



## **Determining The Company Debt Threshold In Order To Determine Bankruptcy Status**

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### **Abstract**

*The Indonesian Bankruptcy Law has not been based on a philosophy that should be in accordance with the principles of the Bankruptcy Principle itself, where the philosophy of the Bankruptcy Law has not been able to explain debtors who have debts greater than their assets. The application of this principle should ideally be a condition for the debtor to be declared bankrupt, where if the debtor is insolvent (the debtor's assets are less than its debts), it is not enough if the debtor stops or fails to pay its debts. If the debtor's assets exceed its debts, then the settlement of the debt and credit should be done through an ordinary civil lawsuit. The application of bankruptcy regulations according to Article 2 of the Bankruptcy Law should not only be based on three aspects, which include the existence of debt, at least two (two) creditors, due time, and collectibles, but also the application of a minimum threshold of capital and assets owned so that the company can be monitored to see if it will be able to rise with the assets and capital it has.*

**Keywords:** *threshold, company, bankruptcy.*

### **A. Introduction**

The concept of the state of law, or “Rechtsstaat” which was previously only mentioned in the Explanation of the 1945 Constitution, is now firmly formulated in Article 1, paragraph (3), which states, "The State of Indonesia is a state of law." It is idealized in the rule of law concept that the law must be used as the commander in the dynamics of state life. Under the rule of law, the state is obligated to provide not only prosperity but also security. In order to ensure the security of the state, the state must be present in every responsibility carried out by the government in terms of regulation regarding the transaction of establishing a limited liability company and the bankruptcy status of the company. In terms of bankruptcy, the state is present by issuing Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. This regulation is a representation of the Republic of Indonesia's 1945 Constitution. Law Number 37 of 2004 regulates bankruptcy status, which in Article 2 states: (1) A debtor who has two or more creditors and does not pay in full at least one debt that has matured and is collectible shall be declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors. (2) An application may also be filed by the public prosecutor's office in the public interest. Bankruptcy affects not only individuals but also companies. A company declared bankrupt at this time will have a negative impact and influence not only on the company itself but also on the entire world.



Despite the fact that Law Number 37, Year 2004, was well-regulated, problems began to arise, specifically because Indonesian Bankruptcy Law does not distinguish between the bankruptcy of individuals and the bankruptcy of legal entities. The Indonesian Bankruptcy Law, as outlined in Law Number 37 of 2004, governs both natural persons and legal entities in bankruptcy. If Law No. 37/2004 does not adequately regulate natural person and legal entity bankruptcy, other laws and regulations are used as a legal basis. The existence of this vacuum introduces a new problem, given that the law is dynamic rather than static. The non- existence of this provision has the potential to create legal uncertainty (*rechtsonzekerheid*) or uncertainty in community legislation, which could lead to legal chaos (*rechtsverwarring*). As a consequence of this, the social situation becomes a vehicle for the law to demonstrate its utility in achieving legal goals. In addition to regulatory arrangements, the renewal of the institutional structure system is equally essential because institutions will play an important role in law enforcement itself; thus, bankruptcy institutions are one of the basic needs in business activities because bankruptcy status is one of the reasons business people leave the market. If business actors are no longer able to compete in the market, they can exit the market.

Problems with the requirements for filing a bankruptcy petition as specified in Article 2 paragraph (1) of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations can be explained as follows: 1. The requirement for the existence of two or more creditors (*concurcus creditorium*). The requirement that a debtor have at least two creditors is closely related to the philosophical origins of bankruptcy law; as previously explained, bankruptcy law is the realization of Article 1132 of the Civil Code. With the establishment of bankruptcy law, it is hoped that the repayment of debtors' debts to creditors can be carried out in a balanced and fair manner. Each creditor (*konkuren*) has the same right to recover repayment from the debtor's assets. If the debtor has only one creditor, all of the debtor's assets automatically become collateral for the debtor's debt repayment, and no *pro rata* or *pari passu* distribution is required. As a result, it is clear that a debtor cannot be sued for bankruptcy if the debtor has only one creditor.

The bankruptcy verdict has consequences for the bankrupt or debtor and his assets; once the bankruptcy verdict is read by the commercial court, the debtor loses the right to manage and control the property (*budel*). He becomes the owner of the estate (*budel*),



but he may no longer manage or control it. The management and control are transferred to the supervisory judge and the curator appointed by the commercial court, while if the creditors and debtor do not submit a proposal for the appointment of another curator to the court, the Balai Harta Peninggalan (BHP) which means inheritance center acts as the curator, which is the judge's decision is frequently problematic because the decision does not include a threshold for determining bankruptcy status.

In this case, determining the threshold status of bankruptcy is the primary indicator in determining or deciding the status of a bankrupt company, the threshold status is an ideal element that should be included in legal development, which is an effort to shape legal life in a better and more conducive direction.

## **B. Research Method**

Legal research, according to its type, nature, and purpose, can be divided into two categories: normative juridical research and empirical juridical research. Research on the Determination of the Company's Debt Threshold in Determining Bankruptcy Status is a type of research in which what is studied is library material or secondary data, which includes primary legal materials, secondary legal materials, and tertiary legal materials. The findings of this study are presented in the form of a descriptive Analytical Description, which can describe the object of the problem under study in a systematic and thorough manner based on data obtained by researchers related to the Determination of the Company's Debt Threshold in Determining Bankruptcy Status.

## **C. Results and Discussion**

### **1. Bankruptcy Problems from a Legal Perspective**

Indonesia was shocked by the decision of the Commercial Court at the Central Jakarta District Court to declare several companies bankrupt, specifically the verdict of the Commercial Court at the Central Jakarta District Court, which bankrupted PT Telekomunikasi Seluler.<sup>1</sup>

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<sup>1</sup> PT. Cellular Telecommunications was declared bankrupt by the Commercial Court at the Central, Jakarta District Court, decision number: 48/PAILIT/2012/PN.NIAGA.JKT.PST. dated September 14 2012. Bankruptcy Decision of PT. This cellular telecommunications was canceled by the Supreme Court in Decision Number 704 K/Pdt. Sus/2012 dated 21 November 2012.



Before the case of PT Telkomsel, similar events occurred on several occasions, such as the bankruptcy of PT Manulife Life Insurance<sup>2</sup> and PT Prudential Life Assurance.<sup>3</sup> Even though the bankruptcy of PT Telkomsel, Manulife Insurance, and Prudential Insurance was ultimately canceled by the Supreme Court at the cassation level, cases like this will cause insecurity for companies that are covenanted in the future from the threat of bankruptcy.

Evidence Bankruptcy law has evolved in a variety of ways, from the most basic to the most complex, from the immoral to the humane. Until now, bankruptcy law has been divided into three categories: debt collection, debt for forgiveness, and debt adjustment.<sup>4</sup> Specifically related to corporate insolvency, the shift is towards corporate rescue. This concept is related to debt adjustment. In this concept, liquidation is only the last option, or *ultimum remedium*.

Realization of the two main principles stated in Civil Code Articles 1131 and 1132. Article 1131 of the Civil Code states that “all property of the debtor, both movable and immovable, both existing and new, Against the Bankruptcy Law (Law No. 4 of 1998) exists in the future, becomes collateral for all individual obligations.” Furthermore, Article 1132 of the Civil Code states that “the property becomes collateral for all those who owe it, and the income from the sale of the objects is divided according to the balance, namely according to the size of their respective debts, unless among the debtors there are valid reasons for precedence.”

Bankruptcy is the public confiscation of the Bankrupt Debtor's assets, which are managed and administered by the Curator under the supervision of the Supervisory Judge. Bankruptcy assets will be distributed in proportion to the amount owed by creditors. This bankruptcy principle is a realization of Article 1131 and the Civil Code provisions, namely that the Debtor's property becomes joint

<sup>2</sup> PT. Manulife Life Insurance was declared bankrupt by the Commercial Court at the Central, Jakarta District Court with Decision Number: 10/Pailit/2002/PN.Niaga/Jkt.Pst dated 13 July 2002. PT Bankruptcy Decision. Manulife Life Insurance was canceled by the Supreme Court in Decision Number 021 K/N/2002.

<sup>3</sup> PT. Prudential Life Assurance was declared bankrupt by the Commercial Court at the Central Jakarta District Court decision Number 13/Pailit/2004/PN.Niaga,Jkt.Pst. April 23 2004. Bankruptcy Decision of PT. Prudential Life Assurance was canceled by the Supreme Court in Decision Number 8K/N/2004 dated 7 June 2004

<sup>4</sup> Eric Brunsstad, “Bankruptcy and Problems of Economic Futility on the Unique Role of Bankruptcy Law,” The Business Lawyer, Vol. 55, February, 2000.



security for all Creditors, which is divided according to the principle of balance, or "Pari Pasu Prorata Parte." According to the provisions in the aforementioned Articles, it is clear from Article 1131 of the Civil Code Article 1132 that if the debtor is negligent in fulfilling his obligations or achievements, the creditor has the right to conduct an auction of the debtor's property. The proceeds of the sale (auction) must be divided fairly and evenly among the creditors in proportion to the outstanding balance of their respective debts. In general, bankruptcy is related to the debts of debtors or the receivables of creditors. A creditor may have multiple receivables or bills, and each receivable or bill is treated differently in the bankruptcy process.

The implementation of the 2004 Bankruptcy Act is more difficult than anticipated. In fact, it is more stringent than the Bankruptcy Act of 1998. In fact, the monetary crisis has passed." The Bankruptcy and PKPU Law's substance contradicts the nature of bankruptcy law. The Bankruptcy Law appears to be a killing machine for the debtor's business. Several issues arise, including: if creditors file PKPU; the minimum requirements for creditors as bankruptcy applicants contained in Article 2 paragraph (1); and the very short PKPU period if creditors file PKPU. The debtor is compelled to submit a settlement proposal to all creditors. In an ideal world, creditors would also submit a peace proposal.

Separatist creditors have the right to declare bankruptcy and vote without losing their collateral rights. There is inequity. Article 281 of the Bankruptcy Law requires that the high requirements for vote calculation and cumulative voting requirements for concurrent creditors and secured creditors be met. "In practice, it often happens that only approximately one year after the homologation of the composition plan, the debtor defaults because it has been forced from the start; the honorarium or fee of the curator (administrator) is very high." There are various interpretations of the ranking of tax bills, labor wage bills, and secured creditors' receivables, as well as interest and benefit from it.

To address the existing issues, the following steps are being taken: revising Article 2, paragraph (1) of the Bankruptcy Law, The importance of commercial judges better understanding the intricacies of bankruptcy means that debtors should submit PKPU. The bankruptcy law must allow sufficient time for companies to



reform. Bankruptcy law should not only pay attention to creditors and debtors but also to the interests of workers, considering the potential for bankruptcy to have a broad impact on consumers or cause bad economic dislocation. Bankruptcy law in Indonesia must pay attention to the financial health of debtors. Procedures for requesting and determining collateral confiscation must be emphasized.<sup>5</sup>

In addition to saving companies from financial difficulties, bankruptcy law protects not only the interests of creditors and debtors but also the interests of parties related to creditors and debtors or stakeholders. Stakeholder protection serves an essential purpose, namely that business must be carried out in such a way that stakeholders' rights and interests are guaranteed, considered, and respected in a business activity. This is necessary because these various parties influence and can influence business decisions and actions. Creditors have stakeholders who are similar to debtors. If a creditor has uncollectible receivables, the creditor may also go bankrupt. However, protecting the interests of creditors and their stakeholders must not come at the expense of the interests of the debtor and the debtor's stakeholders. The concept of corporate rescue appears to contradict the renewal of bankruptcy law in Indonesia, which is more focused on liquidating the debtor's assets than saving the debtor's struggling business. This is evident in both Law No. 4 of 1998 and Law No. 37 of 2004, which prioritize debt collection over corporate rescue.

The postponement of debt payment obligations in Law Number 37 of 2004 does not guarantee that good-faith debtors will be able to continue their business activities, because if peace cannot be reached or implemented, it will result in bankruptcy. To achieve peace, the period of postponement of debt payment obligations is relatively short, the peace process is determined by creditors, and there is an option to cancel the Commercial Court-approved peace decision. In practice, this bankruptcy law has proven incapable of properly resolving debt problems and has even caused a slew of other issues. Creditors' interests are not protected during

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<sup>5</sup> Nico Dewaelheyns et.al., Filtering Speed in a Continental European Reorganization Procedure, Faculty of Business and Economics, Belgium, Buletin, Oktober 2007.



the liquidation process or the Curator's administration of the bankruptcy estate. (SA).<sup>6</sup>

More specifically, the Indonesian Bankruptcy Law is not based on the philosophy that should be present in a bankruptcy law. The philosophy of the Bankruptcy Law is that debtors should be declared bankrupt if their debts exceed their assets, and their assets must be divided proportionally among creditors. According to this philosophy, the conditions for a debtor to be declared bankrupt should be when he is insolvent (the debtor's assets are less than his debts); it is not enough if the debtor stops or does not pay his debts (not paying debts). If the debtor's assets exceed its debts, the debt and credit should be settled through a regular civil lawsuit.

The bankruptcy regulations or instruments that have been developed lack the basic spirit of bankruptcy, which has an impact on the emergence of various problems. As a result, the formation of bankruptcy laws must be carried out comprehensively, paying attention to three dimensions: the past, which is related to the ratio legis of the formation of bankruptcy regulations; the present, which is the objective conditions that exist now with the strategic environment; and the future, which is envisioned by the formation of the bankruptcy law itself.<sup>7</sup>

The process of developing bankruptcy laws as a form of legal development arises from an accumulation or series of events, so that there is a discourse of planning, proposing, discussing, and ratifying this regulation. All of these processes are carried out by the authorities, which are known as the executive (the president and his ministries) and the legislature (DPR) in the system. In an ideal legal formation system, the process of forming the bankruptcy instrument is bottom-up, requiring the legal material to be a reflection of the people's values and will.

If the bankruptcy instrument is a political product, the legal product's character shifts as the political configuration that gave birth to it shifts.<sup>8</sup> The

<sup>6</sup> Eric Brunsstad, "Bankruptcy and Problems of Economic Futility on the Unique Role of Bankruptcy Law," *The Business Lawyer*, Vol. 55, February, 2000, p. 7

<sup>7</sup> H. Bomer Pasaribu, *Arah Pembangunan Hukum Menurut UUD 1945 Hasil Amandemen Dari Prespektif Program Legislasi*, Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM RI, *Majalah Hukum Nasional* (1), 2007, p. 164-165

<sup>8</sup> Moh. Mahfud MD., *Politik Hukum Di Indonesia*. Jakarta: Rajawali Pers, 2009, p. 373.



character of the bankruptcy instrument changes in accordance with these configuration changes. According to Benyamin Akzin, as quoted by Maria Farida Indrati Soeprapto, “because the legal norm of bankruptcy is a public instrument formed by state institutions, its formation must actually be done more carefully because the legal norm of bankruptcy, which is a public norm, must be able to fulfill the will and desire of the community.”<sup>9</sup>

## 2. Determination of the Debt Threshold for the Company in Determining Bankruptcy Status

Basically, the establishment of a company is primarily for profit. To achieve this goal, the company must, of course, have a very good business strategy.<sup>10</sup> Given the rapid development of the business world from year to year, as well as the advancement of Science and Technology (IPTEK), which is becoming more sophisticated and efficient in community activities.

The advancement of science and technology has an impact on a company's business activities. One of the effects of scientific and technological advancements on the business activities of a company that conducts business by utilizing digital data is the use of the internet as a means of trade transactions for producers and consumers.<sup>11</sup> This evolution gave rise to various forms of business competition, the strength of which had an impact on the survival of companies that went bankrupt due to their inability to compete. Aside from that, the Bankruptcy Process against Corporate Legal Entities in general must meet the valid bankruptcy requirements outlined in Article 2, paragraph 1, of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations.<sup>12</sup> The following are the requirements for corporate legal entities in the e-commerce sector to declare bankruptcy:

### a. The Existence of Debt

<sup>9</sup> Ibid. p. 374

<sup>10</sup> Muhammad Syahri Ramadhan, Yunal Laily, and Irsan, “Analisis Hukum Perjanjian Kerja Sama Investasi Antara Persekutuan Komanditer Dan Investor Asing Menurut Hukum Investasi di Indonesia,” *Jurnal Lex Librum* V, no. Hukum Investasi (2018), p. 80.

<sup>11</sup> Abdul Halim Barkatullah dan Teguh Prasteyo, *Bisnis E-Commerce: Studi Sistem Keamanan Dan Hukum di Indonesia*, 1st ed. Yogyakarta: Pustaka Pelajar, 2005, p. 3.

<sup>12</sup> Hadi Shubhan, *Hukum Kepailitan: Prinsip, Norma Dan Praktik Di Peradilan*, 4th ed. Jakarta: Kencana, 2008, p. 7.



The process of debt and credit activities carried out by businesses Given the high costs of business activities, these companies typically rely on companies or individuals with significant wealth to carry out debt and credit activities. One example of companies that can and often are targeted to carry out corporate debt activities is usually banking companies and financing institutions.<sup>13</sup>

**b. A Minimum of Two Creditors**

Creditors are parties with receivables; if there are creditors in a business transaction, there must also be debtors. According to Article 1 point (2) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Creditors are people who have debts due to agreements or laws that can be collected in court, while according to Article 1 point (3) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Creditors are people who have debts due to agreements or laws whose repayments can be collected in court.

According to Article 2, paragraph (1), of Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations, the debtor owes money to 2 (two) or more creditors. Thus, under Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations, a debtor can only be declared bankrupt if he or she has at least 2 (two) creditors.

**c. Due and Collectible**

A corporate legal entity's debt, every business transaction, especially regarding debt and credit, of course, the debtor and creditor have determined the time to complete the debt process, even though it is an agreement. In determining this maturity, the principle of proportionality must be prioritized, which means that the final time of debt payment must be given enough time for the debtor so that the debtor can optimize this rational time to try to pay off the debt to the creditor later. On the other hand, the time specified should not be too long, considering that the creditor has an interest in the object of the debt and credit. This maturity provision is a weapon used by creditors to

<sup>13</sup> Muhammad Syahri Ramadhan, Muhammad Syaifuddin, Theta Murty, Neisa Angrum Adisti, M Zainul Arifin, Rizka Nurliyantika, M Ardian Nugraha, Conie Pania Putri, Kepailitan Perseroan Terbatas di Bidang Usaha E – Commerce, Repertorium: Jurnal Ilmiah Hukum Kenotariatan, Vol.9 No.2 November 2020, p. 132



collect all debts owed to debtors. Debtors are still obligated to pay creditors even if the maturity provisions are not regulated in the agreement due to the debtor's negligence.<sup>14</sup>

In general, corporate legal entities are subject to the bankruptcy process. The most important aspect of a Corporate Law Entity's bankruptcy is that it meets the legal requirements for bankruptcy as stipulated in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, namely the existence of debt, at least (2) two or more creditors, and due and collectible. Furthermore, Article 21 of Law Number 37 of 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations states that bankruptcy covers all assets of the debtor at the time the bankruptcy declaration is pronounced, along with everything obtained during bankruptcy. In a corporate legal entity, all assets in the company are essentially the same as those in a company in general. The fundamental difference in the form of assets of corporate legal entities compared to conventional companies in general is that electronic data used in accommodating these activities can be used as an object of bankruptcy property or *boedel*. The electronic data consists of Domain Names, Big data, Cost Per Lead (CPL), and ad placements.

The legal responsibility of the board of directors as the management of a limited liability company in the field of e-commerce business that goes bankrupt due to their errors or negligence in managing the company will be the directors' personal responsibility. This is as governed by Article 104 paragraphs (1), (2), and (3) of Law Number 40 of 2007 concerning Limited Liability Companies.

Bankruptcy is an attempt to ensure that debtors' debts to creditors are paid. It provides a fair, quick, open, and effective resolution of debt and credit issues.<sup>15</sup> It is hoped that by declaring bankruptcy, the debtor's assets will not be

<sup>14</sup> Imran Nating, *Peranan Dan Tanggung Jawab Kurator Dalam Pengurusan Dan Pemberesan Harta Pailit*, I, Jakarta.: Raja Grafindo Persada, 2004, p. 61

<sup>15</sup> Penjelasan Umum UU Kepailitan



seized, creditors holding material security will pay more attention to the fate of other creditors, and fraud by debtors and creditors will be avoided.<sup>16</sup>

Substantially, the bankruptcy regulations have issues related to the ambiguity of the arrangements, such as the absence of a clear statement in the Bankruptcy Law about the position of consumers. Another issue is the inconsistency of arrangements related to achievement fulfillment between the Bankruptcy Law, which requires achievement to be fulfilled according to the agreement with the curator or administrator, and the Consumer Protection Law, which requires achievement to be fulfilled immediately. Another issue is the violation of the principles governing the creation of laws and regulations as a result of inconsistency between the Bankruptcy Law, the Consumer Protection Law, and the Insurance Law.

In terms of structure, there are issues due to consumers' unequal standing with bankruptcy law enforcement officials such as curators, administrators, supervisory judges, and other law enforcers. This imbalance allows law enforcement to take actions that are detrimental to consumers' interests, giving rise to the term bankruptcy mafia. Furthermore, the supervisory function performed by supervisory judges on curators and administrators is very limited.

In terms of legal culture, law enforcement has acknowledged the position of consumers as creditors. This is demonstrated by bankruptcy judges' acceptance of consumer bankruptcy applications. However, judges have not sided with consumers in their rulings. Another issue is that public understanding of bankruptcy is still limited, as evidenced by the emergence of the assumption that consumers will get their money back through bankruptcy. Due to regulatory issues, law enforcement actions, and disappointing bankruptcy results, the dispute resolution process through bankruptcy has begun to be abandoned in favor of other forms of dispute resolution.<sup>17</sup>

<sup>16</sup> Adrian Sutedi, *Hukum Kepailitan*, Jakarta: Ghalia Indonesia, 2009, hlm. 24. Adrian Sutedi, *Hukum Kepailitan*, Jakarta: Ghalia Indonesia, 2009, p. 24.

<sup>17</sup> Luthvi Febryka Nola, Kedudukan Konsumen Dalam Kepailitan the Position Of Consumer In Bankruptcy, Pusat Penelitian Badan Keahlian DPR RI, jurnal Negara Hukum: Vol. 8, No. 2, November 2017, p. 256



Literally, bankruptcy refers to a situation in which a debtor is unable to make payments on his or her past-due debts. Henry Campbell Black in his Black's Law Dictionary describes bankruptcy as “the state or condition of one who is unable to pay his debts as they are, or become, due.”<sup>18</sup> Debtors who have debts that are due to be paid but are unable to do so due to financial constraints are considered insolvent. It is this inability of the debtor to pay that can be referred to as being in a state of bankruptcy. In this state of inability to pay, the law determines that all of the debtor's assets become collateral for the repayment of the debtor's debts to his creditors.

The application of bankruptcy regulations according to Article 2 of the Bankruptcy Law should not only be based on three factors, including the existence of debt, at least two (two) creditors, due time, and collectible, but also on the application of a minimum threshold of capital and assets owned, so that the company can be monitored to see if it can rise with the assets and capital it has. As a result, it is necessary to revise bankruptcy law in accordance with political legislation, which is the DPR and Government's policy direction regarding the direction of regulation (substance) of bankruptcy law to regulate companies conducting business activities in the context of national legal development.

The existence of the Bankruptcy Law can be a legal product that can fulfill justice for the people if the preparation has fulfilled the rules of national law, namely the elements of legal certainty, expediency, and justice, accompanied by a compromise between the three elements that must be proportionally balanced, the existence of rights and obligations proportionally to the people, entrepreneurs, and the government, and the fulfillment of the principle of legality based on legislation.

#### D. Conclusion

The Indonesian Bankruptcy Law has not been based on a philosophy that should be in accordance with the principles of the Bankruptcy Principle itself, where the philosophy of the Bankruptcy Law has not been able to explain debtors who have debts greater than



their assets. The application of this principle should ideally be a condition for the debtor to be declared bankrupt, where if the debtor is insolvent (the debtor's assets are less than its debts), it is not sufficient if the debtor stops or does not pay its debts (not paying debts). If the debtor's assets are greater than its debts, then the settlement of the debt and credit should be done through an ordinary civil lawsuit.

According to Article 2 of the Bankruptcy Law, the application of bankruptcy regulations should not only be based on three aspects, including the existence of debts, at least two (two) creditors, due time, and collectible, but also on the application of a minimum threshold of capital and assets owned, so that the company can be monitored to see if it will be able to rise with the assets and capital it has. As a result, the bankruptcy law must be revised in accordance with political legislation, which is the DPR and the Government's policy direction regarding the direction of regulation (substance) of the bankruptcy law to regulate companies in conducting business activities in the context of national legal development.

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