Jurnal Hukum Replik
ISSN 2337-9251 (Print) 2597-9094 (Online)
Vol. 12 Issue 2 (2024) 376–409
DOI: 10.31000/jhr.v12i2.11491
Available online since: Sept 20, 2024

Point Of Interest on The Authority of The Commercial Court and The Authority of The State Court in Qualifying Debt

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Abstract

Article 1, paragraph 6 of Law Number 37 of 2004 on Bankruptcy provides a clear definition of debt, yet there are instances where the authority of the District Court overlaps with that of the Commercial Court, particularly in matters of debt verification. This thesis explores the development of the concept of debt within Indonesian bankruptcy law, the handling of simple debt verification in bankruptcy cases, and the jurisdictional overlap between the District Court and the Commercial Court. The research adopts a Normative Legal Research approach, examining legal statutes, case law, and historical developments. Sources include legal texts, commentaries, and relevant literature, which are analyzed descriptively. The study reveals

 History or Article: **Submitted** 05/28/2024 **Revised** 07/11/204 **Accepted** 09/06/2024

three key findings: first, the concept of debt in Indonesia has undergone significant evolution, especially in transitioning to Law 37/2004; second, simple debt verification involves confirming that the debtor has at least two creditors and an unpaid debt that is due; and third, the Commercial Court handles cases with straightforward evidence, while complex cases fall under the District Court's jurisdiction. However, ambiguity remains regarding which cases are assigned to which court. Consequently, the thesis recommends revising Article 1, paragraph 6 of Law 37/2004 to better clarify and enhance the criteria for simple debt verification.

Keywords

Concept of Debt, Authority, Point of Tangency

Introduction

Legal acts involving debts and receivables are generally formalized in an agreement that outlines the rights and obligations of each party. [1] This agreement provides legal clarity and ensures that both creditors and debtors understand their respective responsibilities.[2] When debts and receivables are documented in such an agreement, it offers greater legal certainty for all parties involved.[3] The significance of these agreements lies in their role as a legal framework, guiding the rights and obligations of both the debtor and the creditor in the context of their financial relationship.[4]

In addition, documenting debt and receivable activities in a written agreement is crucial for defining clear terms regarding the due date for repayment, as well as the specific mechanisms and methods of

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1 Lewis A. Kornhauser dan W. Bentley MacLeod, "23. Contracts between Legal Persons," dalam The Handbook of Organizational Economics, ed. oleh Robert Gibbons dan John Roberts (Princeton: Princeton University Press, 2013), 918–57, https://doi.org/10.1515/9781400845354-025.

2 M. Ardiansyah Lubis dan Mhd Yadi Harahap, "Perlindungan Hukum Terhadap Kreditur Sebagai Pemegang Hak Jaminan Dalam Perkara Debitur Wanprestasi," Jurnal Interpretasi Hukum 4, no. 2 (2023): 337–43.

3 Rasji Rasji, "Analisis Perlindungan Hukum Pada Perusahaan Fintech P2P Lending Dengan Jaminan Fidusia (Studi Kasus PT Modal Rakyat Indonesia)," UNES Law Review 6, no. 3 (2024): 9248–59.

4 Nenden Nur Annisa, Mahendra Galih Prasaja, dan Septi Indrawati, Hukum Bisnis (Yayasan Tri Edukasi Ilmiah, 2024).

payment. This clause is essential because it provides guidelines for both parties to fulfill their rights and obligations.[5] The maturity date, or the final deadline for the debtor to meet their obligations, is key in determining whether a debt is overdue. Clearly stating these details in the agreement ensures that both parties have a shared understanding of the repayment timeline and the implications of any delays.[6]

Debt maturity, or the final deadline for a debtor to fulfill their obligations to a creditor, is the most critical phase in the debtor-creditor relationship as outlined in the debt and receivables agreement.[7] This phase is crucial because the maturity of the debt legally determines whether the debtor's claim rights (receivables) against the creditor are valid. The maturity date marks when the debtor must meet their obligations, and failure to do so can impact the creditor's legal standing and the enforceability of their claims.[8]

The definition of debt has evolved with the development of bankruptcy law in Indonesia. According to Article 1, number 6 of Law Number 37 of 2004 on Bankruptcy and Postponement of Debt Payment Obligations (Law 37/2004), debt is defined as: [9]

> "An obligation that is stated or can be stated in monetary terms, whether in Indonesian currency or foreign currency, whether due immediately, in the future, or is contingent, arising from an agreement or by law, and that must be fulfilled by the debtor. If the obligation is not fulfilled, it grants the creditor the right to seek fulfillment from the debtor's assets."[10]

This definition outlines the legal framework for recognizing and enforcing debts, emphasizing the creditor's right to seek repayment

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5 Faturrahman Djamil, Penyelesaian pembiayaan bermasalah di bank syariah (Sinar Grafika, 2022).

6 Dwi Atmoko, "Penerapan Asas Kebebasan Berkontrak Dalam Suatu Perjanjian Baku," Binamulia Hukum 11, no. 1 (2022): 81–92.

7 Agus Siswanto dkk., "Penyelesaian Hukum Pengalihan Objek Jaminan Fidusia kepada Pihak Ketiga pada FIFGROUP Cabang Pematangsiantar," *Jurnal Hukum Bisnis* 12, no. 02 (2023): 74–90.

8 Rizky Limar Kinanthi Nasution, "Tinjauan yuridis kedudukan jaminan dalam pelaksanaan restrukturisasi kredit sebagai upaya penyelamatan kredit bermasalah di Bank Rakyat Indonesia Tbk. Cabang Karanganyar," 2011, https://digilib.uns.ac.id/dokumen/detail/21691.

9 Rian Saputra dan Resti Dian Luthviati, "Institutionalization of the approval principle of majority creditors for bankruptcy decisions in bankruptcy act reform efforts," *Journal of Morality and Legal Culture* 1, no. 2 (2020): 104–12.

10 Herman Darmawi, *Manajemen perbankan* (Bumi Aksara, 2011).

from the debtor's assets if the debtor fails to fulfill their obligations.[11] Bankruptcy and Postponement of Debt Payment Obligations are legal mechanisms established to resolve disputes between creditors and debtors. These mechanisms are fundamentally extensions of the property law system detailed in Articles 1131 and 1132 of the Civil Code. These provisions govern how a debtor's assets are distributed among creditors, thereby providing the legal foundation for both bankruptcy proceedings and the suspension of debt payments.[12]

Law 37/2004 clearly outlines the concepts of debts and receivables. However, in practice, cases that should fall under the jurisdiction of the District Court often end up being handled by the Commercial Court, particularly when it comes to matters of evidence, whether simple or complex. Victorianus M.H. Randa Puang points out that there are frequently differing or inconsistent interpretations among judges due to the ambiguous definition of "simple evidence." This lack of clarity can lead to jurisdictional confusion and inconsistent legal outcomes."[13]

It is crucial to distinguish between simple and complex debt proof to help legal practitioners determine which cases fall under the authority of the Commercial Court and which should be handled by the District Court. For example, in decision Number 489 K/Pdt.Sus-Pailit/2015, the case involved PT Tangkuban Perahu Geothermal Power, the cassation petitioner and former bankruptcy respondent, and PT Wirana Nusantara Energy, the cassation respondent and former bankruptcy petitioner. PT Tangkuban Perahu Geothermal Power (the debtor) is a subsidiary of the state-owned enterprise PT Indonesia Power, holding

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11 Maniah Maniah, "Rekonstruksi Regulasi Perlindungan Hukum Bagi Kreditor Konkuren Dalam Penyelesaian Kewajiban Debitor Pada Penundaan Kewajiban Pembayaran Utang Berbasis Nilai Keadilan" (PhD Thesis, UNIVERSITAS ISLAM SULTAN AGUNG, 2022), http://repository.unissula.ac.id/30975/.

12 Jocelyn Marvella, "Upaya Hukum yang Dapat Dilakukan oleh Kreditur untuk Mendapatkan Hak Pelunasan atas Tunggakan Kredit yang Telah Tercatat Sebelum Debitur Meninggal Dunia" (PhD Thesis, Universitas Internasional Batam, 2021), https://repository.uib.ac.id/3611/1/1751019_FF.pdf.

13 Bangun Victor Halomoan Pasaribu, "Karakter Ordinary Court Pengadilan Niaga Dalam Mengadili Sengketa Pailit Yang Berasal Dari Perjanjian Yang Berklausa Arbitrase" (PhD Thesis, Universitas Islam Riau, 2022), http://repository.uir.ac.id/id/eprint/16735.

a Geothermal Mining Business License for electricity generation. On the other hand, PT Wirana Nusantara Energy (the creditor) is a limited liability company specializing in geothermal well drilling services. The case highlights the importance of accurately categorizing debt proof as either simple or complex, as this classification directly influences the appropriate legal forum whether the Commercial Court or the District Court thereby ensuring the correct application of justice.

In this case, the debtor, PT Tangkuban Perahu Geothermal Power, entered into an agreement with the creditor, PT Wirana Nusantara Energy, under Agreement Number 001.PJ/060/TPGP/2014 for drilling activities. The total value of the contract was set at USD 2,121,200.00, including a ten percent Value Added Tax (VAT). According to the agreement, the creditor was responsible for initially financing the drilling activities, with the costs to be reimbursed by the debtor later. The creditor supplied new drilling equipment, referred to as "Rig BSA#1," for use in drilling up to a depth of 1,500 meters. However, a dispute arose regarding the costs associated with damage to the Rig. The creditor argued that the debtor should cover all expenses incurred due to the Rig's malfunction. The debtor, on the other hand, maintained that any costs related to replacing the faulty Rig with a new one should be borne by the creditor, as it was proven that the Rig's malfunction was due to the creditor's failure to fulfill the agreement properly.

In decision Number 489 K/Pdt.Sus-Pailit/2015, the Supreme Court took a different stance from the Commercial Court at the Central Jakarta District Court regarding the concept of debt in this context. The Supreme Court disagreed with the creditor's interpretation and emphasized that the responsibility for replacing the defective Rig and the associated costs lay with the creditor, as the non-completion of the agreement and the equipment's failure were attributable to the creditor's actions.

This case underscores the importance of clearly defining the concept of debt and the responsibilities of each party within such agreements to avoid legal disputes and ensure proper judicial handling. This case centers on a contractual agreement within the legal field of geothermal drilling services, rather than a traditional debt and receivables agreement. The dispute involves the fulfillment of

performance under the agreement, which is necessary to justify the payment of a bill. The terms of the agreement are complex, and the dispute revolves around whether the agreement was fulfilled or if there was a breach of contract.

Given the complexity of the issues specifically, the need to determine which party failed to meet their obligations this case does not fall under the category of a simple debt dispute. Instead, it requires a thorough examination of the contractual performance, which is typically within the purview of the general civil court system. Therefore, it is not appropriate for the Commercial Court, which is more suited for straightforward debt cases, to have jurisdiction over this matter. The case should be examined and tried in a general civil court to ensure that the legal complexities and nuances are fully addressed, and to provide the necessary legal certainty regarding which party, if any, has defaulted on the agreement.[14]

Ultimately, the Supreme Court decided to grant the cassation petition filed by PT Tangkuban Perahu Geothermal Power. As a result, it overturned the decision of the Commercial Court at the Central Jakarta District Court, which was outlined in Decision Number 09/Pdt.Sus-Pailit/2015/PN Niaga Jkt.Pst., dated June 29, 2015. This ruling effectively annulled the Commercial Court's decision, reflecting the Supreme Court's differing view on the matter and its conclusion that the case was not within the proper jurisdiction of the Commercial Court.

The case highlights a significant discrepancy in interpreting what constitutes simple versus complex evidence. The creditor (petitioner) and the debtor (respondent) had conflicting claims, which complicated the matter beyond a straightforward debt dispute. This difference in perspective led to a debate about the complexity of the evidence. Initially, both the Commercial Court and the Central Jakarta District Court considered the case to involve a simple debt issue. However, the Supreme Court disagreed, finding that the evidence was indeed

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14 Denny Suwondo, *Rekonstruksi Regulasi Perlindungan Hukum Terhadap Konsumen Financial Technology Dalam Perjanjian Pinjam-Meminjam Pada Peer To Peer Lending Yang Berbasis Nilai Berkeadilan* (Universitas Islam Sultan Agung (Indonesia), 2021).

complex. This divergence underscores the challenges in categorizing cases and determining the appropriate court jurisdiction, revealing the need for clearer guidelines on distinguishing between simple and complex evidence in debt and contractual disputes.

In Indonesia, bankruptcy applications involving simple evidentiary procedures are exclusively within the jurisdiction of the Commercial Court. Conversely, if the evidence is complex, the case must be filed with the District Court. According to Article 2, paragraph (1) of Law Number 37 of 2004 on Bankruptcy and Postponement of Debt Payment Obligations, bankruptcy can be declared if a debtor, who has two or more creditors, fails to fully repay at least one debt that is due and collectible. This can occur either upon the debtor's request or at the request of one or more creditors.

While Law Number 37 of 2004 provides clear provisions for filing bankruptcy petitions, there are still instances where cases are erroneously handled by ordinary Civil Courts due to varying definitions and interpretations of debt, which evolve with societal and legal developments. The differences in opinion regarding whether a debt is complex or simple have prompted the author to explore how these concepts and the nature of debt are applied in Commercial Court practice. By examining several Bankruptcy and Postponement of Debt Payment Obligations decisions, this research aims to address the overlapping jurisdictions and clarify the authority of Commercial Courts versus District Courts in qualifying debts

Method

A study cannot be considered complete without a defined research method, as the purpose of research is to systematically, methodologically, and consistently uncover the truth.[15] This research is characterized as descriptive-analytical, which involves describing and analyzing the symptoms and facts related to current issues. Descriptive

15 Andrew Fernando Pakpahan dkk., "Metodologi penelitian ilmiah" (Yayasan Kita Menulis, 2021).

research focuses on detailing the condition of an object or event without aiming to draw broadly applicable conclusions.[16]

Development of the Concept of Debt in Bankruptcy Law in Indonesia

Article 1756 of the Civil Code also does not provide an understanding of debt, but only provides information about what occurs when borrowing money, namely that the return of the money only consists of the money stated in the agreement. If before the time of repayment, there is an increase or decrease in prices or there is a change in the currency, then the return of the amount borrowed must be made in the currency in effect at the time of repayment, calculated according to the price in effect at that time.

Kartini Muljadi linked the definition of debt to Article 1233 and Article 1234 of the Civil Code. From Kartini's description it can be concluded that she defines debt as the same as obligation. From the description it can also be concluded that this obligation arises because every agreement, according to Article 1233, is born, either by agreement or by law. Next, Kartini connected the words intended in Article 1233 with the provisions of Article 1234 which determines that every engagement (gives rise to an obligation) to give something, do something, or not do something. In other words, the debtor is obliged to give each creditor something, do something or not do something.

This case concerns the legal relationship between the Plaintiff and the Defendant where the Plaintiff is the supplier or purveyor of goods requested by the Defendant in the Development Work. This legal problem can be seen in decision Number 976/Pdt.G/2022/PN Mdn 3

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16 Komang Ayu Henny Achjar dkk., *Metode Penelitian Kualitatif: Panduan Praktis untuk Analisis Data Kualitatif dan Studi Kasus* (PT. Sonpedia Publishing Indonesia, 2023).

August 2023 between Bastoni as Plaintiff and CV. Tamaro Fortune as Defendant. The materials received by the Defendant from the Plaintiff totaling Rp. 92,789,000.00 (ninety-two million seven hundred and eighty-nine thousand rupiah) have not been paid. Because the defendant did not pay the price for the goods, the plaintiff then sent warning letters 3 (three) times. Based on the description above, the panel of judges has granted the plaintiff's lawsuit and stated that the defendant has defaulted with its considerations based on Article 1313, Article 1320 and Article 1338 of the Civil Code.

Article 1313 of the Civil Code states that an agreement is an act in which one or more people bind themselves to one or more other people. Regarding the conditions for the validity of an Agreement, it is regulated in Article 1320 of the Civil Code, namely:

1. Those who bind themselves agree;
2. Ability to create an engagement;
3. A certain thing;
4. A legitimate cause.

Then article 1338 of the Civil Code regulates the strength of an agreement made by the parties to apply as law for those who make it, which reads as follows: "All agreements made in accordance with law apply as law to those who make them";

Based on these considerations, the Panel of Judges concluded that an agreement had been established between the Plaintiff and the Defendant regarding the supply of goods/building materials where the Plaintiff was the provider of building materials (seller) while the Defendant was the Orderer/Buyer of building materials so that both parties were bound by an agreement.

Civil case decision Number 976/Pdt.G/2022/PN Mdn dated 3 August 2023 stated that the defendant was in default or broke his

promise to the Plaintiff and sentenced the Defendant to make debt payments or compensation to the Plaintiff amounting to IDR 92,789,000.00 (ninety-two million seven hundred and eighty-nine thousand rupiah) along with interest of 5% (five percent) of Rp. 92,789,000.00 (ninety-two million seven hundred and eighty-nine thousand rupiah) per year.

Regarding the concept of debt in default, in the case above it can be concluded that default is the result of unfulfilled obligations. If it is taken from Kartini's opinion, debt is defined as the same as obligation, then it can be concluded that default can be classified as a debt concept.

This case concerns the work agreement between PT. Nusa Abadi Peace as Plaintiff and Hendra Simanjuntak as Defendant in Decision Number 623/Pdt.G/2023/PN Mdn dated 31 October 2023. The Defendant was appointed General Manager of PT. Nusa Abadi Peace. In his work the Defendant committed unlawful acts. The defendant committed embezzlement by not depositing part of the sales deposit. Due to this, the Plaintiff in his business unit suffered a loss of IDR 31,769,801.00- (thirty-one million seven hundred sixty-nine thousand eight hundred one rupiah)

In the civil case decision Number 623/Pdt.G/2023/PN Mdn dated 31 October 2023, the plaintiff's lawsuit was granted and stated that the defendant had committed an unlawful act and sentenced the defendant to provide material compensation for Rp. 31,769,801.00. (thirty-one million seven hundred sixty-nine thousand eight hundred one rupiah).

The unlawful nature of this case stems from the Criminal Case Decision Number 528/Pid.B/2023/PN.Pbr dated 3 July 2023 which sentenced the defendant with the verdict stating that the Defendant

Hendra Simanjuntak had been legally and convincingly proven guilty of committing the crime of "Embezzlement in a relationship continuous work" as in the single indictment, the Defendant was sentenced to imprisonment for 1 (one) year and 10 (ten) months.

Regarding debt in relation to unlawful acts, it can lead to the breach of an agreement, resulting in the failure to fulfill obligations that should have been met. As previously explained by Kartini, obligations can be classified as debts, which, in essence, result in unlawful acts that cause the obligations or debts in an agreement to be disrupted. Therefore, it can be concluded that the concept of debt can also be categorized under unlawful act.

Realizing that confusion has arisen regarding the meaning of debt because there is no definition or understanding of what is meant by "debt" in Perpu Number 1 of 1998 as promulgated by Law Number 4 of 1998, Law Number 7 of 2004, we have provides a definition of debt as intended in Article 1 Paragraph (6) of Law 37/2004 as follows: "Debt is an obligation that is expressed or can be expressed in amounts of money either in Indonesian or foreign currency, either directly or which will arise in the future. (contingent), which arises due to an agreement or law and which the debtor is obliged to fulfill and if not fulfilled gives the creditor the right to obtain fulfillment from the debtor's assets."

In bankruptcy, debt is very crucial, because without debt it is impossible for the bankruptcy case to be examined. In Article 2 Paragraph (1) of Law 37/2004, it is stated that the Debtor has two or more Creditors and does not pay off at least one debt which is due and can be collected, declared bankrupt with a Court Decision, either at his own request or at the request of one or more creditors. The definition of debt referred to in Article 2 Paragraph (1) has been included in Article 1 Number 6 of Law 37/2004. The elaboration of the definition of debt

in Law 37/2004 is a quite significant improvement because of the previous Bankruptcy Law, namely Law Number 4 of 1998 The debt limit is not explained.

Based on a systematic interpretation, the definition of debt in article 1 number 6 of Law 37/3004 is the definition of debt in a broad sense, both in terms of borrowing and borrowing money or debt arising from other agreements or based on the law, whether agreed in Indonesian currency or foreign currency. foreign. Article 1 number 6 reads: "debt is an obligation which is expressed or can be expressed in amounts of money in either Indonesian or foreign currency, either directly or which will arise at a later date or is contingent, which arises because of an agreement or law. and which must be fulfilled by the debtor and if not fulfilled gives the creditor the right to obtain fulfillment from the debtor's assets".

Based on several sub-chapters above, the development of the concept of debt in Indonesia was examined, it was found that the concept of debt had developed significantly starting from Failisement Verordening where the form of debt was still simple but no definition of debt was found. Turning to the concept of debt in Perpu no. 1 of 1998, the forms of debt are increasingly widespread, although in Perpu no. 1 of 1998 has determined that the form of debt is principal and interest or the definition of debt in the narrow sense. In the end, UU 37/2004 concerning Bankruptcy and Postponement of Debt Payment Obligations is explained explicitly, it has formulated the definition of debt in a broad sense in Article 1 number 6.

Simple Proof of Debt in Bankruptcy Cases

When referring to the general rules of procedural law regarding simple evidence regulated in Herzein Inlandsch Reglement (H.I.R)

article 83 f in its explanation relating to minor cases before the court, namely cases that fall under the jurisdiction of which the District Court will examine them in a summary manner, both the implementation of the law and the proof. However, in the H.I.R there is no explicit explanation regarding this summary evidence. Referring to the specific laws and regulations, namely Uuk-Postponement of Debt Payment Obligations, there is no clear explanation as to how to provide simple proof. Sagung Wira Chantieka dan Ibrahim, "Beban Pembuktian Dalam Perkara Perdata," *Jurnal Hukum* 1, no. 1 (2018): 8..

Simple proof is a requirement regulated in Article 8 paragraph (4) of Law 37/2004 which states that a request for a bankruptcy declaration must be granted if there are facts or circumstances that are simply proven in Article 2 paragraph (1) that have been fulfilled. If an application for bankruptcy is submitted by a creditor, proof of the creditor's right to collect is also done simply Susanti Adi Nugroho, *Hukum Kepailitan Di Indonesia Dalam Teori Dan Praktik Serta Penerapan Hukumnya* (Jakarta: Prenadamedia Group, 2018)..

Thus, the process of examining a bankruptcy application is carried out simply without having to follow or be bound by the procedures and evidentiary system regulated in the civil procedural law. Simple proof in bankruptcy procedural law has been normed or established as a legal norm in the bankruptcy laws or regulations that have been in force in Indonesia (formerly the Indie Netherlands), namely;

1. Article 6 paragraph 5 failissemendts-verordening, Staatsblad 1905 Number 217 jo.staatblad 1906 Number 348 which reads; "a declaration of bankruptcy is made if it can easily be concluded that from the events and circumstances it turns out that the debtor is unable to pay his debts and there is a bankruptcy petition from the

creditor as well as debt collection submitted by the creditor concerned."

2. Article 6 paragraph (3) of the government regulation in lieu of law number 1 of 1998 law number 4 of 1998 reads; "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 1 paragraph (1) have been fulfilled"
3. Article 8 paragraph (4) of Law 37/2004 reads: "the application for 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 fulfilled"

Proving bankruptcy cases is not too difficult and complicated. To prove the four conditions or elements of a bankruptcy petition, namely that there is a debt, the debt is due and can be collected, there are two or more creditors, and the debtor has not paid off at least one debt, simple. This means that if during the trial, the facts or circumstances that are the requirements for the bankruptcy application have been fulfilled, then the bankruptcy application must be granted and the Debtor is declared bankrupt.

In practice, to prove the four requirements for a bankruptcy petition, the evidence is sufficient as documentary evidence as regulated in Article 1867 of the Criminal Code. There is no need to use or be equipped with other evidence such as: witnesses, allegations, confessions, and oaths as regulated in Article 1866 of the Criminal Code, Article 284 RBg, or Article 164 HIR, which are commonly used

in civil lawsuit cases. The evidentiary system in Bankruptcy Law is regulated in Article 8 paragraph (4) of Law 37/2004:[17]

"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."

What is meant by proven facts or circumstances is simply the fact that there are two or more creditors and the fact that the debt is overdue and unpaid. Meanwhile, the difference in the amount of debt argued by the bankruptcy applicant and the bankruptcy respondent is not an obstacle to being declared bankrupt. The condition of unwillingness or inability to pay is stated if it is simply proven that there are events or circumstances which indicate that the condition of unwillingness or inability to pay exists.

The evidentiary system in bankruptcy law is a sub-system of civil procedural law in general. If the bankruptcy procedural law does not regulate it, the general civil evidence system applies. This can be seen from the provisions of Article 299 of Law 37/2004. Therefore, the evidence contained in Article 1866 of the Civil Code, namely documentary evidence, witnesses, allegations, confessions and oaths, remains valid for evidence in Bankruptcy and postponement of debt payment obligations cases. By referring to Article 299 of Law 37/2004, Article 163 HIR / 283 RBg concerning the burden of proof also applies in bankruptcy evidence law and postponement of debt payment obligations. This means that whoever postulates something is obliged to prove that it exists.

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17 Syamsudin M. Sinaga, *Hukum Kepailitan Indonesia* (Jakarta: Tatanusa, 2012).

The Supreme Court was of the opinion that the reasons for the review could not be justified by the judex juris decision, there was no real error because the considerations were appropriate and correct. The legal relationship between the Petitioners and the Respondent is not a pure debt and receivable relationship. The existence of a debt in article 6 of Law 37/2004 cannot be proven simply because the respondent in the construction agreement has completed almost 90% of it, while the problem to date with the building has not been 100% resolved, which is beyond the respondent's ability and not at the request of the respondent, He stressed that the problem of the building not being resolved was due to a broken promise/default from a third party, namely PT. Wijaya Karya against the Cassation Petitioner, who is also a party in the bankruptcy petition. So the resolution is not through the commercial court and if there really is a breach of contract in the kiosk sale and purchase agreement, it must be resolved through the district court. The letter of evidence submitted by the Applicant for Judicial Review is not decisive new evidence (novum).

The Supreme Court is of the opinion that these reasons cannot be justified, because the Commercial Court at the Central Jakarta District Court did not apply the law incorrectly because its decision and considerations were appropriate and correct, namely granting the Petitioner's Petition because it was simply proven that the Bankrupt Respondent had fulfilled the requirements to be declared bankrupt in accordance with spirit of the provisions of Article 19 paragraph (3) of Law no. 37 of 2004 and in order to provide protection for buyers who have good intentions, the Bankruptcy Petition can be submitted again if in the course of its development the Bankruptcy Respondent, who was initially declared bankrupt based on a court decision, turns out to

have failed to fulfill his obligations. Based on the trial evidence, it was simply proven that the Respondent was unable to provide the apartment units to the Petitioners and other buyers according to the promised time; that the Bankruptcy Law applies the definition of debt in a broad sense so that obligations that are not fulfilled by the Seller to the Buyer as agreed are the Seller's debt to the Buyer because in simple terms these obligations can be valued in money, namely the amount of money that has been paid by the Buyer to the Seller. Based on these considerations, when the Seller fails to fulfill its obligations to the Buyer, the Seller is a debtor and the Buyer is a creditor.

The reasons for the request for reconsideration from the Applicant for Judicial Review can be justified. The Bankruptcy Petitioner has sold to the Bankruptcy Respondent land covering an area of 16,200 M2 for a total price of Rp. 16,250,000,000.00, paid partly in cash and the rest by check. It turned out that 35 (thirty five) checks could not be cashed with a nominal value = Rp. 4,480,000,000.00. The Bankruptcy Respondent argued that the area sold to the Bankruptcy Respondent was 18,545 M2, and what had just been handed over by the Bankruptcy Petitioner was 16,232 M2, so that the remaining area that had not been handed over was 2,282 M2, and Rp. 11,770,000,000.00 had been paid. Because the Bankruptcy Respondent admits that he has only paid IDR 11,770,000,000.00 and the price of the 16,200 M2 land is IDR 16,250,000,000.00, the Bankruptcy Respondent still owes the Bankruptcy Petitioner a debt, therefore proof of the existence of the debt is simple; That the Bankruptcy Respondent also admitted that there was a debt owed to another creditor, namely PT. Bank Panin, BCA and PT. Bank Mandiri, but not yet due. This proves that there is a debt to BCA. From the provisions of Article 2 paragraph (1) of the Bankruptcy Law (Law No. 37 of 2004), it is proven that the Respondent

has more than one creditor, has not paid in full at least one debt that has matured and can be collected, namely 35 checks which withdrawn by the Respondent at the maturity date, cannot be withdrawn, because the funds are insufficient. From Novum it was proven that there were other creditors of the Bankruptcy Respondent, apart from that there was an error by the Judge or a real error by Judex Juris in considering the simple evidentiary requirements, because with the Bank refusing to disburse 35 checks, which the Petitioner withdrew because there were no funds, it was enough to It's simple to prove that there is a debt from the Respondent, what's more, the Respondent admits that the price of Rp. 16,250,000,000.00 has only been paid Rp. 11,770,000,000.00. So it is simply proven that the Respondent's debt exists.

Decision Number 25 PK/PDT.SUS/2012 dated 19 March 2012, which granted the request for reconsideration from the applicant for judicial review: WEMPY DAHONG. Cancel Supreme Court Decision No. 360K/Pdt.Sus/2011 dated 22 August 2011 which annulled the Commercial Court Decision at Makasar District Court No. 01/Pailit/2011/Pn.Niaga Makassar dated March 24 2011. Granted the Bankruptcy Petitioner's petition in its entirety. Stated Mr. Herry (Bankruptcy Respondent) Bankrupt with all the legal consequences. Sentencing the Respondent for Judicial Review/Respondent for Bankruptcy to pay court costs at all levels of justice and in the judicial review examination which in this judicial review examination is set at IDR 10,000,000.00 (ten million Rupiah).

Decision Number 386K/Pdt.Sus-Pailit/2014 dated 27 August 2014, which rejected the cassation petition from Cassation Petitioner Gusniati Adawiyah, Spd. Sentencing the Cassation

Petitioner/Bankruptcy Petitioner to pay court costs at the cassation rate set at IDR 5,000,000.00 (five million rupiah).

Based on the decision above, it can be observed that of the 6 decisions that the commercial court decided the case simply and the Supreme Court at the cassation level and the PK decided the case stating that the evidence was not simple, so that only one of the 6 decisions stated that the commercial court in examining the case stated that it was not simple by using The legal certainty theory states that commercial courts tend to use aspects of legal certainty, while the Supreme Court, both at the cassation level and at the PK level, tends to use a legal justice theory approach. This is natural because the Supreme Court is the highest level of justice in Indonesia. Mistakes that occur in commercial courts can be corrected juridically and factually, if the Supreme Court, in addition to adjudicating, can also hear cassation or judicial review cases submitted to it.

Touching Point on the Authority of District Courts and Commercial Courts Regarding Debts in Bankruptcy Cases

Relative competence relates to the authority to judge/examine cases of a District Court based on the division of legal areas (jurisdiction). For District Courts, the jurisdiction includes the Regency/City level area where the District Court is located.[18] Relative competence regulates the distribution of adjudicatory powers between similar courts, depending on the place of residence of the defendant. Article 118 HIR concerns relative power, concerning distribution of wealth. The principle is "the competent authority is the district court

[18] Bambang Sugeng, "Hukum Acara Perdata dan Dokumen Litigasi Perkara Perdata," *Kencana Predana Media Group, Jakarta*, 2011.

whose jurisdiction includes the defendant's residence". This principle in Latin is known as actor sequitur forum rei.

The establishment of a commercial court in Indonesia is a specialization (differential) in the judicial system in Indonesia. This means that the commercial court is a special court that examines and tries certain cases within the general court environment. The rationale for establishing a commercial court was due to the influence of the symptoms of the monetary crisis that occurred in several countries in Asia, including Indonesia in mid-1977, so that to overcome this, a legal system and rules were needed that could resolve crisis problems, especially debt and receivable problems, quickly, transparently and effective. For this reason, regulations regarding bankruptcy law and postponement of debt payment obligations have been made, and the main thing is to create an institution that can safeguard the interests of parties who owe money and those who have debts in a balanced and fair manner, as well as having a fast and transparent settlement mechanism. as well as effective implementation.

The first commercial court was established within the Central Jakarta district court, whose jurisdiction covers the entire territory of the Republic of Indonesia. Furthermore, based on Presidential Decree Number 97 of 1999 on 18 August 1999, a Commercial Court was also established within the scope of the Medan, Semarang, Surabaya and Makasar District Courts. The division of jurisdiction of the Commercial Court area for all regions in Indonesia is as follows:[19]

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19 Elyta Ras Ginting, *Hukum Kepailitan: Teori Kepailitan* (Bumi Aksara, 2018).

a. The Makasar Commercial Court covers the provinces: South Sulawesi, Southeast Sulawesi, Central Sulawesi, North Sulawesi, Maluku and Irian Jaya.
b. Medan Commercial Court, covering the provinces: North Sumatra, Riau, West Sumatra, Bengkulu, Jambi, Special Region of Aceh.
c. Surabaya Commercial Court, covering the provinces: East Java, South Kalimantan, Central Kalimantan, East Kalimantan, Bali, West Nusa Tenggara, East Nusa Tenggara.
d. Semarang Commercial Court, covering the Province Central Java, Special Region of Yogyakarta.
e. Central Jakarta Commercial Court, covering the provinces: Special Capital Region of Jakarta, West Java, South Sumatra, Lampung, West Kalimantan.

The commercial courts that have been established in five provincial capitals, apart from having the authority to examine and decide on bankruptcy cases and postponement of debt payment obligations cases, also have the authority to examine and decide on other cases in the field of commerce.

Article 280 paragraph (2) Law Number 4 of 1998:

> "The commercial court as intended in paragraph (1), apart from examining and deciding applications for declaring bankruptcy and postponing debt payment obligations, also has the authority to examine and decide other cases in the commercial sector which are determined by Government Regulation."

Based on these provisions, the commercial court as regulated in Law Number 4 of 1998 has the authority to examine and decide on bankruptcy and postponement of debt payment obligations cases, while

other cases based on Article 300 of Law Number 37 of 2004 will be regulated by law. Not by government regulations.

Article 300 paragraph (1) Law Number 37 of 2004 which reads:

"The court as intended in this Law, apart from examining and deciding on applications for bankruptcy declaration and Postponement of Debt Payment Obligations, also has the authority to examine and decide on other cases in the field of commerce which are determined by law."

This means that the Commercial Court, apart from having absolute authority to examine every application for postponement of debt payment obligations's bankruptcy declaration, also has the authority to examine other cases which are also under the authority of the commercial court at this time, namely issues of Intellectual Property Rights.[20]

Apart from Law 37/2004, it also emphasizes the authority of the Commercial Court in relation to agreements containing arbitration clauses, namely Article 303 of Law 37/2004 reads:

"The court remains authorized to examine and resolve applications for bankruptcy declaration from parties bound by agreements containing arbitration clauses, as long as the debt that is the basis for the application for bankruptcy declaration meets the provisions as intended in article 2 paragraph (1) of this law."

Article 303 of Law 37/2004 confirms that even though an agreement (debts and receivables) contains an arbitration clause, the Commercial Court still has the authority to examine on condition that

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[20] Stevi G. Tampemawa, "Prosedur dan Tatacara Penundaan Kewajiban Pembayaran Utang (PKPU) Menurut Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang," *Lex Privatum* 7, no. 6 (2019): 5–11.

the debt which is the basis for the application for a bankruptcy declaration has met the provisions, namely the existence of two or more creditors and no pay in full at least one debt that is overdue and can be collected.

Apart from bankruptcy cases and postponement of debt payment obligations cases, there are also bankruptcy derivative cases which are also under the authority of the commercial court. This bankruptcy derivative case is as regulated in Article 3 paragraph (1) of Law Number 37 of 2004 which reads

"Decisions on applications for bankruptcy declaration and other matters related to and/or regulated in this law, are decided by a court whose jurisdiction includes the area where the debtor's legal domicile is."

In Article 3 paragraph (1) of Law Number 37 of 2004 it is stated that decisions on applications for bankruptcy declaration and other matters related to and/or regulated in this law are decided by a court whose jurisdiction includes the area where the debtor's legal domicile is. As for the Elucidation of Article 3 paragraph (1) of Law Number 37 of 2004, what is meant by "other matters", namely, actio pauliana, third party resistance to confiscation, or cases where the debtor, creditor, curator or administrator is one of the parties in cases related to bankruptcy assets, including the curator's lawsuit against the directors which caused the company to be declared bankrupt.

Furthermore, based on Perma Number 3 of 2021 dated 17 September 2021 concerning Procedures for Filing and Examining Objection to Decisions of the Business Competition Supervisory Commission in the Commercial Court, this has expanded the authority of the Commercial Court. Business actors as referred to in Number 5 of 1999 dated March 5 1999 concerning the Prohibition of

Monopolistic Practices and Unfair Business Competition who object to the Decision of the Business Competition Supervisory Commission (KPPU) may submit it to the commercial court at the business actor's legal domicile within a period of 14 days after The KPPU's decision has been objected to.

1. 178 PK/Pdt .Sus/2010

The relationship between the applicant and the respondent is a building sale and purchase agreement where the applicant is the buyer and the respondent is PT. UE ASSA as seller. PT UE ASSA did not fulfill its obligations in completing the construction and/or did not physically hand over the above mentioned kiosks/stands (non-residential flats) to the Petitioners on time.

In the court of first instance no.16/Pailit/2009/Pn.Niaga.Sby because the panel of judges stated that the bankruptcy respondent was simply proven to have a debt that was due and collectible and had 2 creditors, it is appropriate that this case falls under the authority of the commercial court. However, both at cassation level no. 141K/Pdt.Sus/2010 and at the Judicial Review level No. 178PK/Pdt.Sus/2010 the panel of judges stated that this case did not have a debt, but instead fulfilled the elements of breach of contract which should be within the authority of the general civil court. Regarding judex facti, it is wrong to apply the definition of debt which can be proven summarily or simply. The existence of debt in article 6 of Law 37/2004 cannot be proven simply because the respondent in the construction agreement has completed almost 90% of it, while the problem to date with the building has not been 100% resolved, which is beyond the ability of the respondent and not at the will of the respondent, He stressed that the problem of the building not being

resolved was due to a broken promise/default from a third party, namely PT. Wijaya Karya against the Cassation Petitioner, who is also a party in the bankruptcy petition.

Until the panel of judges was of the opinion that the legal relationship between the Petitioners and the Respondent was not a pure debt and receivable relationship and the settlement was not through the commercial court and if there really was a breach of contract in the kiosk sale and purchase agreement, it had to be resolved through the district court.

From the description above, it relates to justice according to Gustav Radbruch, where justice is treatment that is fair, impartial, siding with the right, not taking sides, not harming someone and giving equal treatment to each party in accordance with the rights they have at the district court stage, In deciding the case, the panel of judges did not take into account the breach of promise/default from the third party, so the theory of justice according to Gustav Radbruch was neglected. In contrast, the cassation decision and review of the panel of judges' decision fulfills a sense of justice.

2. 236 K/Pdt.Sus/2010

The Petitioners are the buyers and the Respondent is the seller of the apartment units. In the court of first instance no. 73/Pailit/2009//PN.Niaga.Jkt.Pst because the panel of judges declared the respondent bankrupt, it is appropriate that this case falls under the authority of the commercial court. In cassation no. 236K/Pdt.Sus/2010 the panel of judges also stated that this case strengthened the Central Jakarta Commercial District Court. In the decisions above the judge has appropriately applied the authority of the case in accordance with the theory of justice according to Gustav Radbruch.

The Commercial Court at the Central Jakarta District Court did not apply the law incorrectly because its decision and considerations were appropriate and correct, namely granting the Petitioner's Petition because it was simply proven that the Bankrupt Respondent had fulfilled the requirements to be declared bankrupt in accordance with the spirit of the provisions of Article 19 paragraph (3) of Law no. 37 of 2004 and in order to provide protection for buyers who have good intentions, the Bankruptcy Petition can be submitted again if in the course of its development the Bankruptcy Respondent, who was initially declared bankrupt based on a court decision, turns out to have failed to fulfill his obligations. Based on the trial evidence, it is simply proven that the Respondent was unable to provide the apartment units to the Petitioners and other buyers in accordance with the promised time. The Bankruptcy Law applies the definition of debt in a broad sense so that obligations that are not fulfilled by the Seller towards the Buyer as agreed are the Seller's debt to the Buyer. because in simple terms these obligations can be valued in money, namely the amount of money that has been paid by the Buyer to the Seller. The tangential point of this case, which can be observed from the perspective of the petitioner, is regarding the Bankruptcy Respondent's delay in handing over the apartment units purchased by the Bankruptcy Petitioners, which if we look closely at the a quo case constitutes a default (broken promise) which is within the authority of the court. civil law within the scope of the General Court.

3. 296 K/Pdt .Sus/2011

The relationship between the Petitioner and the Respondent is an agreement to provide compensation in exchange for resignation. The Petitioner resigned from the 2009 Telkomsel Uso Project

Implementation Consortium and the Respondent agreed to the Petitioner's resignation and provided compensation.

In the court of first instance No.03/Pailit/2011/PN.Niaga.Jkt.Pst, because the panel of judges declared the respondent bankrupt, it is appropriate that this case falls under the authority of the commercial court, but the panel of judges did not consider the existence of the cassation respondent's obligations which had not been fulfilled based on theory. justice, this does not fulfill the sense of justice Hari Agus Santoso, "Perspektif Keadilan Hukum Teori Gustav Radbruch Dalam Putusan PKPU 'PTB,'" *Jurnal Hukum* 36, no. 3 (2021): 329.. However, in cassation No.296K/Pdt.Sus/2011, the panel of judges stated that this case fulfilled the elements of breach of contract which should be within the authority of the general civil court.

The Joint Agreement dated April 21 2010, which is the basis for the legal engagement between the Cassation Petitioner and the Cassation Respondent, has determined its own conditions in accordance with the provisions. Mutual agreement that the new cassation applicant has the obligation to fulfill stage III payments to the cassation respondent (a new debt will exist), namely after the cassation respondent fulfills the submission (the cassation applicant receives) the following documents and tax invoices, namely in the form of:

a. Operational funds Rp. 1,112,536,589,-

b. Cost of funds Rp. 490,607,059, -

c. 8% Compensation Fee IDR 700,000,000, -

Based on the description above, because the fulfillment of obligations by the Petitioner for Cassation in the form of payment of Rp. 2,080,000,000,- is still hindered by the Respondent's fulfillment of the previous obligations in the form of submitting the Collective

Agreement document along with invoice documents and tax invoices, then the debt has not yet fulfilled its maturity characteristics. and billable.

4. 25 PK/PDT.SUS/2012

Between the Bankruptcy Petitioner and the Bankruptcy Respondent there has been an agreement in the form of buying and selling land belonging to the Bankruptcy Petitioner. In the court of first instance

No.01/PAILIT/2011/PN.NIAGA Makassar because the panel of judges declared the respondent bankrupt, it is appropriate that this case falls under the authority of the commercial court. In cassation no. 360K/Pdt.Sus/2011 the panel of judges stated that this case fulfilled the elements of breach of contract which should be the authority of the general civil court. However, at the PK level, decision no. 25PK/PDT.SUS/2012 the panel of judges again confirmed decision No.01/PAILIT/2011/PN.NIAGA Makassar.

The Bankruptcy Respondent denied the debts of the Bankruptcy Respondent as argued by the Bankruptcy Petitioner, according to the Bankruptcy Respondent, the Bankruptcy Petitioner was the one who broke his promise because he did not hand over the land and buildings as agreed, namely an area of 18,545 m^2 and 5 (five) buildings, the Bankruptcy Petitioner only handed over land measuring 16,200 m^2. m^2 without a building because it had been demolished and taken by the bankruptcy applicant. The debt situation in the a quo case is not simple in nature, it is difficult to prove so it is not suitable to be examined at the Commercial Court but at the District Court through a civil case process and therefore does not comply with Article 2 paragraph (1) jo.

Article 8 paragraph (4) Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations.

According to the bankruptcy petitioner, the Bankruptcy Petitioner has sold the Bankruptcy Respondent a land area of 16,200 M2 for a total price of Rp. 16,250,000,000.00, paid partly in cash and the rest by check. It turns out that 35 (thirty five) checks could not be cashed with a nominal value = Rp. 4,480,000,000.00, which means that the Bankruptcy Respondent still owes the Bankruptcy Petitioner. In this case the panel of judges is fit to apply justice based on the theory of justice which has been explained previously, because the panel of judges not only considers the debtor's obligations but also the creditor's obligations.

5. 135 PK/Pdt.Sus/2012

The relationship between the parties is that the Petitioner is the buyer and the Respondent is the seller in the form of a plot of land covering an area of 660 M^2. In the court of first instance no. 11/PAILIT/2011/PN.NIAGA.JKT.PST because the panel of judges declared the respondent bankrupt, it is appropriate that this case falls under the authority of the commercial court. However, in cassation no. 345 K/Pdt.Sus/2011 the panel of judges stated that this case fulfilled the elements of breach of contract which should be the authority of the general civil court. However, at the PK level, the panel of judges canceled the Supreme Court's decision to declare the Respondent Bankrupt, namely PT Panca Wiratama Sakti, Tbk, bankrupt with all the legal consequences.

The payment obligation is not yet due and cannot be collected because it is prevented by the fulfillment of the obligations of the Cassation Respondent first. In making the AJB, the payment of taxes/BPHTB (sales tax for sellers and purchase tax for buyers) which

are borne by each party must be fulfilled. Until now This AJB was never signed and the Cassation Respondent has not fulfilled the BPHTB/purchase tax payment that must be paid by the buyer to the State. If the payment of BPHTB/purchase tax which must be paid in advance by the Buyer/Casation Respondent to the State has not been fulfilled, and the AJB has not been made before the PPAT, the process of issuing a split certificate in the name of the Cassation Respondent/buyer cannot be carried out by the Cassation Petitioner at the local Land Office . Therefore, until now the certificate cannot be issued. The implementation of the obligations of letter c of article 3 of the PPJB, namely the obligation of the Cassation Petitioner to carry out certificate splitting arrangements on behalf of the Cassation Respondent, is hampered by the requirement of first fulfilling the BPHTB tax payment and making the AJB.

According to Gustav Radbruch, justice is treatment that is fair, impartial, sided with the right, not biased, does not harm anyone and gives equal treatment to each party in accordance with the rights they have. Based on the theory of justice above, the Supreme Court at the cassation level does not consider both obligations of both debtors and creditors to the point that the sense of justice is neglected.

6. 386 K/Pdt.Sus-Pailit/2014

The Petitioner is the buyer and the Respondent is the seller. The applicant has purchased 1 (one) house unit in full from the respondent. In the court of first instance no. 11/Pdt.Sus.pailit/2014/PNNiagaJkt.Pst The Panel of Judges stated that the respondent was not bankrupt. The same thing was also decided in cassation level no. 386K/Pdt.Sus-Pailit/2014 The Panel of Judges stated that this case fulfilled the elements of breach of contract which

should be the authority of the general civil court. Based on the theory of justice, the panel of judges is fit to apply the law because the panel of judges has considered the obligations of both debtors and debtors.

Even though the Petitioner has sent a summons to the Respondent for the purchase money that the Respondent has received to be returned to the Bankruptcy Petitioner, it does not mean that the money is a debt that has matured to be collected because the money received by the Respondent is a down payment for the purchase of 1 house unit that was ordered. and purchased by the Bankruptcy Petitioner from the Respondent as developer, the payment of which was only paid in the amount of Rp. 82,800,000.00 from the price of Rp. 110,000,000.00. The Petitioner for Cassation has not paid all his obligations to pay the price of the house, so the Respondent has no obligation to hand over the house. So in this case the unit agreed upon in the agreement between the parties is not a debt

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