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Simple Evidentiary in Bankruptcy Cases

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Abstract

This study aims to find and analyze the concept of simple evidentiary in bankruptcy cases and to find and analyze the characteristics of simple evidentiary in bankruptcy cases. This research is a type of normative legal research using a statutory approach and a conceptual approach. The results showed that the simple concept of proof in bankruptcy cases is not the whole proving process in the bankruptcy case trial process, but only simply proving of the existence of the debt. However, if it turns out that at trial there are difficulties in proving the three facts mentioned above, then it is certain that the proof is not simple. In bankruptcy cases, the trial process is carried out with simple evidentiary intended so that this case can be resolved quickly and effectively. Quick because the settlement of bankruptcy cases in the commercial court has determined the time period at each level of the judiciary. Effective because the decision on the bankruptcy petition case is instantaneous.

I. Introduction

According to the opinion of a legal expert named Hikmahanto Juwana, the notion of modern law is a law that is manifestly needed in an industrial society. For example, the United States adopted the British Bankruptcy Law because the rapidly growing industry in the United States needed a legal tool governing debt repayment.[1]

In Indonesia, the debt settlement legal systems originally came from the Bankruptcy Ordinance as contained in Staatsblad 1905 No. 217 jo Staasblad 1906 No. 348. The substance of the Ordinance has been amended by Government Ordinance No. 1 of 1998, and the Government Ordinance was approved as a law based on Law no. 4 of 1998. At the end, the Bankruptcy Law has been replaced with Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. (hereinafter referred to as

[1] Elyta Ras Ginting, *Hukum Kepailitan: Teori Kepailitan* (Jakarta: Sinar Grafika, 2018). p.23

UUK and PKPU). Even though the UUK and PKPU are the newest bankruptcy laws, this does not mean that these laws are absolutely perfect.[2]

Indonesia is building the national economy, hence modern bankruptcy law institutions are urgently needed by the Indonesian government today whilst not overlooking the prevailing legal system. The law and the economy must go hand in hand, in order to realize an equitable economic development. As modern bankruptcy law institutions, the UUK and PKPU still have several weaknesses, such as the concept of simple evidentiary for example, which has caused problems in their implementation. There is no clear concept of simple evidentiary in the UUK and PKPU, which has resulted in various interpretations and consequently created legal uncertainty.[3]

As it is known, apart from the legal awareness of the community and the righteous law enforcement officers, the implementation of law in a state society is also determined by the preciseness of its legal regulations. Precise legal regulations are beneficial for legal certainty and also indispensable in a fair law enforcement.[4] Likewise in economic development, the law must run parallel to economic growth and development.

There is a strong ground for this research as the UUK and PKPU really poses its own difficulties regarding simple evidentiary in bankruptcy cases. It is necessary to make a firm regulation regarding whether simple evidentiary includes the entire process of proof in the process of examining bankruptcy cases or only regarding proof of the existence or absence of debt.[5]

This simple evidentiary phenomenon in bankruptcy cases greatly affects economic development related to the debt settlement system. For this reason, it is urgent to immediately conduct research in order to find materials as inputs in the renewal of bankruptcy law.[6]

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[2] Rai Mantili, "Proses Kepailitan Oleh Debitor Sendiri Dalam Kajian Hukum Acara Perdata Dan Undang-Undang Nomor 37 Tahun 2004," *ADHAPER: Jurnal Hukum Acara Perdata* 1, no. 2 (2015): 117–134, https://doi.org/10.36913/jhaper.v1i2.15., p.121.

[3] Robert and Keizerina Devi Azwar Robert, Sunarmi, Dedi Harianto, "Konsep Utang Dalam Hukum Kepailitan Dikaitkan Dengan Pembuktian Sederhana (Studi Putusan No: 04/PDT. SUS. PAILIT/2015/PN. NIAGA. JKT. PST)."," *USU Law Journal* 4, no. 4 (2016): 30–39.

[4] Maskur Hidayat, "Hukum Perdata Progresif: Perubahan Dan Kesinambungan Penemuan Hukum Di Bidang Hukum Perdata," Jurnal Hukum Dan Peradilan 3, no. 3 (2014): 269, https://doi.org/10.25216/jhp.3.3.2014.269-280.

[5] Erma Defiana Putriyanti and Tata Wijayanta, "Kajian Hukum Tentang Penerapan Pembuktian Sederhana Dalam Perkara Kepailitan Asuransi," *Jurnal Mimbar Hukum* 22, no. 3 (2010): 482–97, https://doi.org/10.22146/jmh.16240.

[6] Doni Budiono, "Analisis Pengaturan Hukum Acara Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *ADHAPER: Jurnal Hukum Acara Perdata* 4, no. 2 (2018): 109–28, https://doi.org/10.36913/jhaper.v4i2.81.

Based on the background of the problem described above, the focus of the problem that will be studied in this research is firstly, what is the concept of simple evidentiary in bankruptcy cases. The second problem is why the evidentiary process in bankruptcy cases is carried out in a simple way.

Based on the search results, scientific articles were found that discusses simple Evidentiary in bankruptcy, such as scientific articles written by Mulyani Zulaeha[7] entitled "Evaluating Simple Proofs in Bankruptcy as Protection for the Business World in Indonesia". This scientific article focuses on evaluating a simple proof system in bankruptcy which is seen as likely to harm the debtor. The discussion in this scientific article shows that the simple evidentiary system in bankruptcy in Indonesia does not reflect the principle of legal certainty and provides protection for debtors and interested stakeholders. Previous research regarding simple evidentiary in bankruptcy is also found in a scientific article written by Iwan Sidharta[8] entitled "Simple Proofing Process in the Court Decision of Bankruptcy Case". The focus of the discussion in this scientific article is on the interpretation of simple evidence in the bankruptcy petition trial. Meanwhile, this article focuses more on examining the meaning of the concept of simple proof in bankruptcy cases. Therefore, this study aims to find and analyze the concept as well as the characteristics of simple evidentiary in bankruptcy cases.

2. Research Methods

The type of research used is normative legal research that relies on secondary data as the main source.[9] However, primary data is still needed through field research to complete this research. The working of norms in practice is a reinforcement in analyzing the existing norms in the product of legislations.[10] This research uses a statutory approach and a concept analysis approach. The data studied in this study are primary data and secondary data. The primary data in this study is sourced from the results of interviews with informants while the secondary data consisted of primary legal materials consisting of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. Law No. 21 of 2011 concerning the Financial Services Authority HIR (Herzien Inlandsch Reglement) which is often translated as the Renewed Indonesian Regulation, namely the procedural law in civil case trials applicable on the islands of Java and Madura. RBG (Rechtreglement voor de Buitengewesten) which is often translated Trans Regional Law Regulations (outside

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[7] Mulyani Zulaeha, "MENGEVALUASI PEMBUKTIAN SEDERHANA DALAM KEPAILITAN SEBAGAI PERLINDUNGAN TERHADAP DUNIA USAHA DI INDONESIA," *ADHAPER: Jurnal Hukum Acara Perdata* 1, no. 2 (2015): 171–87, https://doi.org/10.36913/jhaper.v1i2.18.

[8] Iwan Sidharta, "PEMBUKTIAN SEDERHANA DALAM PUTUSAN PAILIT(STUDI KASUS PERKARA NOMOR 515 K/PDT.SUS/2016)," Jurnal Legal Reasoning 1, no. 1 (2018): 36–47.

[9] Soerjono Soekanto, Penelitian Hukum Normatif Suatu Tinjauan Singkat (Jakarta: Rajawali Pers, 1995). p.15.

[10] Ari Hernawan, "Keberadaan Uang Pesangon Dalam Pemutusan Hubungan Kerja Demi Hukum Di Perusahaan Yang Sudah Menyelenggarakan Program Jaminan Pensiun," *Kertha Patrika* 38, no. 1 (2016): 3–19, https://doi.org/10.24843/kp.2016.v38.i01.p01.

Java, Madura), namely procedural law that applies in civil case trials in courts outside Java and Madura. Secondary legal materials in the form of legal literature related to the issues to be discussed are listed in Staatblad 1927 No. 227. All data that has been collected both primary data and secondary data will be processed and analyzed using qualitative data analysis which is then presented descriptively.

3. Results and Discussion

3.1 Bankruptcy Case Court

The court authorized to hear and decide cases of bankruptcy and postponement of debt payment obligations is the Commercial Court. It should be understood that the Commercial Court is not a separate court, as is the case with the Military Court, State Administrative Court and Religious Court, but is only a specialization of the District Court, as is the case with the Juvenile's Court, and the Traffic Court.

The establishment of the Commercial Court in Indonesia was first based on Article 281 of Government Ordinance Number 1 of 1998, which determinded "for the first time with this law the Commercial Court is established at the Central Jakarta District Court." Furthermore, the establishment of a Commercial Court with UUK and PKPU, is possible on the basis of the provisions of Law Number: 2 of 1986 concerning the General Courts. Article 8 of the Law provides: "In the General Courts, there may be a specialisation provided for by the law. On top of that, in the explanation of the law, it is explained that specialisation is the existence of differentiation/specification in the General Courts environment, for example the Traffic Court, the Juvenile Court, and the Economic Court

Based on article 306 of the UUK and PKPU, the Commercial Court at the Central Jakarta District Court which was established based on the provisions of article 281 paragraph (1) of Government Ordinance Number: 1 of 1998 concerning Amendments to the Bankruptcy Law as stipulated in Law Number 4 of 1998 is declared to still having the authority to hear and decide on cases that are within the scope of duties of the Commercial Court. The Commercial Court at the Central Jakarta District Court currently has jurisdiction over the Special Capital Region of Jakarta, West Java Province, South Sumatra, Lampung and West Kalimantan.

Additionally, based on article 300 paragraph (2) of the UUK and PKPU, the establishment of a Commercial Court other than the Central Jakarta District Court will be carried out in stages by Presidential Decree, taking into account the needs and readiness of the necessary resources. Currently, apart from the Central Jakarta District Court, Commercial Courts have also been established in several places, including the Ujung Pandang District Court, covering the provinces of South Sulawesi, Southeast Sulawesi, Central Sulawesi, North Sulawesi, Maluku and Irian Jaya. The Medan District Court covers the provinces of North Sumatra, Riau, West Sumatra, Bengkulu, Jambi and the Special Region of Aceh. The Surabaya District Court, covering the Regions of East

Java Province, South Kalimantan, Central Kalimantan, East Kalimantan, Bali, West Nusa Tenggara, and East Nusa Tenggara. Semarang District Court, covering the Region of Central Java Province and the Special Region of Yogyakarta.

The establishment of the Commercial Court to examine cases of Bankruptcy and Postponements of Debt Payment Obligations, as well as other cases based on government regulations, is based on considerations of promptness and effectiveness. Effective means that the decision of the bankruptcy petition case is immediate (the District Court's decision unless decided by order to state that the decision is immediate, or not). Promptness means that according to UUK and PKPU, the length of bankruptcy cases hearings are specified, for the Commercial Court level, the Cassation Level, or at the Judicial Review Level. Legal remedies that can be taken by those who are dissatisfied with the decision of the Commercial Court in bankruptcy cases is to directy appeal to the Supreme Court without an appeal in the High Court. The direct appeal in this bankruptcy case makes the bankruptcy case proceed faster than ordinary case hearings in the District Court.

The decision on the bankruptcy declaration petition will be effective, because according to the provisions of the UUK and PKPU, the decision is immediate. This means that the Curator has been able to sell the Bankruptcy Properties, even though the decision on the bankruptcy declaration petition has not had permanent legal force, because there is an appeal filled against it.[11]

Based on these discussion, it can be seen that the Commercial Court has absolute authority to hear and decide cases of petitions for bankruptcy statements and requests for Postponement of Debt Payment Obligations. As the Commercial Court is within the General Courts, there is no Chief Justice of the Commercial Court, there is only the Chief Justice of the District Court who also oversees the Commercial Court. Commercial Judges are appointed by the Chief Justice of the Supreme Court from General Court Judges who are experienced and have successfully completed a special training program, and can also be appointed as Ad Hoc Judges if necessary.

3.2 Procedural Law in Bankruptcy Cases

Based on the provisions of Article 299 of the UUK and PKPU which specifies that: "unless otherwise provided for in this law, the applicable procedural law is the Civil Procedure Code. This means that the intended civil procedural law is HIR/RBg. So if the UUK and PKPU do not regulate certain matters concerning the procedure for filling a petition for bankruptcy declaration and examination of cases in and by the court, then the HIR/RBg must be applied.

[11] Lontoh, Rudhy A. Denny Kailimang and Benny Ponto Lontoh, Rudhy A., Denny Kailimang, *Penyelesaian Utang Piutang Melalui Pailit Atau Penundaan Kewajiban Pembayaran Utang* (Bandung: Alumni, 2001). p.23.

Based on these provisions, it can be seen that the UUK and PKPU are laws whose substance reflects the principle of integration. It means the substance of the law that unites between the legal system and its materiel law. Materiel and formal bankruptcy law are a unified whole system of the civil law and the national civil procedural law which applies as positive law in Indonesia.

UUK and PKPU are lex specialists that regulate debt repayment procedures which are carried out by:

a. filling an application for bankruptcy, and
b. submitting a PKPU application.

If it is not specifically regulated in the UUK and PKPU, or there is a lack of clarity in the regulations, then the lex generalist applies, for example the Civil Code, Civil Procedure Law (HIR/RBg., the law that regulates Property Rights – Mortgage Law, Fiduciary Law, Shipping Law relating to Ship Mortgage, Aviation Law relating to Aircraft Mortgage). For example, Article 185 of the UUK and PKPU only regulates generally regarding sales but does not regulate in detail the procedure for executing fiduciary collateral rights or aircraft mortgage object.

In bankruptcy cases, advocates play a very central role. The petition for a declaration of bankruptcy whether filed by the Debtor or Creditor, cannot be filed directly by the Debtor or Creditor in question. Article 7 paragraph (1) UUK and PKPU determine:
"The petition referred to in Article 6, Article 10, Article 11, Article 12, Article 43, Article 56, Article 57, Article 68, Article 161, Article 171, Article 207, Article 212 must be filed by an advocate".

In connection with the provisions of article 7 paragraph (1) of the UUK and PKPU, then in article 7 paragraph (2) of the UUK and PKPU, it determines the elimination of the requirement to use the services of an advocate when the parties petitioning bankruptcy are: the prosecutor's office, Bank Indonesia (Central Bank Of Indonesia), the Capital Market Supervisory Board, and the Minister of Finance (there is a slight change now with the issuance of Law No. 21 of 2011 concerning the Financial Services Authority (OJK).

3.2.1 Legal Remedies

Legal remedies provided in the bankruptcy procedural law are only Cassation and Judicial Review. So in the case of bankruptcy there is no remedy of Appeal.

3.2.2 Evidentiary in Civil Cases

It is crucial to understand the evidentiary law (law of evidence), because evidence is related to the ability to reconstruct events or past events as truth.[12] The law of evidence is a series of rules and procedures for the implementation of evidence in criminal, civil, and administration trials in authorized courts in Indonesia. Based on this understanding, what is meant by the law of evidence in civil cases is a series of regulations regarding the procedures for implementing proving in the trial of civil cases in court.[13]

The law of evidence is included in formal civil law or civil procedural law. As for what is meant by civil procedural law, it is the law that regulates how to guarantee the enforcement of material civil law. Formally the law of evidence regulates how to carry out evidence as provided for in HIR and RBg., whereas materielly the law of evidence regulates whether or not the evidence can be accepted with certain evidence exhibits at trial and the strength of the evidence from the evidence exhibit to the extent to which it can be proven.

An important part of the legal system for proving civil cases includes, among others, the burden of proof. The basic principle of the burden of proof in civil procedural law is provided in Article 163 HIR/283 Rbg. and Article 1865 of the Civil Code which specifies: "Whoever claims to have a right or an event, he must prove the existence of that right or event". The provision contains a principle in civil procedural law called "the principle of actori incombit probatio", that is the principle of sharing the burden of proof. This means that both parties, both the plaintiff and the defendant, can be burdened with proof. The plaintiff is obliged to prove the events he proposes, while the defendant is obliged to prove his objections based on the evidence they have. The presentation of legally valid evidence to a judge hearing a case in order to provide certainty about the truth of the events presented before the trial is called proving.[14] If the plaintiff cannot prove the argument or event he put forward, he must be defeated, whereas if the defendant cannot prove his objection, then he must be defeated. So if one of the parties is burdened with proof and he cannot prove it, then he will be defeated.[15] This is essentially to fulfill a sense of justice so that the risk in the burden of proof is not one-sided.

Proving it is not always easy, especially to prove a negatie, something that is negative, it is generally impossible (negative non sunt probanda), proving not being in debt, not

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[12] M. Yahya Harahap, *Hukum Acara Prdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2017). p.496

[13] H. P. Panggabean, *Hukum Pembuktian Teori-Praktik Dan Yurisprudensi Indonesia* (Bandung: Alumni, 2012). p.3.

[14] Ridwan Syahrani, *Materi Dasar Hukum Acara Perdata* (Bandung: PT Citra Aditya Bakti, 2004). p.83

[15] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 2010). p.101.

receiving money, basically proving anything of negative, is generally impossible or difficult. Based on the Teachings of Law, there are several theories regarding the burden of proof, as mentioned below.

1. The merely corroborating theory of proof
According to this theory, whoever proposes something must prove it and not deny it. The justification of this theory is that it is impossible to prove negative things (nagativa non sunt probanda). Negative events cannot be the basis of a right, even if the proof is possible, it is not important and therefore cannot be imposed on a person. This theory, has been abandoned.

2. Subjective legal theory
According to this theory, a civil process is always the execution of subjective law and whoever put forward or claims to have a right must prove it. This theory is based on article 1865 of the Civil Code.

3. Objective legal theory
According to this theory, filing a claim for a right or a suit means that the plaintiff asks the judge to apply objective legal provisions to the proposed event. The plaintiff must prove the truth of the proposed event and then seek for the objective law to be applied to the event. This theory cannot answer matters that are not regulated by law.

4. Public law theory
According to this theory, seeking the truth of an event in the judiciary is in the public interest, therefore judges should be given greater authority to seek the truth.

5. Procedural law theory
The principle of audi et alteram partem, the principle of equal standing for the parties before the judge. The judge shall divide the burden of proof based on the equal position of the parties. For example, if the defendant states that he bought something from the plaintiff, but the sale and purchase was void because of compensation, then the defendant must prove that he has a claim against the plaintiff. The plaintiff in this case does not need to prove that he has no debt to the defendant.

3.2.3 Evidence Exhibits
Based on the civil procedural law as provided in article 164 HIR/284 RBg., as well as article 1866 of the Civil Code, the evidence used in proving civil cases is referred to in sequence below.

a. Proof of writing
b. Evidence with witnesses
c. Conjectures
d. Confession
e. Oath.

4. Conclusion

The concept of simple evidentiary in bankruptcy case is not a process of proff as a whole in the proceedings of bankruptcy cases, but only the proving of the existence of debt is simple. That in the proceedings it is easy to find the existence os the facts: the debtor has two or more creditors; the debtor does not pay off in full at least one debt that has matured and is collectible. If it turns out that at trial there are difficulties in proving the three facts mentioned above, then it is certain that the evidentiary is not simple. In bankruptcy cases, the proceedings are carried out with simple evidentiary intended so that the case can be resolved promptly and effectively. Promptly because the settlement of bankruptcy cases in commercial courts has a fixed period of time for proceedings at each level of court, while for cases in the district courts at each level of court, the time period for a trial is not determined. Effective because the decision of the bankruptcy petition case is immediate, while the decision of the district court is not immediate unless it is decided by an order to be an immediate decision.

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