

EFFECTIVENESS OF LAW ENFORCEMENT ON CORPORATE BANKRUPTCY STATUS

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Abstract

This study aims to evaluate the effectiveness of law enforcement on the status of bankruptcy in Indonesia. Lawrence M. Friedman's legal system theory is used because it has a comprehensive scope to evaluate the effectiveness of enforcing legislation. This study uses juridical-normative research with statutory and case approach. The laws and regulations studied are Law no. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (KPKPU), while the case study takes the case of the bankruptcy of Telkomsel in 2012. This study finds that bankruptcy law enforcement in Indonesia has not been effective. This is because Indonesian bankruptcy law still has weaknesses in terms of substance, structure, and legal culture. In addition, this study finds that the fundamental weakness of Law no. 37 of 2004 is the application of simple proof as a mechanism for imposing bankruptcy statements to debtors. The application of this simple evidence makes law enforcers (judges) tend to ignore facts other than the two conditions stipulated in Law no. 37 of 2004 to impose bankruptcy status, namely the existence of two or more creditors and the existence of one debt that is due and collectible. In the end, the simple evidence mechanism does not open up opportunities for law enforcement officials to assess the debtor's ability to pay off their debts.

Keywords: *Law Enforcement; Bankruptcy; Simple Proof*

1. INTRODUCTION

Bankruptcy of PT Telekomunikasi Selular (Telkomsel) in 2012 attracted public attention. The state-owned company was declared bankrupt through the Central Jakarta Commercial Court Decision Number 48/Pailit/2012/PN.Niaga.Jkt.Pst because it was deemed to not have paid its debt obligations in the form of Purchase Order No. PO/PJI-AK/VI/2012/00000027 dated June 20, 2012 and No. PO/PJI-AK/VI/2012/00000028 dated June 21, 2012, totaling Rp5,260,000,000.00 (five billion two hundred and sixty million rupiah) to PT Prima Jaya Informatika. Telkomsel's bankruptcy is a concern because the company actually has assets that are much larger than the amount owed to PT Prima Jaya Informatika. In other words, Telkomsel is actually a company that has the ability to pay their debts. Thus, the commercial court decided to go bankrupt because of the request submitted by PT Prima Jaya Informatika is considered to have met the requirements for imposing bankruptcy as regulated in Article 2 Paragraph (1) of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (*Kepailitan dan Penundaan Kewajiban Pembayaran Utang*). The article states that a debtor can be declared bankrupt if 1) it has two or more creditors; 2) not paying at least one debt that is due and collectible.

Prior to Telkomsel, bankruptcy cases involving companies with large assets had also arisen. In 2000, PT Asuransi Jiwa Manulife Indonesia was declared bankrupt through the

Central Jakarta Commercial Court Decision Number 10/Pailit/2002/PN.Niaga.Jkt.Pst. The bankruptcy petition was filed by curator Paul Sukran from PT Dharmala Sakti Sejahtera. In 2004, the commercial court also ruled against PT Prudential Life Assurance at the request of Lee Boon Siong, a Malaysian who has business activities in Indonesia as a consultant for insurance and agency services (Central Jakarta Commercial Court Decision Number 13/Pailit/2004/PN.Niaga.Jkt.Pst).

Regarding corporate bankruptcy applications, according to data from *Sistem Informasi Penelusuran Perkara (SIPP)* at the district courts with commercial court rooms in Jakarta, Semarang, Surabaya, Makassar and Medan, it was found that the number of case applications that were entered and handled during 2017–2021 was 570 cases. This number shows the trend of petitions for bankruptcy cases which tend to increase in every city. The commercial courts in Jakarta and Semarang are the ones who handle the most cases of bankruptcy petitions.

Table 1.1. *Number of Cases of Bankruptcy Applications*

Commercial Court	Number of Cases of Bankruptcy Applications					Total
	2017	2018	2019	2020	2021	
Central Jakarta	47	41	61	56	51	260
Semarang	18	32	23	32	27	139
Surabaya	30	10	29	21	24	114
Medan	1	7	8	11	11	39
Makassar	0	11	3	4	2	20
Total						572

Source: processed by the author from SIPP at the District Courts of Central Jakarta, Surabaya, Medan, Makassar, and Semarang.

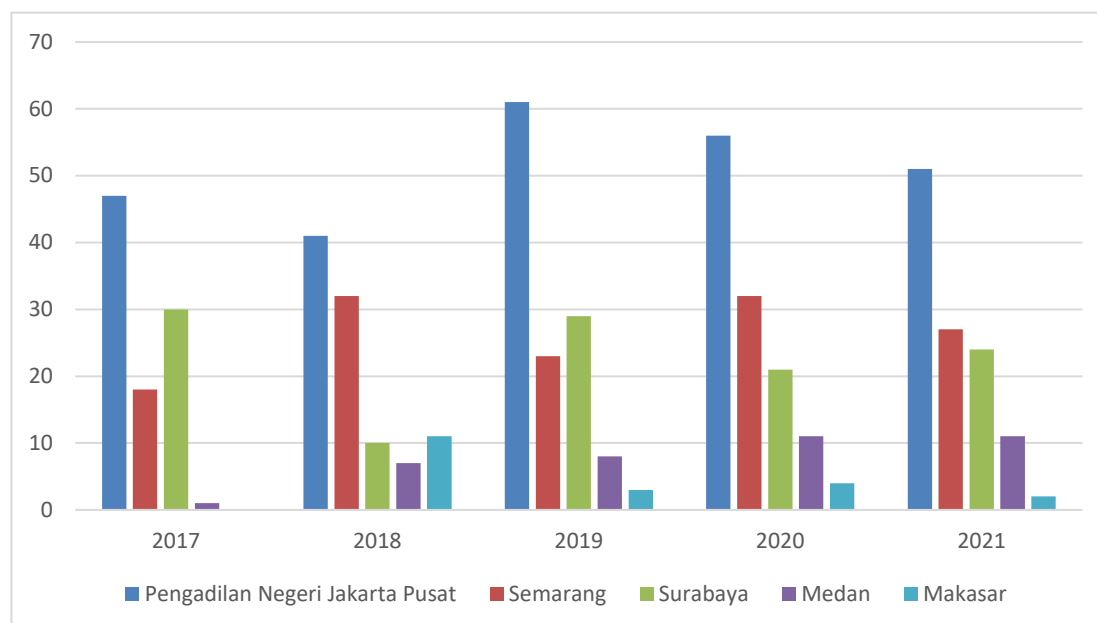


Figure 1.1. *Trends in Application for Bankruptcy in Several Courts in Cities in Indonesia*

Source: processed by the author, 2021.

The increasing trend of bankruptcy petitions actually indicates the ineffectiveness of bankruptcy law enforcement in Indonesia. This is because the imposition of bankruptcy on a solvent company is not in line with one of the principles of bankruptcy law, namely business continuity (going concern). Bankruptcy law should guarantee the realization of a healthy business climate and support economic growth, not be used as a tool that actually facilitates the imposition of bankruptcy on corporations. It is too easy for corporations to enter bankruptcy, which will have implications for the confidence of investors and business actors in Indonesia.

The fundamental problem that needs to be considered regarding the ineffectiveness of bankruptcy law enforcement is the application of simple proof as a mechanism for imposing bankruptcy on debtors. This is in accordance with Article 8 Paragraph (4) of Law no. 37 of 2004 which reads, "Application for declaration of bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements to be declared bankrupt as referred to in Article 2 Paragraph (1) have been fulfilled." Proving the facts or circumstances in this bankruptcy petition is said to be simple because it only requires the fulfillment of two elements, namely 1) the existence of two or more creditors and 2) debts that have fallen due and are not paid. In the Elucidation section of Article 8 Paragraph (4) it is also stated that "the difference in the amount of debt argued by the bankruptcy applicant and the bankruptcy respondent does not prevent the issuance of a bankruptcy declaration decision." Thus, regardless of the amount of the debt, as long as there are two or more creditors and the debt is due and unpaid, the bankruptcy application must be granted.

Ricardo Simanjuntak stated that simple proof reflects the application of fast and effective principles for the interests of the business world in solving debt problems. He also considered that simple evidence aims as an absolute requirement to limit the authority of the commercial court in granting a petition for a declaration of bankruptcy to each debtor.¹ In addition, simple proof also offers a firm period of time regarding the decision on the petition for a declaration of bankruptcy. Previously, Article 6 Paragraph (4) of Law no. 4 of 1998 stipulates that the period of decision on the application for a declaration of bankruptcy is set no later than 30 (thirty) days from the date the application for a declaration of bankruptcy is registered. This time period setting was then amended in Law no. 37 of 2004 which states that the court's decision on the petition for a declaration of bankruptcy must be pronounced no later than 60 (sixty) days after the date the petition for a declaration of bankruptcy is registered (Article 8 Paragraph (5)).

Regarding this simple proof, Kartini Muljadi and Gunawan Widjaja also added that the debtor's existence which was simply proven by the creditor must not be denied by the debtor. Furthermore, the fulfillment of the element of "debt due and unpaid" can be proven simply by way of the creditor sending a warning to the debtor regarding the overdue payment deadline, but the debtor does not pay.²

¹ Ricardo Simanjuntak, "Esensi Pembuktian Sederhana Dalam Kepailitan," In *Undang-Undang Kepailitan dan Perkembangannya*, ed. Emmy Yuhassarie (Jakarta: Pusat Pengkajian Hukum, 2005) 52.

² Kartini Muljadi and Gunawan Widjaja, *Pedoman Menangani Perkara Kepailitan* (Jakarta: Raja Grafindo Persada, 2007), 135.

In addition to not paying attention to the amount of debt, the simple proof mechanism also does not consider aspects of the debtor's ability to pay or solvency. In fact, to declare a company bankrupt, the court should first measure the debtor's ability to pay which is generally done through an insolvency test. Prihatmaka, Sunarmi, and Hendra recommended the need for insolvency conditions as a requirement for bankruptcy applications.³ The same thing was also stated by Nurmawati that the insolvency test needs to be applied in bankruptcy law in Indonesia when the court wants to determine the bankruptcy status of the debtor (corporate). He proposed this idea after doing a comparison of the United States and the Netherlands bankruptcy laws which apply the insolvency test as a condition of bankruptcy petition.⁴ Hamdani more specifically proves the relationship between financial ratios and corporate bankruptcy.⁵ Hamdani's research reinforces the need for a financial ratio analysis-based assessment (insolvency test) to determine whether a company is in a solvent or insolvent state.

The absence of this insolvency test can be understood to be the root cause of the ineffectiveness of law enforcement in the bankruptcy cases of Telkomsel, Manulife, and Prudential Life Assurance. The three companies were declared bankrupt without ever being considered by the commercial court on the overall financial condition and assets. In fact, when an appeal was filed, the Supreme Court judge overturned the bankruptcy decision by the commercial court. In general, the cancellation of the decision is based on the main consideration, namely the existence of other facts that have not been considered by the judges of the commercial court in these cases. For example, in the case of Telkomsel and PT Prima Jaya Informatika, it was found that the debtor (Telkomsel) did not pay its debt obligations because the creditor (PT Prima Jaya Informatika) was deemed to have defaulted on the cooperation agreement. The default in question is PT Prima Jaya Informatika is considered to have failed to build the Prima community with 10 million members in a year of agreement or until June 2012. PT Prima Jaya Informatika failed to sell the Telkomsel product to the Prima community because it turned out to only sell outside the Prima community. PT Prima Jaya Informatika also failed to pay purchase order No. PO/PJI-AK/V/2012/00000026 dated May 9, 2012 which resulted in losses for Telkomsel. The basis for further consideration of the Supreme Court judges is that the petition for bankruptcy must be rejected because the existence of debt which is the subject of the case is very complicated, so it must be proven first in the district court.

The author considers that the judges of the Central Jakarta Commercial Court should not have imposed bankruptcy on Telkomsel if an insolvency test was required in the

³ Hervana Wahyu Prihatmaka, Sunarmi, and Rahmad Hendra, "Insolvensi Dalam Hukum Kepailitan Di Indonesia (Studi Putusan No. 48/Pailit/2012/Pn.Niaga.Jkt.Pst Antara PT.Telekomunikasi Selular vs PT. Primajaya Informatika)," *Fiat Justisia* 8, no. 2 (2014): 4, <https://doi.org/10.25041/fiatjustisia.v8no2.295>.

⁴ Luh ayu Maheswari Prabaningsih and Made Nurmawati, "Pengaturan Insolvency Test Dalam Penjatuhan Putusan Pailit Terhadap Perusahaan," *Kertha Semaya: Journal Ilmu Hukum* 7, no. 9 (July 2019): 1, <https://doi.org/10.24843/KM.2019.v07.i08.p14>.

⁵ Deni Hamdani, "Analisis Likuiditas, Solvabilitas, dan Profitabilitas untuk Memprediksi Tingkat Kepailitan Media di Indonesia (Studi Pada Emiten Subsektor Advertising, Printing dan Media di Bursa Efek Indonesia Periode 2006-2009)," *Jurnal Indonesia Membangun* 14, no. 3 (September-December 2015), <https://jurnal.inaba.ac.id/index.php/JIM/article/view/50>.

bankruptcy petition. From the insolvency test, it will be proven that Telkomsel has the ability to pay. The judge can then conclude that if the reason for Telkomsel's payment is not due to the inability aspect, it means that there are other facts that cause the BUMN to not pay. At this stage the judge will find the reasons as mentioned above, namely that Telkomsel did not pay the debt because he believed that PT Prima Jaya Informatika as a creditor is considered a default. So, with the insolvency test, the judge can find 1) the fact that the debtor is able or unable to pay (able or not able to pay) or 2) the fact that the debtor is willing or not willing to pay. From these two dimensions the judge can explore the facts or other underlying causes.

Although a number of studies have stated that insolvency tests are important to be included in the bankruptcy legislation in Indonesia, in order to realize the effectiveness of law enforcement, it is believed that this is not enough. Because, to realize the effectiveness of law enforcement, it is necessary to optimize the three components mentioned by Lawrence M. Friedman as substance, structure, and legal culture.

Legal substance is the core of the legislation itself. The substance also contains the meaning of the product or the decision of the legislator.⁶ According to Friedman, legal substance can include everything that plays a role in determining whether or not the law can be implemented properly. So, the substance of the law contains rules, norms, and patterns of behavior that bind the community and serve as guidelines for law enforcers.⁷

Structure implies a framework that provides comprehensive protection for a legal system. This structure consists of elements of the number and capacity of the judiciary, how the laws and regulations are and what procedures must be carried out by law enforcers. The structure is a limitation of movement.⁸ Thus, structure is the framework, the part that persists, the part that gives some form and limitation to the whole.

Objects from the legal structure, including law enforcement. Law enforcement is an important factor in the proper functioning of the law. If the regulations that have been initiated are good, but the quality of law enforcement is low, a problem will arise. And vice versa, if the regulations that are initiated are bad, while the quality of law enforcers is good, there are opportunities for law enforcement problems to arise.

Legal culture implies the attitude of people's behavior towards the law and the legal system. This includes their beliefs, values, ideas, and expectations for life. This idea of thinking makes the law work as it should.⁹ Legal culture is a social thought that is used to determine how the law is applied in people's lives.

The three legal elements presented above (structure, substance, and culture) are interrelated with one another. In its implementation, the three must create mutually supportive relationships in order to create the expected lifestyle.¹⁰ The continuity between the three elements is likened to mechanical work. The legal structure is illustrated as a

⁶ *Ibid.*, 6.

⁷ Lawrence M. Friedman, *Sistem Hukum Perspektif Ilmu Sosial* (Bandung: Nusa Media, 2017), 57.

⁸ Lawrence M. Friedman, *American Law* (United States of America: W.W. Norton & Company, 1984), 5.

⁹ *Ibid.*, 90.

¹⁰ Soekanto, Soerjono. *Faktor-Faktor yang Mempengaruhi Penegakan Hukum* (Jakarta: PT. Raja Grafindo Persada, 2002): 59–60.

machine, the legal substance is what the machine does, while the legal culture is the subject or person who operates the machine, and wants the machine to be used.

A number of previous studies that proposed setting an insolvency test or a minimum amount of debt basically only touched on the substance aspect in efforts to enforce bankruptcy law in Indonesia. Therefore, through this study, the author aims to evaluate the effectiveness of bankruptcy law enforcement in a more comprehensive manner through the three components of Friedman's legal system consisting of structure, substance, and legal culture.

2. RESEARCH METHODS

2.1. Type of Research

This study uses a type of juridical-normative legal research. Juridical-normative legal research seeks to find the rule of law, legal principles, and legal doctrines to answer legal issues faced.¹¹ Based on this definition, in this research the author aims to understand the (normative) norms and principles in the bankruptcy laws and regulations to answer the issue of law enforcement in the Telkomsel bankruptcy case.

This research uses a statutory approach. The statutory approach is a condition *sine qua non* for normative legal research. According to Marzuki, this approach is useful in finding the *ratio legis* and the ontological basis for the birth of laws and regulations. By studying the *ratio legis* and the ontological basis of a law, we will be able to understand the philosophical content behind the law. With his philosophical understanding, we will understand whether there is a philosophical conflict between the law and the content at hand.

Another approach is the case approach. According to Cohen and Olson, research into court decisions is one of the two main sources of legal authority.¹² Although legislation appears to be a direct and imperative source, it is not complete unless it is interpreted by judges and applied to specific situations. Campbell et al. state that the benefit of researching judicial cases is to be able to find the *ratio decidendi* or reasoning, namely the court's considerations to arrive at a rule.¹³ The case study in this research is Telkomsel's bankruptcy case based on the Central Jakarta Commercial Court Decision Number 48/Pailit/2012/PN.Niaga.Jkt.Pst.

2.2. Data Collection Techniques

The data collection technique is done through document study. The author first conducts an inventory related to a number of regulations (primary materials) for bankruptcy in Indonesia. From these regulations, researchers identify aspects of law enforcement. The author also looks at other regulations that are referenced and become derivative regulations of the existing and still valid bankruptcy regulations in Indonesia.

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2005): 35.

¹² Morris L. Cohen dan Kent C. Olson, *Legal Research in A Nutshell* (Minnesota: West Publishing Company, 1992): 5.

¹³ Enid Campbell, and E.J. Glasson, Lee Poh York, and Jennifer M. Sharpe, *Legal Research: Materials and Methods*, 4th ed (Sydney: The Law Book Company Ltd., 1996), 64.

From there, the authors obtain information related to regulations and other sources of material collected, then take an inventory and study according to the research objectives.

Documentation studies are also carried out on secondary materials that discuss bankruptcy problems and law enforcement. The author also explores other bankruptcy cases, either through books, articles, reports, or media coverage. These materials are classified, then verified by triangulation techniques with other sources so that it is expected to achieve data accuracy.

2.3. Types of Data

As previously mentioned, this research is a type of juridical-normative legal research. According to Soerjono Soekanto, normative legal research is legal research conducted by examining library materials or secondary data.¹⁴ In this study, the types of data or sources of legal research that researchers use are library materials or secondary data, namely those from library studies. Secondary data in normative legal research includes primary legal materials, secondary legal materials, and tertiary legal materials.

2.4. Data Analysis Techniques

After the literature is collected, the authors process and analyze based on normative qualitative methods. This analysis prioritizes the depth of data, not the amount of data. Data is presented in the form of tables and charts and then compared. Furthermore, the author interprets the data according to the theoretical framework of Lawrence M. Friedman's legal system. Finally, the authors draw conclusions to answer the research questions.

2.5. Delimitation and Limitation

In terms of the object of study, this research is limited by the topic of corporate bankruptcy. This study does not discuss the object of bankruptcy studies at securities companies, stock exchanges, clearing and guarantee institutions, depository and settlement institutions, insurance companies, reinsurance companies, or pension funds. This study limits the study of the current bankruptcy laws and regulations, namely Law no. 37 of 2004. Finally, this research focuses on one case, namely the case between Telkomsel and PT Prima Jaya Informatics in 2012.

3. ANALYSIS AND DISCUSSION

3.1. Evaluation of the Effectiveness of Bankruptcy Law Enforcement in Indonesia

3.1.1. Evaluation of Legal Substance

In the context of bankruptcy law in Indonesia, the legal substance currently applicable as the basis for bankruptcy regulation is Law no. 37 of 2004. This section focuses on evaluating aspects of the legal substance related to bankruptcy

¹⁴ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: PT RajaGrafindo Persada, 2001), 13–14.

as regulated in Law no. 37 of 2004. There are a number of weaknesses in terms of the substance of the Bankruptcy Law no. 37 of 2004. First, it concerns the minimum requirements for creditors as applicants for bankruptcy. Article 2 Paragraph (1) confirms that bankruptcy can be filed if it meets two conditions: 1) the debtor has two or more creditors; and 2) the debtor does not pay at least one debt that has matured and is collectible.¹⁵ This article contradicts the nature of the need for bankruptcy legal remedies which should be for the benefit of all creditors, namely the principle of creditorium parity (creditor equality). Creditors are people who have receivables due to agreements or laws that can be collected before the court. In practice, the substance of Article 2 which requires the existence of two or more creditors can basically cause problems, namely when another creditor who is not a bankrupt applicant and the claim is due or not yet due does not intend to take legal action to bankrupt the debtor. However, because the substance of the Bankruptcy Law only requires a minimum of two creditors, the interests of other creditors who are not applicants for bankruptcy are not facilitated. This regulation actually results in a creditor being forced to register to file for bankruptcy.

Second, Article 2 Paragraph (1) which stipulates the minimum requirement for the number of creditors applying for bankruptcy does not distinguish between concurrent, separatist and preferred creditors. Concurrent creditors are creditors who do not hold material security rights, preferred creditors are creditors who are prioritized because of the nature of their receivables (privileged), and separatist creditors are creditors who hold material security rights. In the Elucidation of Article 2 Paragraph (1), special mention is made of separatist creditors and preferred creditors. Both of them can file for bankruptcy without losing their collateral rights to the property they have against the debtor's assets and their right to take precedence. So, based on the Elucidation of Article 2 Paragraph (1), separatist creditors have the right to go bankrupt and participate in voting without losing their collateral rights. In this case there is an injustice, where the creditor's rights have been protected by collateral on the debtor's wealth, but the debtor is still bankrupt through voting from the separatist creditor.

Third, it relates to debts that have matured and can be collected. The law does not explicitly regulate whether the debt is based on the principle of tendency to the interests of the debtor or creditor. In handling bankruptcy cases, the principle of tendency can lead to various decisions from the Panel of Judges. If at maturity a debt is interpreted based on the principle of inclination to the debtor, the bankruptcy application will be rejected. On the other hand, if the maturity date of a debt is determined based on the interests of the creditor, the bankruptcy petition, especially in the involuntary petition, tends to be granted.

¹⁵ Fitri N. Heriani, "Enam Kesalahan UU Kepailitan," *Hukum Online*, October 9, 2015, <https://www.hukumonline.com/berita/a/enam-kesalahan-uu-kepailitan-lt561737ed1a1cb/>.

Fourth, the Bankruptcy Law does not adhere to the principle of limiting the nominal value of money or debt. Debt as referred to in Article 1 Number (6) is debt in a broad sense, namely “a liability that is stated or can be stated in the amount of money, both in Indonesian currency and foreign currency, either directly or which will arise in the future or contingent, which arises because of an agreement or law and which must be fulfilled by the debtor and if it is not fulfilled, it gives the creditor the right to obtain fulfillment from the assets of the debtor.” This broad definition of debt can influence the decisions of the Panel of Judges. In this case, the Panel of Judges tends to only focus on the existence of debt. In fact, the Panel of Judges can emphasize another dimension in interpreting debt. For example, instead of just looking at the existence of debt, the Panel of Judges can compare the amount of the debt with the assets, cash flow, or business performance of the debtor. Comparison with these variables can provide an understanding to the Panel of Judges regarding the ability to pay debtors.

Unlike the Bankruptcy Law in Indonesia, several other countries, such as Singapore and Hong Kong, adhere to the principle of limiting the nominal value of money or debt. The implication of not limiting the minimum amount of debt as the basis for filing a bankruptcy application can in turn make the bankruptcy law a mere debt collection tool. This is actually a deviation from the nature of bankruptcy which aims as an institution for the rapid liquidation of the financial condition of debtors who are unable to pay their debts to creditors to prevent unlawful executions. In addition, the absence of a limit on the minimum amount of debt can also harm creditors who have much larger debts or harm debtors who have greater wealth than their debts.

Fifth, in bankruptcy law in Indonesia, there is no known insolvency test in bankruptcy applications to debtors. This results in the size of the debtor's assets not being considered for rejecting or accepting the bankruptcy application. The consequence of not applying the insolvency test is that there is no legal protection for companies that are still solvent from bankruptcy.

Table 3.1. *Weaknesses of Legal Substance in Law no. 37 Year 2004*

Weaknesses in Legal Substance	Descriptions
Minimum requirements for creditors as bankruptcy applicants	Contrary to the nature of bankruptcy law which should be made for the benefit of all creditors.
Separatist creditors and preferred creditors can apply for a declaration of bankruptcy without losing their collateral rights to the property they have on the debtor's assets. They also have the right to prioritize repayment.	There is injustice in this arrangement. This is because the rights of the separatist and preferred creditors have actually been protected by the collateral submitted by the debtor. Even though they have submitted the collateral, the debtor can still be

	bankrupted by voting from the separatist creditors.
Definition of debt	The definition is too broad, does not adhere to the principle of limiting the nominal value of money or debt.
The meaning of debt that has matured and can be collected	It is not explicitly regulated whether the debt that is due and collectible is based on the interests of the creditor or debtor so that there is a difference of interpretation.
Unknown and applied insolvency test	There is no legal protection for companies that are still solvent from bankruptcy. Bankruptcy law in Indonesia is only used as a debt collection tool and a tool to bankrupt a corporation.

3.1.2. Evaluation of Legal Structure

The legal structure is a legal institution that supports the legal system itself, which consists of legal forms, legal institutions, legal instruments, and the process and performance of law enforcement. The first thing that is of concern in evaluating the legal structure of bankruptcy in Indonesia is the availability of a commercial court that has the authority to examine and decide on bankruptcy cases.

In terms of legal institutions, before the enactment of Law no. 4 of 1998 concerning Bankruptcy, the settlement of bankruptcy cases is resolved by the District Court which is part of the General Court. However, since the enactment of Law no. 4 of 1998, bankruptcy cases are examined and decided by the Commercial Court which is within the General Court. The current law (Law No. 37 of 2004) also confirms that the court that has the authority to examine and decide cases in bankruptcy is the Commercial Court.

The establishment of this commercial court is inseparable from the situation of the monetary crisis that has occurred since mid-1997. The settlement of commercial cases (bankruptcy) which was previously the authority of the district court is considered ineffective. In addition, the absence of bankruptcy cases registered and examined in district courts is also due to the lack of public trust (including foreign investors) in the Indonesian judicial system. The results of research conducted by the National Development Planning Agency (Bappenas) in 1996 showed a lot of corruption and a lack of knowledge of the law among court judges who examined commercial cases. This weakness is compounded by the court's incompetence in making decisions. The District Court that examined bankruptcy cases at that time was considered less effective in resolving

bankruptcy cases when the economic crisis hit Indonesia. Therefore, at the suggestion and urging of the IMF, a commercial court was formed.¹⁶

The establishment of a Commercial Court to examine bankruptcy cases, as well as other commercial cases based on government regulations, is based on considerations of speed and effectiveness. Bankruptcy cases according to the Bankruptcy Law are determined for the period of examination at the Commercial Court level, at the Cassation level, and at the Judicial Review level. Legal remedies that can be taken by parties who are dissatisfied with the decision of the Commercial Court in the case of Bankruptcy are directly cassation to the Supreme Court without an appeal through the High Court. Thus, bankruptcy cases will proceed faster when compared to ordinary case examinations in the District Court. This short process reflects the application of the principles of speedy and appropriateness in Indonesia's bankruptcy law. In addition, the fast deadline is also considered to be able to achieve legal certainty in resolving disputes between debtors and creditors.¹⁷

Although commercial courts are formed within the district court, not every district court has a commercial court. Currently, in every district and city throughout Indonesia there have been district courts, but there are only five commercial courts, namely in Medan, Jakarta, Semarang, Surabaya and Makassar. With only five commercial courts, this will certainly make it difficult for justice seekers who will resolve their cases. This difficulty occurs because of the wide jurisdiction of the commercial court area. Therefore, the five commercial courts are felt to be insufficient for access to justice seekers.¹⁸

The second concern that needs to be emphasized in evaluating the legal structure of bankruptcy is the procedural law related to simple evidence. Simple proof is a requirement regulated in the provisions of Article 8 Paragraph (4) of Law no. 37 of 2004 as part of the bankruptcy procedural law. Simple evidence states that "the application for declaration of bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements to be declared bankrupt as referred to in the provisions of Article 2 Paragraph (1) have been fulfilled." The purpose of proven facts or circumstances is simply the existence of two or more creditors and debts that are due and unpaid. The large difference in the amount of debt argued by the petitioner and the defendant to be bankrupt does not prevent the issuance of a bankruptcy declaration decision.

Based on the explanation of Article 8 Paragraph (4) of Law no. 37 of 2004, simple proof is proof of the existence of a debtor's debt that is filed for bankruptcy

¹⁶ Tata Wijayanta, "Urgensi Pembentukan Pengadilan Niaga Baru." *Mimbar Hukum* 22, no. 2 (2010): 3–4, <http://dx.doi.org/10.22146/jmh.16230>.

¹⁷ Sandy Marsel Watuseke, "Peranan Lembaga Peradilan Niaga dalam Menyelesaikan Sengketa Pailit Menurut Undang-Undang No. 37 Tahun 2004," *Lex et Societatis* 3, no. 4 (May 2015): 3, <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/8050>.

¹⁸ Tata Wijayanta, "Penyelesaian Kes Kebankrutan di Pengadilan Niaga Indonesia dan Mahkamah Tinggi Malaysia: Suatu Kajian Perbandingan" (Thesis Doktor Falsafah, Universiti Kebangsaan Malaysia, 2008), 287–288, Perpustakaan Tun Seri Lanang, <http://ptsldigitalv2.ukm.my:8080/jspui/handle/123456789/389119>.

that has matured; and the existence of two or more creditors of the debtor who is petitioned for bankruptcy.¹⁹ This means that the debtor can be bankrupted if it has been simply proven that the debtor has more than one creditor and one of the debts has matured and can be collected, but the debtor or has not paid the debt. So, there is no need to be billed in advance as is usually the case in the stop-paying situation, in which the creditor must first collect the receivables that are past due and it turns out that the debtor even though it has been billed still does not pay his debt. The Bankruptcy Law cannot provide a detailed explanation of how the simple evidence is carried out in examining the bankruptcy petition so that it is indicated that there has been an abuse of circumstances in the evidence in the commercial court. In addition, the absence of clear definitions and boundaries as a guide for what is meant by simple evidence in completing a bankruptcy application.²⁰

Table 3.2. *Weaknesses in the Legal Structure Aspects of Law no. 37 Year 2004*

Weaknesses in Legal Structure	Descriptions
Not every district court has a commercial court	With only five commercial courts, this will certainly make it difficult for justice seekers who will settle their cases in this commercial court.
Procedural Law related to Simple Evidence	It is open to abuse of circumstances in evidence in a commercial court.

3.1.3. Evaluation of Legal Culture

Legal culture is a person's attitude towards the law and the legal system, namely beliefs, values, thoughts and expectations. Legal culture can refer to law enforcement and society. The first concern in evaluating the legal culture of bankruptcy in Indonesia is about making the Bankruptcy Law a debt collection tool. This deviates from the nature of bankruptcy which aims as an institution for the rapid liquidation of the financial condition of debtors who are unable to pay their debts to creditors to prevent unlawful execution.

The second concern is related to the legal culture of law enforcers, especially judges. In this case, the legal culture that still stands out from the judges is juridical-dogmatic legal reasoning. That is, the decision mechanism is based on what is in accordance with the sound of the law without paying attention to other facts surrounding the case.

In Law no. 37 of 2004, there are only two requirements for a bankruptcy application, namely a debtor who has two or more creditors and the debtor does not pay off at least one debt that has matured and can be collected. These

¹⁹ Kartini Muljadi and Gunawan Widjaja, *Pedoman Menangani Perkara Kepailitan* (Jakarta: Raja Grafindo Persada, 2004), 141.

²⁰ Aria Suyudi, Eryanto Nugroho, and Herni Sri Nurbayanti, *Kepailitan di Negeri Pailit* (Jakarta: Pusat Studi Hukum dan Kebijakan Indonesia, 2004), 148.

conditions are very loose because there is no minimum debt limit. That is, whether the debt is large or small, as long as it does not pay, the creditor can file for bankruptcy against the debtor.

With regard to the broad meaning of maturing debt, it is hoped that judges who handle bankruptcy disputes will be able to provide constructive and concrete legal construction on the meaning of maturing debt which is in line with the objectives of bankruptcy law enforcement. However, in certain decisions, judges impose bankruptcy verdicts on debtors regardless of the health condition of the company that was declared bankrupt. This is because the Bankruptcy Law does not adhere to the principle of limiting the nominal value of money or debt. Ideally, judges who handle bankruptcy cases are able to understand the extent to which the substance of bankruptcy dispute resolution is by making decisions based on ideal legal considerations. This can be done, for example, by deciding on a bankruptcy declaration based on the approval of the majority creditors.

Table 3.3. *Weaknesses in Legal Culture Aspects in Law no. 37 Year 2004*

Weaknesses in Legal Culture	Descriptions
Legal Culture in the community	Bankruptcy applications can eventually become bankruptcy as a mere collection tool (debt collection tool). This is actually a deviation from the nature of bankruptcy which aims as an institution for the rapid liquidation of the financial condition of debtors who are unable to pay their debts.
Legal Culture Law Enforcement (Judge)	Not being able to understand the extent to which the substance of bankruptcy dispute resolution is by making decisions based on ideal legal considerations, for example related to the element of an element of debt that is due and collectible which is one of the requirements for a bankruptcy application.

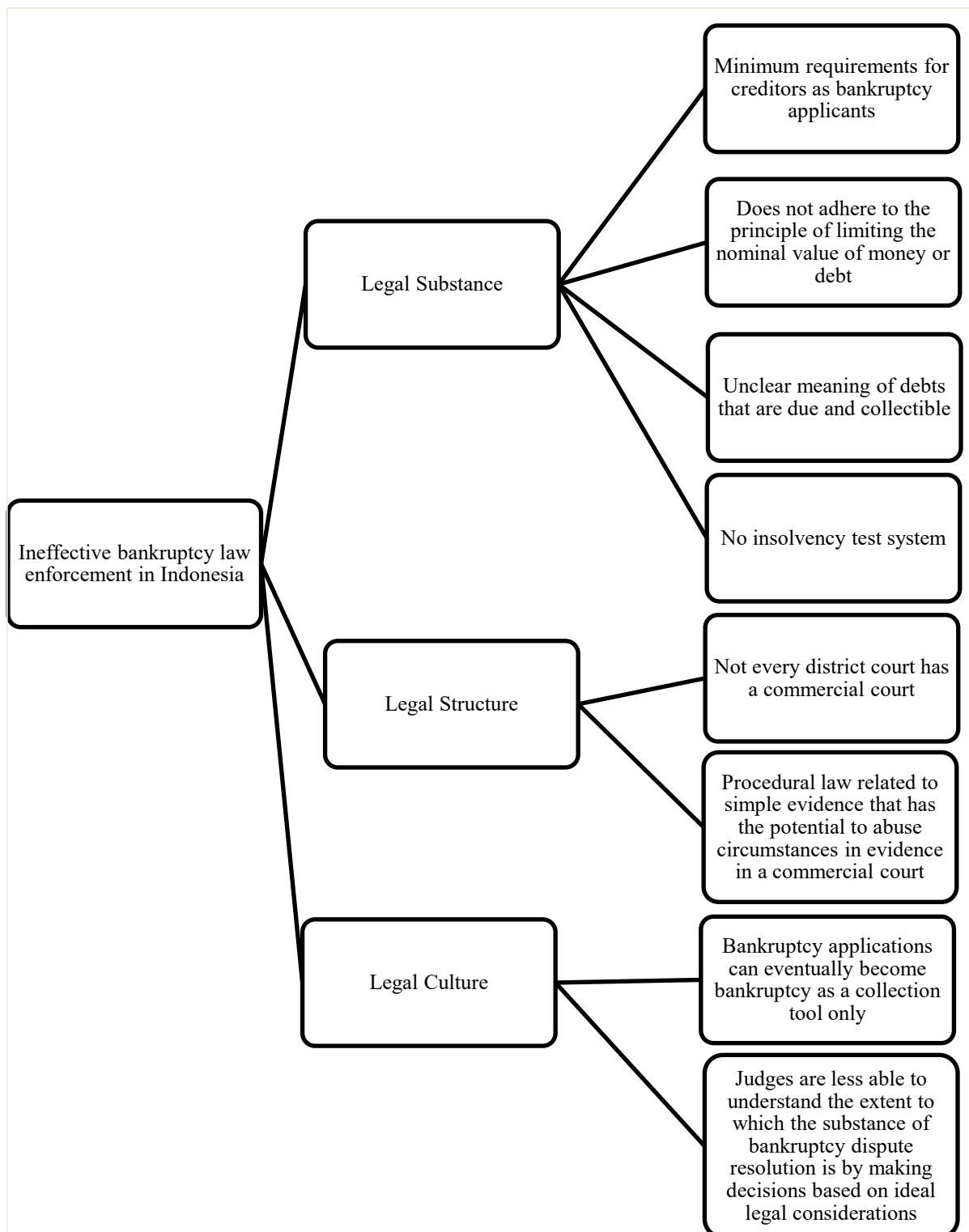


Figure 3.1. *Ineffective Bankruptcy Law Enforcement in Indonesia*

3.2. Case Study: PT Telekomunikasi Selular

3.2.1. Chronology

PT Prima Jaya Informatika (PT PJI/applicant) filed a bankruptcy petition against PT Telekomunikasi Selular (Telkomsel/the respondent). The reason, PT PJI claims that Telkomsel has 1) at least one outstanding and collectible debt; and 2) two or more creditors. The debt that has matured and is collectible arises from the cooperation agreement between PT PJI and Telkomsel. In the cooperation agreement, it is stated that Telkomsel has an obligation to provide a sports-themed refill voucher in the amount of at least Rp120,000,000 (one hundred and twenty million rupiah) consisting of a top up voucher of Rp25,000 (twenty five thousand rupiah), Rp50,000 (fifty thousand rupiah) top-up vouchers, and sports-themed prepaid cards in the amount of at least Rp10,000,000 (ten million) every year. The vouchers will be sold by PT ISP. On the basis of providing these vouchers, PT PJI issued the purchase order PO/PJI-AK/VI/2012/00000027 dated June 20, 2012 and No. PO/PJI-AK/VI/2012/00000028 dated June 21, 2012 with a total invoice value of Rp5,260,000,000 (five billion two hundred and sixty million rupiah). However, regarding the two purchase orders, Telkomsel decided to temporarily stop the allocation of Prima products.

Apart from PT PJI, Telkomsel also have debts to PT Extent Media Indonesia (PT EMI) for the implementation of cooperation in mobile data content services with a total bill of Rp40,326,213,794 (forty billion three hundred twenty-six million two hundred thirteen thousand seven hundred ninety-four rupiah).

In the exception, Telkomsel stated that PT PJI does not have the right to apply for a declaration of bankruptcy. The reason is, Telkomsel assesses that there are no maturing debts. Telkomsel believes that there has been a default by PT PJI on the cooperation agreement. The default in question is PT PJI is considered to have failed to build a Prima community with 10 million members in a year of agreement or until June 2012. PT PJI failed to sell the Telkomsel product to the Prima community, because it turned out to only sell outside the Prima community. PT PJI also failed to pay purchase order No. PO/PJI-AK/V/2012/00000026 dated May 9, 2012 which resulted in losses for Telkomsel. Thus, Telkomsel concludes that the petition for a declaration of bankruptcy is still unclear (*exceptio obscurum libelum*).

3.2.2. Commercial Court Judge Considerations

- 1) Regarding the existence of a debt that has matured and can be collected.

In their consideration, the panel of judges used Article 1458 of the Civil Code to declare the purchase order PO/PJI-AK/VI/2012/00000027 dated June 20, 2012 and No. PO/PJI-AK/VI/2012/00000028 dated June 21, 2012 is a debt due and can be collected. Article 1458 of the Civil Code reads "a sale and purchase is deemed to have taken place between the two parties, as soon as the persons reach an agreement on the goods and their prices, even though the

goods have not been delivered and the price has not been paid." Thus, the panel of judges stated that there had been a sale and purchase by way of debt between Telkomsel and PT ISP.

2) Regarding the existence of two or more creditors.

Telkomsel cannot prove that it has paid the bill of PT EMI in the period August to October 2011 and therefore it is legally and convincingly proven that Telkomsel has obligations to other creditors, other than PT ISP.

Based on the above considerations, the judge considered that PT PJI can simply prove the existence of facts or circumstances that make the requirements to be declared bankrupt as referred to in Article 2 Paragraph (1) of Law no. 37 of 2004 has been fulfilled. Thus, the petition for a declaration of bankruptcy filed by PT PJI is considered to have legal reasons and must be granted.

In the exception on September 14, 2012, the judges of the Central Jakarta Commercial Court decided to reject the exception of the bankruptcy respondent (Telkomsel) in its entirety. In the main case, the judge grants the petition for a declaration of bankruptcy from the applicant against the respondent in its entirety and declares that the respondent has been bankrupt with all the legal consequences.

3.2.3. Considerations of Supreme Court Judges

On November 21, 2012, the Panel of Judges of the Supreme Court ruled on the cassation filed by Telkomsel. This decision granted the cassation request from the cassation applicant, namely canceling the decision of the Central Jakarta Commercial Court Number: 48/Pailit/2012/Pn.Niaga.Jkt.Pst. The basis for consideration in this decision is that the judge considers that the petition for bankruptcy must be rejected because the existence of the debt which is the subject of this case is very complicated, so it must first be proven through the District Court.

3.2.4. Analysis of the Effectiveness of Bankruptcy Law Enforcement in Telkomsel Bankruptcy Cases

In this case, the Panel of Judges of the Commercial Court refers to Law no. 37 of 2004 to assess the validity of the petition for a declaration of bankruptcy filed by PT ISP. The elements taken into consideration by the judge are simple evidence, namely the existence of debts that have matured and can be collected and the existence of two or more creditors (Article 2 Paragraph (1)). However, this consideration is inherently flawed.

3.2.4.1 Analysis of Legal Substance

(1) Absence of insolvency test

In this case, the determination of Telkomsel's insolvency condition was not carried out through an insolvency test. Determination of the

conditions of insolvency according to the regulations stipulated in Law no. 37 of 2004 which explains that insolvency is a state of being unable to pay. This is contained in the Elucidation of Article 57 Paragraph (1) which reads, "What is meant by 'insolvency' is the state of being unable to pay." Regarding the method of determining the insolvency, Article 178 Paragraph (1) states, "If at the meeting of the verification of receivables a reconciliation plan is not offered, the proposed reconciliation plan is not accepted, or the ratification of the reconciliation is rejected based on a decision that has obtained permanent legal force, by law the bankruptcy estate is in a state of insolvency."

In this case, Telkomsel's bankruptcy assets are declared not in an insolvent condition. This is because Telkomsel submitted a peace proposal before the Receivable Matching Meeting. Chronologically, this case can be summarized as follows.

Table 3.4. *The Chronology of Telkomsel Bankruptcy Cases in 2012*

July 16, 2012	PT PJI filed for bankruptcy.
September 14, 2012	The judge of the Commercial Court decided that Telkomsel was bankrupt.
October 22, 2012	Telkomsel officially submitted a peace proposal to settle its debts to creditors. In the peace proposal, Telkomsel claimed to be ready to complete all of its obligations. The verification of receivables is carried out at the creditors' meeting, after the bankruptcy decision has been read out in accordance with Article 113 Paragraph (1) of Law no. 37 Year 2004.
October 31, 2012	As of the Accounts Receivable Matching Meeting which was held on October 31, 2012, there were 176 parties who submitted claims to the Telkomsel curator team, with a total invoice value of Rp14 trillion. However, only 46 parties were recognized by Telkomsel as creditors with a total bill of Rp3,15 trillion (or US\$81,9 million). The verification or verification meeting of Telkomsel's debt was postponed for three weeks from October 31, 2012 because the debtor felt that he was not ready. There are still many things that need to be resolved by debtors related to creditor bills at creditor meetings.
November 21, 2012	The Supreme Court overturned the decision of the Commercial Court, which meant that Telkomsel was declared bankrupt.

January 29, 2013

PT PJI filed a review.

Based on the chronology above, it can be concluded that the bankruptcy estate has not yet reached the insolvency phase because Telkomsel has submitted a reconciliation proposal on October 22, 2012 (before the Accounts Receivable Matching Meeting on October 31, 2012). Thus, the consideration of the Panel of Judges of the Commercial Court regarding the status of bankruptcy is not fulfilled based on the condition of insolvency as regulated in Article 178 Paragraph (1).

At the appeal level, Telkomsel also proved its financial capability (solvent) through an insolvency test with a balance sheet test. In the memorandum of cassation, Telkomsel confirmed that the total assets they had in 2011 were still far greater than the amount of debt that was collected by PT PJI amounting to Rp5,260,000,000. In addition, Telkomsel stated that they still generate tens of trillions of Rupiah in profit every year.

As previously explained, the absence of an insolvency test makes the Bankruptcy Law unable to provide legal protection for companies that are still solvent from bankruptcy. In fact, when Telkomsel took the initiative to conduct an insolvency test, it was found evidence that their finances were in a solvent condition, and even the amount of debt collected was not proportional to the assets owned by the company. At the same time, the absence of this insolvency test has also made the Law used as a collection tool only.

(2) Definition of debt that has matured and can be collected

The author argues that the existence of debt in this bankruptcy case cannot be proven simply. Telkomsel denied the existence of debt on the grounds of *exceptio non adimpleti contractus*, namely because it was preceded by a default by PT ISP. So, there is no debt that can be used as a condition for an application for a declaration of bankruptcy or at least the application for bankruptcy must be rejected because the existence of debt which is the subject of this case is very complicated, so it must first be proven through the District Court. Regarding the terms of maturity and collectability, the researcher is of the opinion that the maturity of the debt referred to in this case cannot be determined because the debt in question cannot be proven simply and must be proven first through the District Court.

3.2.4.2 Analysis of Legal Structure

(1) Misuse of circumstances in simple proof

Previously it was explained that the Bankruptcy Law did not provide a detailed explanation of how simple evidence was carried out in examining a bankruptcy petition so as to allow abuse of circumstances in evidence in a commercial court. This abuse occurred in the bankruptcy case of Telkomsel, especially when the Majelis Judge of the Commercial Court determined the conditions for the existence of two or more creditors.

The author is of the opinion that the consideration of the Panel of Judges of the Commercial Court which states that PT. EMI is another lender is not appropriate and tends to be inconsistent. This is because evidence regarding other creditors is only submitted in the form of photocopies, but is instead approved by the commercial court, while evidence regarding debt repayments against other creditors is simply rejected because the documents are in the form of photocopies. In fact, the panel of judges should have referred to Article 1888 of the Civil Code which reads, "The strength of proof of written evidence is in the original deed. If the original deed exists, then the copies and summaries can only be trusted, only the copies and summaries are in accordance with the original, which can always be ordered to show it." Therefore, PT. EMI should not be validly considered as another creditor so that the existence of two or more creditors as stipulated in Article 2 Paragraph (1) of Law No. 37 of 2004 is not fulfilled.

3.2.4.3 Analysis of Legal Culture

(1) Legal culture in society

The legal culture that develops in the community can be seen from the behavior of creditors who tend to use the Bankruptcy Law as a debt collection tool. This behavior arises because of lax bankruptcy filing requirements. Consequently, the Indonesian Bankruptcy Law is unable to fulfill the nature of bankruptcy, which basically aims to be a quick liquidation institution for the financial condition of debtors who are unable to pay their debts.

(2) Legal culture in law enforcement

The legal culture that appears from the Telkomsel bankruptcy case is that the Commercial Court Judges are not able to understand the extent to which the substance of bankruptcy dispute resolution is by making decisions based on ideal legal considerations. For example, regarding the determination of the condition of insolvency regarding the bankruptcy status of this corporation, the Panel of Judges of the Commercial Court can be understood not to have carefully considered other facts to decide the case. This also indicates that the consideration of the Commercial Court Judges which only refers to simple evidence actually results in the ineffectiveness of bankruptcy law enforcement

in the cases of Telkomsel and PT Prima Jaya Informatics. The decision of the Panel of Judges of the Commercial Court is also considered to cause huge losses in the development of security and certainty of investing in Indonesia, especially 35 percent of Telkomsel's share ownership is a foreign investor, namely Singapore Telecom Pte. Ltd.

4. CONCLUSION

Based on the evaluation of the aspects of substance, structure, and culture, it can be concluded that bankruptcy law enforcement in Indonesia has not been effective. This is because the bankruptcy law in Indonesia still has a number of weaknesses in these three components. In terms of substance, bankruptcy law in Indonesia has a number of weaknesses, namely not applying the minimum requirements for creditors as bankruptcy applicants; does not adhere to the principle of limiting the nominal value of money or debt; unclear purpose of debts that are due and collectible; and no known insolvency test.

In terms of structure, bankruptcy law enforcement is still constrained in several aspects. First, not every district court has a commercial court. Second, the procedural law is related to simple evidence that has the potential to experience abuse of circumstances in evidence in a commercial court. From a cultural perspective, there are weaknesses in the legal culture in the community and law enforcers (judges). In society, the embedded legal culture is the behavior of using the Bankruptcy Law as a debt collection tool, while in law enforcement, the legal culture can be seen from the behavior of judges who tend to be less able to understand the substance of bankruptcy dispute resolution and make decisions based on ideal legal considerations.

The ineffectiveness of bankruptcy law enforcement in Indonesia is also reflected in an example case, namely the Telkomsel's bankruptcy case in 2012. This case proved that the absence of an insolvency test requirement was a fundamental weakness of the Bankruptcy Law in Indonesia. Telkomsel, which is in a financially sound (solvent) condition, turns out to be bankrupt by the application submitted by PT Prima Jaya Informatics. Telkomsel also took the initiative to conduct an insolvency test and prove that its financial condition is healthy. Moreover, the results of the insolvency test prove that Telkomsel's assets are far greater than the debts collected by its creditors. In the end, it was discovered that Telkomsel was not able to pay (not able to pay), but not willing to pay (not willing to pay). Telkomsel does not want to pay because it considers PT Prima Jaya Informatika has defaulted on the cooperation agreement. Thus, at the decision at the cassation level, the Panel of Judges decided that the case must be resolved first in the District Court, not the Commercial Court.

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