to experts, simple proof can be carried out if the bankrupt debtor does not submit an exeptio non adimpleti contractus, which states that the creditor himself did not fulfill his obligations first. However, this exeptio non adimpleti contractus is contained in reciprocal agreements, which can raise the question of the existence of the debt and make it difficult to prove it in an easy and fast way.[38]

This evidentiary system does not have the character of finding fault according to law and does not require the conviction of a judge as in the criminal examination process which requires searching for factual truth.[39]So the aim of seeking procedural truth is to seek the truth based on evidence as regulated in civil procedural law. Evidence that is recognized in civil procedural

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law is regulated in detail in Article 1866 of the Civil Code and Article 164 of the HIR.[40]a). Proof of writing or letter; b). Prove it with witnesses; c). Conjecture; d). Statement; e). Oath.

According to M. Yahya in his book, the importance of documentary evidence is emphasized because letters or deeds in civil cases play an important role in accordance with reality. Every activity in the civil sector is deliberately recorded or written down in a letter or deed, such as a sale and purchase transaction agreement, lease, gift, transportation, insurance, marriage, birth and death, which are made in written form with the aim of being evidence of the transaction or relationship event. the law that occurred.[41]

By not regulating evidence in bankruptcy cases in the UUK-PKPU, according to Article 299 UUK-PKPU, the provisions regarding evidence as regulated in Article 1866 of the Civil Code Jo. Article 164 HIR also applies in simple evidence in bankruptcy cases. The second similarity lies in the burden of proof itself. Article 163 HIR Jo. Article 283 Rbg Jo. Article 1865 of the Civil Code states that:[42]"Every person who claims to have certain rights, or to strengthen his own rights or deny the rights of others, must prove the existence of such rights or events."

In his book, R. Subekti states that the distribution of the burden of proof must be done fairly and impartially. A one-sided distribution of the burden of proof can result in the party receiving the burden of proof falling into the trap if the burden is too heavy. The issue of dividing the burden of proof is considered a legal or juridical matter that can be reduced to the cassation level.[43]

UUK-PKPU also does not regulate the burden of proof, so in accordance with Article 299 UUK-PKPU, the rules regarding the burden of proof are regulated in Article 163 HIR Jo. Article 283 Rbg Jo. Article 1865 of the Civil Code also applies in simple evidence in bankruptcy cases mutatis-mutandis.[44]

The first fundamental difference between simple proof in bankruptcy cases and proof in civil cases in general is that there is a time-sensitive process of proof itself, in ordinary civil cases, for example cases of default or cases of unlawful acts, the proof process can take place quickly or for a long time depending on The complexity and complexity of the problem itself. The parties are not limited in presenting how much evidence they wish to refute as long as the evidence is relevant and valid according to the provisions of the applicable civil procedural law. Bankruptcy cases, the evidentiary process is not as complicated and long as the proof in ordinary civil matters. The essence of evidence in a bankruptcy case is only to prove whether the debtor has debts that are past due and unpaid and that there are at least two creditors.[45]Thus, basically the simple proof process is similar to the process of proving ordinary civil incidents, only the difference is in the object of proof and a simpler process to speed up the process of terminating bankruptcy cases in the Commercial Court.[46]

The second difference between bankruptcy law and ordinary civil law is the decision issued by the judge. A judge's decision in a civil case can be executed if it has permanent legal force or Inkracht van gewijsde, unless it is stipulated otherwise, namely the decision is uit voorbaar bijvoorrad (immediate decision). However, decisions in bankruptcy cases can basically still be executed in advance even if legal action is taken against the decision. The juridical reason for

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this provision is that bankruptcy cases use a simple evidentiary process, so the decision is considered easy to predict. Apart from that, in the bankruptcy process, the principle is a fast process.[47]

In ordinary civil cases, if a party does not agree with the judge's decision, they can file an appeal, cassation and judicial review. However, in bankruptcy cases, parties who disagree with the decision can immediately file an appeal to the Supreme Court without having to file an appeal first. The aim of eliminating the tape is to speed up the bankruptcy process, considering that the tape institution is often only used by parties to buy time for the proceedings, even if they are sure they will lose. Therefore, the construction of this legal remedy is considered effective in the bankruptcy process.[48]

One of the reasons why this simple proof is needed is because Article 8 paragraph (5) of the UUK-PKPU stipulates that the Commercial Court must provide a decision within a maximum of 60 days after the application is registered. If there is no simple proof, the Bankruptcy Application examination process may exceed the specified time. If there is no bankruptcy declaration, simple proof cannot be carried out, and one of the parties that can file for bankruptcy is the OJK.

In practice, simple proof in the Commercial Court becomes more complicated than what is regulated in Article 8 paragraph (4) of the Bankruptcy Law. Puang believes that there are often varying interpretations or inconsistencies in the interpretation regarding the unclear meaning of simple evidence among the panel of judges.[49]This easy to understand evidence provision requires proof of bankruptcy requirements in the event that there are 2 (two) or more creditors and a minimum amount. The absence of clear definitions and boundaries in the use of easy-to-understand evidence has resulted in greater differences between judges in interpreting the meaning of easy-to-understand evidence in resolving bankruptcy cases.[50]

Article 256 of the Bankruptcy and PKPU Law states that Articles 11, 12, 13, 14 of the Bankruptcy and PKPU Law apply with the necessary adjustments to the conclusion of the bankruptcy declaration as a result of the decision to terminate the PKPU. The legal remedy that can be taken against the PKPU decision is cassation to the Supreme Court. The cassation request must be sent no later than 8 days after the stated decision is pronounced. Apart from the debtors and creditors involved in the conference, other creditors who are dissatisfied with the decision can also submit a cassation request.

The Registrar will note the date of the cassation request and provide a written receipt to the applicant. The cassation applicant must submit a cassation memo on the same day as the cassation application is abandoned. After the Registrar must send the request for cassation and the cassation memo to the respondent no later than 2 days after the request is sent. Then, please submit a counter cassation memorandum no later than 7 days after receiving the cassation memorandum. The Registrar will deliver the counter-memory of cassation to the applicant no later than 2 days after the counter-memory of cassation is received. Furthermore, the clerk must send all relevant documents to the Supreme Court no later than 14 days after the cassation request is submitted.[51]

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The Supreme Court must investigate the cassation request and set a hearing date no later than 2 days after the cassation request is received. Examination of the cassation application is carried out no later than 20 days after the application is received. The decision on the cassation application must be pronounced no later than 60 days after the application is received. The cassation decision which includes the underlying legal considerations must be announced in open session. In the event that there is a difference of opinion between members of the panel, the difference of opinion must be included in the cassation decision. The Registrar of the Supreme Court must provide a copy of the cassation decision to the Registrar of the Commercial Court no later than 3 days after the decision is pronounced. The Court Bailiff must provide a copy of the cassation decision to the cassation applicant, cassation respondent, curator, and supervisory judge no later than 2 days after the decision is received. A decision to declare bankruptcy that has obtained permanent legal force can be submitted for judicial review to the Supreme Court.[52] Based on this, the provisions in the bankruptcy declaration that apply to the PKPU decision are only contained in the articles above. The simple proof contained in Article 8 paragraph (4) in conjunction with Article 2 paragraph (1) of the Bankruptcy Law and PKPU which regulates simple proof applies to applications for bankruptcy declaration, whereas in PKPU applications, in fact the Bankruptcy Law and PKPU do not confirm the application of simple proof which states that The application for declaring bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as intended in Article 2 paragraph (1) of the Bankruptcy Law and PKPU have been fulfilled. Even though this has been proven simply, the judge will not immediately decide on PKPU against the debtor. Based on the Bankruptcy Law and PKPU, if it has been proven that it can simply be declared bankrupt, the PKPU application does not have to be granted. However, based on Article 225 paragraph (2) of the Bankruptcy and PKPU Law, for a PKPU application issued by the debtor, the court is obliged to grant the temporary PKPU application and must appoint a Supervisory Judge from the court judges and appoint an administrator together with the debtor to manage the debtor's assets.[53]

In the case of a PKPU application submitted to court, the judge must grant the temporary PKPU application without looking at the evidence. Simple proof as in a bankruptcy petition does not apply in a PKPU petition because based on Article 225 paragraph (2) of the Bankruptcy and PKPU Law, the judge must grant a temporary PKPU petition without considering whether the proof is simple or not. Judges are not bound by the provisions contained in the Bankruptcy Law and PKPU because there are no provisions regarding simple evidence in PKPU applications. After receiving a temporary PKPU decision, the debtor will submit a peace plan. With this peace plan, it is hoped that the problems faced by creditors and debtors can be resolved without a bankruptcy application process. Then, creditors will vote whether to reject or accept the permanent PKPU. If the creditor refuses the permanent PKPU, the debtor will be declared bankrupt. If the PKPU can still be approved by creditors and debtors, then the granting of PKPU will still be determined by the court. The court must also consider the Decree of the Chairman of the Supreme Court (SKMA) Number 109/KMA/SK/IV/2020 concerning the Implementation of the Guidelines for Settlement of Bankruptcy Cases and Postponement of Debt Payment Obligations.[54]

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Several judges' decisions regarding PKPU often use simple proof as a condition in the PKPU decision, such as in the decision of the Supreme Court of the Republic of Indonesia Number 586 K/Pdt.Sus-Pailit/2013. In his decision, the Judge rejected the PKPU application on the grounds that the evidence was not simple based on Article 8 paragraph (4) in conjunction with Article 2 paragraph (1) of the Bankruptcy Law and PKPU. On the other hand, there are also several judge decisions that do not use simple evidence in determining PKPU decisions, such as Decision No. 48/PAILIT/ 2012/PN.NIAGA/JKT.PST concerning PT Telekomunikasi Selular Tbk., Decision No. 10/Pailit/ 2002/PN.Niaga.JKT concerning PT Asuransi Jiwa Manulife Indonesia, Decision No. 13/Pailit/2004/PN.Niaga.JKS.PST concerning PT Prudential Life Assurance which decided on PKPU without considering simple evidence.

3. Implications and Updates to Simple Evidence in Bankruptcy Cases

Specifications in bankruptcy cases, especially those related to simple evidence, often give rise to various problems. In general, the first problem that arises from simple proof in Bankruptcy cases is the ease of granting a bankruptcy petition because the applicant only needs to prove that the debtor has 2 (two) or more creditors and at least debts that are due and collectible, without considering the financial condition of the solvent company or not.[55]The second problem that arises from simple proof in Bankruptcy cases is that simple proof tends to protect the interests of creditors and is sometimes exploited by creditors who have bad intentions. The third problem that often occurs in simple evidence is the existence of different interpretations by the Panel of Judges in examining, deciding and adjudicating Bankruptcy cases. This shows that in practice there is no legal certainty regarding the limits within which simple evidence must be proven by parties in dispute.[56]

Simple evidentiary arrangements based on Article 8 paragraph (4) referring to Article 2 paragraph (1) of the Law on Bankruptcy and Postponement of Debt Payment Obligations (UUK-PKPU) cause problems in bankruptcy cases filed by credit syndication agents as bankruptcy applicants. The first problem that arises from simple evidentiary arrangements in syndicated credit is the rejection of the bankruptcy petition submitted by the applicant by the Commercial Court. The rejection of the bankruptcy petition is caused by an error by the party submitting the bankruptcy petition. who can file a bankruptcy petition in a syndicated credit, giving rise to rejection in filing a bankruptcy petition, as in the Supreme Court Decision Number 25 / K / N/1999 which stated that the party filing the bankruptcy petition was at fault. The Supreme Court's decision states that it is not within the authority of a credit syndication agent to file a bankruptcy application. Regarding the authority of the party submitting a bankruptcy petition in a Syndicated Credit, it is not a problem if the credit syndication agreement has determined the representative party as a party in the event of a case, so that the judge will give more consideration to the party submitting the bankruptcy petition. authority to submit a bankruptcy application for syndicated credit. The second problem is the difficulty for applicants who have complicated credit indications that need to be proven simply. This simple proof is difficult for credit syndication agents because it involves many banks and separate debts. However, this simple evidentiary arrangement can eliminate the fairness expected in bankruptcy institutions. The judge may not grant the bankruptcy petition submitted by the

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credit syndication agent if it cannot prove the debt in a simple manner as regulated in Article 8 paragraph (4) UUK-PKPU. Debts in bankruptcy cases will actually only be discussed at the debt verification stage, so the credit syndication agent should only prove that the debts in the credit syndication are due and can be collected.

When understanding Article 8 paragraph (4) of UUK-PKPU regarding simple proof in the approval of a bankruptcy application by a judge, this article should not be interpreted as meaning that a judge can reject a bankruptcy application that cannot be simply proven. Judges should not only look at the law but should also consider justice and expediency when making decisions.[57]Simple proof Refers to the examination of evidence in a bankruptcy petition.[58]Article 8 paragraph (4) UUK-PKPU aims to convince judges not to reject or grant bankruptcy applications that can be proven simply. However, this does not mean that bankruptcy applications that cannot be proven simply must be rejected by the Panel of Judges. The panel of judges must still examine and decide on bankruptcy applications whose facts or circumstances are not simply proven. Article 8 paragraph (4) UUK-PKPU states that a bankruptcy petition must be made if there are facts or circumstances that are simply proven that the requirements in accordance with article 2 paragraph (1) have been fulfilled. Therefore, if the applicant cannot provide simple proof, the Panel of Judges is obliged to accept the application based on article 8 paragraph (4) UUK-PKPU.

In relation to debt as a requirement for filing a bankruptcy statement, if you look at the Bankruptcy Law, there is actually no explanation regarding the limit of debt value. In fact, the amount of debt can be an indicator that the debtor is eligible for bankruptcy. Apart from that, according to the author, translating the value of this debt can indirectly provide legal protection to debtors, especially for debtors with small debt amounts. This is because creditors with small credit cannot apply for bankruptcy to the commercial court. Sutan Remy Sjahdeini also believes that a minimum limit on the amount of debt must be set, because if the unpaid debt is not limited, it will be detrimental to the debtor and its shareholders, for example if a debtor with assets worth IDR 1,000,000,000,000 could result in bankruptcy by a person creditor who only has a bill of IDR 10,000,000. Apart from that, the criteria for debt that can be collected are also not explained in the provisions regarding the maturity of debt, whether it must be all or part of the debt amount that must be paid. For example, if a company continues to produce but does not make a profit, so if it is able to pay its debts when they fall, it can only pay in stages.[59]

This is different from a simple lawsuit which limits debt to under Rp. 500,000,000 as regulated in Article 1 of Supreme Court Regulation no. 4 of 2019 concerning Procedures for Settlement of Simple Claims which states that "Settlement of Simple Claims is a procedure for examination at a civil lawsuit conference with a material claim value of a maximum of IDR. 500,000,000 (five hundred million rupiah) which was settled using simple procedures and evidence". The limit for this simple lawsuit (civil procedure) is clearly determined by the nominal limit. Regarding debts that have matured, this is included as a minimum requirement for creditors as bankruptcy applicants. Article 2 paragraph (1) is considered by several experts to be proof that the Bankruptcy Law is contrary to the essence of bankruptcy law because there

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are no definite measures for the implementation of Article 2 paragraph (1) and the understanding of debts that are due and can be collected is also not the same.[60]

The concept of debt is very important because without debt, bankruptcy cases cannot be examined. Bankruptcy is a legal institution to liquidate debtor assets and pay debts.[61]Debts that are due indicate that demands for payment can be filed.[62]Amendments to Article 2 paragraph (1) regarding debts that are due should be changed to "debts that can be collected" to avoid disagreements regarding related debts.[63]

Therefore, regarding future updates to the Bankruptcy Law, each article must be firmly and clearly regulated so that different interpretations can be minimized. Implementing regulations are also needed to further explain the contents of the Bankruptcy Law.[64]From the explanation above, there is a weakness because there is no limit on the nominal value of debt in bankruptcy law. Juridical arguments show that without a minimum amount of debt as a basis for filing bankruptcy, bankruptcy can be used solely as a collection tool. In addition, without a limit on the amount of the debt, debtors who have much larger debts can also be disadvantaged. Therefore, it is very important to set limits on the nominal value of debt in the Bankruptcy Law to prevent the potential for unlawful execution by creditors.[65]

Thus, this action is considered important to prevent unauthorized use of bankruptcy institutions and ensure protection for debtors from creditors who do not have good intentions. This is especially important when the debtor is a creditor company with large assets, while the creditor is a small creditor. However, no discrimination may occur between creditors in the use of bankruptcy institutions, both small and large creditors. Bankruptcy should be a means of forcing debtors, both small and large, to pay their debts.[66]

In carrying out updates regarding the nominal value of debt in the future, Indonesia can look at examples from Canada and America. In Canada, secured creditors or unsecured creditors with a debt value of CDN $1,000.00 (equivalent to IDR 11,251,300 2023 exchange rate) have 6 months to file a bankruptcy application after the debtor submits a bankruptcy statement to The Official Receiver. In America, the Bankruptcy Code requires that a bankruptcy petition for an involuntary petition can be filed if the debtor has an unsecured debt claim of US $5,000.00 (equivalent to Rp. 74,925,000 in 2023 exchange rate). Three creditors must jointly submit an application if the debtor has 12 or more creditors, otherwise a creditor can submit an application for all of his or her claims of at least US $5,000.00. This limitation on the nominal value of debt aims to limit creditors who have a small amount of debt (below the minimum) as a form of legal protection against majority creditors and arbitrariness by minority creditors.[67]

D. CLOSING

1. Conclusion

a. Proof in Civil Law is regulated in Article 1865 of the Civil Code which states that every person who claims to have a right or refuses another person's right must prove this claim. In other words, the burden of proof is determined by the party making the claim or right.proof in bankruptcy cases, where proof of bankruptcy is carried out simply in accordance with

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Article 8 paragraph (4) UUK-PKPU. The Bankruptcy Application must be approved if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt in accordance with Article 2 paragraph (1) have been fulfilled. Therefore, proof in bankruptcy cases is specific and differentiates it from the proof process in other ordinary civil cases.

b. In a Bankruptcy Petition, simple proof can be seen from UUK-PKPU Article 8 paragraph (4) which concerns the factors used for simple proof. Simple evidentiary procedures in bankruptcy cases are not specifically regulated in UUK-PKPU.In practice, simple proof in the Commercial Court becomes more complicated than what is regulated in Article 8 paragraph (4) of the Bankruptcy Law. Puang believes that there are often varying interpretations or inconsistencies in the interpretation regarding the unclear meaning of simple evidence among the panel of judges. Judges are not bound by the provisions contained in the Bankruptcy Law and PKPU because there are no provisions regarding simple evidence in PKPU applications. After receiving a temporary PKPU decision, the debtor will submit a peace plan. With this peace plan, it is hoped that the problems faced by creditors and debtors can be resolved without a bankruptcy application process. Then, creditors will vote whether to reject or accept the permanent PKPU. If creditors refuse a permanent PKPU, the debtor will be declared bankrupt. If the PKPU can still be approved by creditors and debtors, then the granting of PKPU will still be determined by the court. The court must also consider the Decree of the Chairman of the Supreme Court (SKMA) Number 109/KMA/SK/IV/2020 concerning the Implementation of the Guidelines for Settlement of Bankruptcy Cases and Postponement of Debt Payment Obligations.

c. In Bankruptcy cases, especially those related to simple evidence, often give rise to various problems, for example 1). ease in granting a bankruptcy petition because the applicant only needs to prove that the debtor has 2 (two) or more creditors and at least debts that are due and can be collected; 2). simple proof that tends to protect the interests of creditors and is sometimes exploited by creditors who have bad intentions; and 3). there are different interpretations by the Panel of Judges in examining, deciding and adjudicating Bankruptcy cases. Article 1 Supreme Court Regulation no. 4 of 2019 concerning Procedures for Settlement of Simple Claims which states that "Settlement of Simple Claims is a procedure for examination at a civil lawsuit conference with a material claim value of a maximum of IDR. 500,000,000 (five hundred million rupiah) which is settled using simple procedures and proof". In carrying out updates related to the nominal value of debt in the future. This limitation on the nominal value of debt aims to limit creditors who have a small amount of debt (below the minimum) as a form of legal protection against majority creditors and arbitrariness by minority creditors.

2. Suggestion

It is necessary to strengthen regulations and socialize the regulation of simple evidence, especially regarding Perma No. 4 of 2019 concerning Procedures for Settlement of Simple Claims.

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