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RESEARCH ARTICLE

INSOLVENCY TEST FOR BANKRUPTCY CASES IN INDONESIA: IS IT NECESSARY?

***Nyoman Agus Hermawan, I.**

Doctoral Program of Faculty of Law, Udayana University, Bali, Indonesia

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**Corresponding author:*
Nyoman Agus Hermawan, I.

ABSTRACT

In general, only insolvent debtor is declared bankrupt by the Court. Hence, the Court should reject request of bankruptcy if the debtor is still solvent. However, there are many cases in Indonesia where the court passed on bankruptcy decision to the solvent debtors. The purpose of this article is to examine the needs of using insolvency test for bankruptcy decision ruled down by the judge. This article employs normative legal research. The results show that it is not easy for the judge to implement the insolvency test in bankruptcy case because the Indonesian Bankruptcy Law regulates that authentication process should be done in a simple way.

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INTRODUCTION

Bankruptcy is basically always related to debt, creditor, debt payment, asset and even market. In practice, a company is not only bound by one creditor but it can also be tied to more than one creditor simultaneously. Thus, the condition where the debtor has no economic capacity anymore can bring impact to at least on some of its creditors. In addition, the economic inability of a company may also impact its employee, surrounding environment and other related parties. Since bankruptcy of a person or company potentially cause broad impacts; therefore, the need of having standard legal rule or device to protect parties in concern is emerged. The word bankrupt English comes from Italian law namely *Banca Rupta*. There was a bankruptcy practice in medieval Europe by carrying out the destruction of benches from bankers or traders who fled secretly with creditor's assets. Similar thing was also happened in Venice (Italy) where *banco* (bench) of the lender (banker) who was unable to pay debts was completely broken or destroyed (Munir Fuady, 1999). Thus, in terms of legal history, the bankruptcy law initially aimed to protect creditors by providing a clear and definite way to settle debts that cannot be paid (Erman Radjagukguk, 2001). Which debt is not paid by the debtor due to the circumstances of his inability. Bankruptcy law arises due to special circumstances of debtors who do not have the ability to complete their obligations.

The bankruptcy concept in indonesia and the thought on insolvency test: According to Sutan Remy, *Faillisement* and *Kepailitan* are equivalent to the term "bancruptcy" or "insolvency" in English. Although the terms of bankruptcy and insolvency are different in meaning, both are very closely related to one another. In a different sense, a debtor who is already in an insolvent state can be declared bankrupt by the court, after request of bankruptcy has been made to the debtor in concern. Insolvency is a financial state of a civil law subject (legal entity). Meanwhile bankruptcy is a legal state of a civil law subject (legal entity). A debtor can only be declared bankrupt by a court if the debtor is in an insolvent state. On the contrary, the debtor who has been insolvent does not, for the sake of law, become bankrupt because such bankruptcy state must be first requested before the court (Sutan Remy Sjahdeni, 2016). However, because the bankruptcy law regulates the insolvency of debtors; so, the term bankruptcy law is often used as the term insolvency law. In other words, the two terms are often used as substitute synonyms, even though each of these terms essentially has a different meaning (Sutan Remy Sjahdeni, 2016). The relationship between the two terms is inseparable from the real situation of the debtor that is being requested to be declared bankrupt. Universally, only debtor who has been insolvent is to be declared bankrupt by the Court. So the Court should reject request of bankruptcy if the debtor is still in a solvent state (Sutan Remy Sjahdeni, 2016). As Rohan Lamprecht stated, "Insolvency is not necessarily lead to bankruptcy, but all bankrupt debtors are considered insolvent". So according to him, the state of insolvency does not always lead to bankruptcy, but debtor who is in a state of bankruptcy is certainly in a state of insolvency. Insolvency is a financial condition of the debtor where debtor's debts exceed

his assets (Sutan Remy Sjahdeni, 2016). Bankruptcy law or insolvency law of many countries in the world generally determines that the debtor can only be declared bankrupt by the court if the debtor is in an insolvent state. That is, if the debtor's debt to all of his creditors (concurrent, preferential and separatist) exceed the sum of all assets he has (Sutan Remy Sjahdeni, 2016). According to Stefan Albrecht Riesenfeld, "Bankruptcy law was enacted to provide and govern an orderly and equitable liquidation of the estates of insolvent debtors (Stefan, A.R). Therefore, bankruptcy law basically regulates the liquidation of debtor who is in an insolvent state. A debtor who does not carry out his obligation and is not in an insolvent state should not be subject to bankruptcy provisions. Article 1 paragraph (1) *Faillissements-verordening* (hereinafter referred to as Fv) regulates that a debtor can be declared bankrupt if the debtor is unable to pay his debt and is in a state of stop paying his debt. The article does not determine whether the debtor must have more than one creditor as determined by Indonesian Law No. 37 of 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts (Law 37/2004). Therefore, even if a debtor has only one creditor, he can be declared bankrupt by the court as long as the debtor is financially unable to repay his debts and is in a state of stop paying his debt (insolvent). From the phrase of "is financially unable to repay his debts and is in a state of stop paying his debt", it can be concluded that only insolvent debtor that can be declared bankrupt (Stefan, A.R., p. 128-129). Therefore, the state of being financially unable to repay his debts or insolvency is one of the bankruptcy conditions adhered to by the provisions of *Faillisement Verordening*.

Meanwhile, when referring to the provision of Article 1 number (1) Indonesian Law No. 4 of 1998 on the Stipulation of the Government Regulation in Lieu of Law No. 1 of 1998 on Amendment of Law on Bankruptcy As Law (Law 4/1998), it is noted that:

"Bankrupt debtor has two or more creditors and does not pay at least debt that has matured and became payable, shall be declared bankrupt with the decision of the competent court as referred to in Article 2, either at his own petition or at the request of one or more of his creditors" (Law 4/1998).

Thus the phrase used in the provision of Law 4/1998 is "does not pay" and not the phrase "unable to pay".

After the issuance of Law 37/2004, the definition of bankruptcy can be found Article 1 number (1), which states:
"Bankruptcy shall mean general confiscation of all assets of a Bankrupt Debtor that will be managed and liquidated by a Curator under the supervision of Supervisory Judge as provided for herein"

Furthermore, the provisions of Article 2 paragraph (1) of the Law 3/2004 governs the conditions that must be met in the event that the debtor is requested for bankruptcy, namely:

"A debtor having two or more creditors and failing to pay at least one debt which has matured and became payable, shall be declared bankrupt through a Court decision as stated in Article 2, either at his own petition or at the request of one or more of his creditors"

Thus, bankruptcy of a legal subject both individuals and legal entities can occur if some of the requirements formulated in Article 2 paragraph (1) of Law 37/2004 are fulfilled, which consists of:

1. At least there are two or more creditors.
2. Not paying in full at least one debt that has matured and became payable (without distinguishing whether the debtor is just not willing to pay the creditor for certain reasons, for example the creditor does not carry out the achievements as previously agreed) (Gunawan Widjaja, 2003).

Law 37/2004 embrace the same definition provided in Law 4/1998, where both of them embrace to terms and conditions that are different from bankruptcy terms and conditions in *Faillisement Verordening*. The requirement for a debtor being in an insolvent state is not a condition determined according to Article 2 paragraph (1) of Law 37/2004. According to Sutan Remy Sjahdeni, the condition of debtor who has been in an insolvent state is an absolute requirement that must exist in the bankruptcy requiremens as determined by law (Sutan Remi Sjahdeni, 2016)

The debtor is considered to be in an insolvent state only if the value of the total liability is greater than the value of his assets. In such circumstances, the debtor is considered to a balance sheet insolvency. Balance sheet insolvency is opposed to cash-flow insolvency, which is debtor's financial condition with no sufficient liquidity to pay his obligations when it is due because the cash inflow is smaller than the cash outflow even though the value of the asset is still greater than the value obligations (not yet experiencing balance sheet insolvency) (Sutan Remi Sjahdeni, 2016). Referring to the discussion above, there are two types of insolvency, namely balance sheet insolvency and cash flow insolvency. Financial state is called as balance sheet insolvency if the debt of a company or individual has exceeded the value of its assets. Meanwhile, what is meant by cash flow insolvency is if actually a company or individual still has assets greater than the amount of its debt but cannot fulfill the repayment of its debts when the debts are due. This is due to unbalanced inflows and outflows of the company's cash, for example the outflow is greater than the inflow. Therefore, such company or individual does not have enough cash to pay its debts and other payment obligations that are due (Sutan Remi Sjahdeni, 2016). Referring to the above differentiation of debtor's financial states, therefore, the case of a debtor who does not pay his debt due to cash-flow insovency should not be examined by a bankruptcy court (commercial court), but it should be examined by an ordinary district court. The non-payment case by a debtor that does not experience balance sheet insolvency to its creditor constitutes as a breach of contract case and not a bankruptcy case (Sutan Remi Sjahdeni, 2016). Similarly, it is also the case of a debtor that does not make payment to a creditor because of his inability. As such, a state where debtor could not perform his obligation to pay is not due to he does not have the ability to repay, but because he does not have willingness to repay. The condition of a debtor with no willingness to repay is not always because the debtor has bad intentions. It sometimes happens because the bad intention comes from the creditor. For example, the creditor (as the seller) has handed over the item to the debtor (buyes) but the item is not in accordance with the specifications that have been agreed upon, or maybe other things (Sutan Remi Sjahdeni, 2016). In this case, the case should be submitted to an ordinary district court as a case on the basis of a breach of contract and not submitted to the

commercial court to be petitioned and furthermore to be declared bankrupt. A debtor can be requested to the court for a bankruptcy decision only if the debtor has a balance sheet insolvency. In the event that the debtor commits event of default by not paying his debt due to a cash flow insolvency or for other reasons that are not caused by a balance sheet insolvency, then he cannot be requested for bankruptcy before the bankruptcy court (Sutan Remi Sjahdeni, 2016). The determination of whether the debtor's financial condition is in a state of being unable to pay his debts or in other words the debtor has been in an insolvent state must be done objectively. This can only be performed based on financial audit or financial due diligence that is carried out by an independent public accounting firm (Sutan Remi Sjahdeni, 2016).

Court should consider request of bankruptcy only if the debtor is in an insolvent state. In the event that a condition of a debtor is still solvent can be proven based on the assessment conducted by the public accounting firm and financial consultant then the request of bankruptcy must be rejected by the court and then the court must decide that the dispute between the debtor and creditor is filed to the District Court as a breach of contract case under civil case (Sutan Remi Sjahdeni, 2016; p. 158-159). In the history of Indonesian bankruptcy law, such an attitude is an attitude of Fv, namely Article 1 paragraph 1, which states (from the translation), “every debtor who is incapable, is in a state of stop paying his debt, with the judge’s ecision, either at his own request or at the request of one or more of his creditors, is declared bankrupt (Sutan Remi Sjahdeni, 2016). Bankruptcy according to Subekti and Tjitrosedibio is a condition where a debtor has stopped paying his debts. Upon such person is declared bankrupt due to the request of his creditors or at his own request by the Court, then his assets are controlled by the Chancery Court as the *curatrice* in the matter of such bankruptcy to be used by all creditors. One and the others are regulated in the Bankruptcy Law (L.N.1905 No.217) (Subekti and Tjitrosoedibio, 1981). It can be stated that bankruptcy law does not regulate the bankruptcy of a debtor who does not pay his obligations only to one of his creditors (who does not control a portion of the debtor's debt) but that the debtor must be in an insolvent state. A debtor is in an insolvent state if the debtor is financially unable to pay most of his debts or the value of his assets is less than his liabities. A debtor can not be said to have been in an insolvent state if a creditor does not pay his debt to only one debtor meanwhile he still can pay his debts to other creditors properly, except if one creditor in question controls a large part of the debtor's debt. If a debtor does not pay a debt to one of his creditors (except if the creditor controls the debtor's debts) while to the other creditors the Debtor is still carrying out his obligations properly, it does not mean the debtor is unable to pay the debts. In such event, perhaps the debtor simply does not pay the debt for some reasons (Subekti & Tjitrosoedibio, 1981; p. 80). The factors on why it is important to have regulations on bankruptcy and suspension of obligation for payment of debts can be found in the general elucidation of Law 37/2004. Such factors are as follow (Soentandyo Wigjonosoebroto, 1995):

1. To prevent creditors from illegally claiming the debtor’s assets when there are more than one creditor at the same time.
2. To prevent creditors holding security right in respect of a property from selling the debtor’s property without considering the interest of both the debtor and other creditors.
3. To avoid fraud or dishonest practices by one of the creditors or by the debtor himself. For example, the debtor tries to give advantages to one or more creditors and to harm the interest of other creditors or the debtor tries to hide or dispose of his assets in order to free himself from his obligations to the creditors.

The ease of bankruptcy requirements stipulated in Article 2 paragraph 1 of Law 37//2004 is strengthened by the provision of Article 8 paragraph 4 of Law 37/2004 which determines that:

“The request for bankruptcy statement must be granted if there is a fact or condition which is simply proven that the requirements for being declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled".

In practice, there are decisions on bankruptcy issued by the Commercial Court where only apply Article 2 paragraph 1 of Law 37/2004 as below:

Based on the above decisions, it looks like that the judge's judgment in deciding cases is based on Article 2 paragraph 1 of Law 37/2004, where it is proven by the existence of debt that has matured and the existence of 2 (two) creditors or more. So, judges often look as if they are the mouthpieces of the Law, which in turn will hurt the sense of justice of the people. Whereas in fact, law enforcement is a concrete form of application of law in society that affects legal feelings, legal satisfaction and the need of justice or legal justice of the community (Bagir Manan, 2011) itself. The situation of stop paying must be an objective situation where the financial condition of the debtor that cause him unable to pay the debts (in distressed). In other words, the debtor may not only not willing to repay his debts, but his financial situation is in a state of being unable to repay his debts. This requirement was later amended through Government Regulation in Lieu of Law No. 1 of 1998 which was subsequently promulgated as Law Number 4 of 1998 and was lastly amended by the enactment of Law 37/2004 in 2004 (Bagir Manan, 2011).

Bankruptcy requirements are stipulated in Article 2 paragraph 1 of Law 37/2004. It states, "A debtor having two or more creditors and failing to pay at least one debt which has matured and became payable, shall be declared bankrupt through a Court decision, either at his own petition or at the request of one or more of his creditors." With the new rules, it is enough for a debtor to be requested for a bankruptcy statement if the debtor does not pay the debt to only one creditor as long as the debtor has two or more creditors (has more than one creditor). There is no requirement that financially the debtor must have stopped paying the debts. In other words, it does not imply the financial condition of the debtor has been insolvent. Therefore, the formulation of Article 2 paragraph 1 of Law 37/2004 may leads to a possibility where a solvent companies to be declared bankrupt. The new formulation is not very in line with the bankruptcy law principle that is accepted globally, namely only debtors who have been insolvent who can be declared bankrupt (Bagir Manan, 2011). Law 37/2004 does not adhere to the insolvency principle in determining bankruptcy of the debtor. It is not surprising that the bankruptcy decisions towards debtors imposed by the Indonesian Commercial Court based on the Law are very disappointing for the business world and foreign investment in Indonesia (Bagir Manan, 2011).

Table 1 Decisions on bankruptcy of the commercial court

No	Decision of Commercial Court	Legal Consideration	Decision of Appeal	Legal Consideration
1.	No. 49/PDT.SUS/PAILIT/2014/ PN.NIAGA.JKT.PST	Considering, whereas based on the whole description of the above legal considerations, in the end the Panel of Judges argue that the request of bankruptcy from the Bankruptcy Applicant must be granted because there had been fact or condition which was simply proven that the requirements to be declared bankrupt as stated in the provisions of Article 2 paragraph (1) and Article 8 paragraph (4) of the Bankruptcy Law have been fulfilled, therefore the Bankruptcy Respondent must be declared bankrupt with all legal effects;	Number 212 K/Pdt.Sus-Pailit/2015	Whereas *Judex Facti* has been right and correct in its legal considerations because according to the law, the requirements for bankruptcy have been fulfilled with the existence of more than one creditor and the debt that has matured and became payable.
2.			Number 212K/Pdt.Sus-Pailit/2015	Whereas *Judex Facti* has been right and correct in its legal considerations because according to the law, the requirements for bankruptcy have been fulfilled with the existence of more than one creditor and the debt that has matured and became payable.
3.			Number 1093 K/Pdt.Sus-Pailit/2016	Whereas the legal considerations of *Judex Facti* that reject the request of bankruptcy from the Applicant can be justified and is not against the law, where it turns out that the Applicant cannot prove that the Debtor has two or more Creditors in the *a quo* case, therefore the application of the Applicant does not meet the requirements and must be rejected based on the *Judex Facti* considerations;

This legal arrangement is often used by certain parties to obtain unilateral profits by damaging businesses that are economically still solvent and not feasible to be declared bankrupt. This is felt to be unfair and contrary to the purpose of bankruptcy law, one of which is to maintain the debtors businesses that are still solvent Institution for Research and Development Education and Training of Law and Judicature, 2014). The provision of Article 5 paragraph 1 of Law No. 4 of 2004 on Judicial Power stipulates that the court adjudicates according to law, where judging according to law is the principle in conducting a trial. This principle has the purpose of guaranteeing justice and legal certainty (Bagir Manan, 2009; p. 2). The Decision making based on law principle is often becomes the target to intimidate judges who are seen as not living a sense of justice that lives in the community. For the sake of justice, the judge is not justified for only applying the law as legal justice. The judge must prioritize moral justice or social justice as well. Justice seekers want the judges to ground things that have been debates at the level of philosophy and legal theory, to be concrete in the form of decisions that reflect public justice. Judges, if necessary, must override or abandon the law, in order to satisfy the sense of justice of the community (Bagir Manan, 2009). Judges must interpret legal certainty as just certainty and justice is nothing but just justice (Bagir Manan, 2009). The law will only achieve its ultimate goal if it has touched the and is referred to as sense of justice in society. It means there is a balance between the interests that are protected and the things that are part of it. It seems that law is far from the sense of justice, both in law enforcement in the sense of norms and laws in application. Basically the principles of law and constitution impose equality of degree and right for everyone before the law. Law enforcement is certainly inseparable from the various factors that influence it, especially the legal substance itself, law enforcement officers and the communities where the law is implemented or the environment in which law enforcement is implemented, of the economic, social and cultural systems. The interaction that occurs between these factors will influence the law enforcement process (Bagir Manan, 2011). The substance of the provision of Article 2 paragraph (1) Law 37/2004 regulates bankruptcy requirements that are not in line with the principle of bankruptcy law, namely the bankruptcy of debtors on the basis of the debtor's inability. The substance of Article 2 paragraph (1) Law 37/2004 does not include the debtor's inability as condition to be declared bankrupt. The provision of Article 2 paragraph (1) Law 37/2004 is not in accordance with the philosophy of bankruptcy institution which constitutes as a way out to resolve debt problem between debtor and creditor because debtor’s debts are greater than his assets, so he cannot pay his debts in full. From the phenomenon in handling bankruptcy cases that happen nowadays, it seems obvious that there is a deviation of the function and purpose of bankruptcy institution, which is inseparable from the legal substance itself. It is Article 2 paragraph 1 jo Article 8 paragraph 4 Law 37/2004 that already shifted to facilitating the bankruptcy for debtors. The term of bankruptcy mavia is even developed. As time goes by, the bankruptcy institution, under Law 37/2004, is used as a means to declare the debtor with bankruptcy without considering whether the debtor solvent or insolvent in order to control the debtor's assets. There is no legal rule (empty notm) on the inability of debtor as the requirement to request bankruptcy statements found in Law 37/2004. This shifting will continue to the application of bankruptcy law by the Judge. Therefore, the decision is deemed not to reflect justice for people seek justice. Law 37/2004 has advantage, namely open opportunity for a company that still has the potential to continue and develop its business to be imposed with bankruptcy decision (Antonius *et al.,* 2014). One of the cases is the case of PT. Nyonya Meneer. It has been established for 98 years but already declared bankrupt through decision Number Nomor 11/Pdt.Sus-Pailit/2017/PN Niaga Smg jo. Number 01/Pdt.Sus-PKPU/2015/PN Niaga Sm. Therefore, PT. Nyonya Meneer was not satisfied with the decision. How come a company with assets that reach IDR 16 trillion can be declared bankrupt due to IDR 7 billion of debt? That is why they did the appeal in order to save the legendary

herbal medicine business (poskotanews.com, 2017). Basically, Article 2 paragraph (1) Law 37/2004 contains vagueness of norm. The phrase of "failing to pay" causes multi interpretation. Failing to pay the debt can be interpreted as the debtor is "unable to pay" and can also be interpreted as the debtor "does not want to pay" (Sutan Remy Sjahdeni, 2016). Another interpretation of such phrase is that the debtor is incapable and for one reason or another the debtor does not want to pay, even though he is actually capable (Hikmahanto Juwana, 2002). Therefore, failing to pay can be interpreted as the debtor is "unable" to pay and can also be interpreted as the debtor "does not want to" pay even though he is actually capable. The debtor does not want to pay his debt for some reason, for example because the creditor also has debts to the debtor. In this case, the debtor does not want to pay even though he is actually capable. In addition to vagueness of norm, the provision of Article 2 paragraph (1) Law 37/2004 also does not regulate the inability of debtor as a condition for being declared bankrupt.

The Bankruptcy Law must be able to encourage investment and capital market passion. It also needs to facilitate domestic companies to obtain foreign credit. To be able to achieve this goal, Bankruptcy Law in Indonesia should contain globally accepted principles, especially from Bankruptcy Laws in modern countries such as the United States, Canada, the European Union, Japan, China and others. These principles must be in line with the bankruptcy law principles applied in the countries of the investors and the creditors who want to invest their capital in Indonesia (Sutan Remy, 2016). Going concern principle is the principle of the survival of an entity (business entity). Going concern indicates an entity (business entity) is considered to be able to maintain the company and its business activities in the long term and will not be liquidated in the short term. The potential and survival capability of a business entity or company to survive is proven in the form of an auditor's report as a competent party and is considered fair in assessing whether a company has the capability to continue its business or otherwise declare with bankruptcy in order to solve existing problems. The bankruptcy request of a company is inseparable from bookkeeping because it shows financial condition of such company. In bankruptcy practice, the examination of the debtor's bookkeeping is the first thing that must be done by the curator in settling bankruptcy assets. The financial statement is generally used by large-scale and small-scale companies to determine the progress and continuity of the company's business in the future (going concern). The financial statement is the end result of the process of recording, merging and summarizing all transactions carried out by the company with all parties related to its business activities and important events that occur within the company. Financial report provides information about the company's financial position. The financial statement must be presented fairly, transparently, easily understood and can be compared with the previous year report or between similar companies (Maruli Simalango, 2018). Referring to the discussion above, Law 37/2004 basically does not fully adhere to globally accepted principles of bankruptcy. The following is the principle that is not explicitly stated in Law 37/2004, principle that the debtor who can be declared bankrupt is a debtor who has been in an insolvent state. In fact, the implementation of bankruptcy requirements in Law 37/2004 which does not mention that debtor who can be declared bankrupt is a debtor who has been in an insolvent state, has caused other problem. It is because some judges are of the opinion that when the bankruptcy requirements are met, then the process to make bankruptcy decision should be brief and easy without first should further explore the true financial condition of the debtor, whether is it true that the debtor is in the situation of unable to pay or is it unwilling to pay. Actually, such passive attitude of the judge does not provide justice and can even cause other problem in the community. Bankruptcy of a business entity or company must be interpreted as it is not only bring legal consequences to the debtor but also influence on taxation, employees and investment. This protection is intended only for debtors who have good intentions to repay their debts to creditors. One alternative to prevent failure in making bankruptcy decision towards the solvent debtor is for the judge to take the initiative to conduct the insolvency test against the debtor who has requested for bankruptcy. The current Law 37/2004 that prevails in Indonesia does not require the existence of an insolvency financial situation from the debtor who is being requested with bankruptcy. Thus, Law 37/2004 does not adhere to the principle of insolvency in determining bankruptcy of a debtor. This is not in line with the universal principle that applies to various laws in other countries of the world, which requires the existence of insolvent debtor as requirement for a debtor to be declared bankrupt. The principle adopted by Law 37/2004 is also different from the principle adopted by Fv Netherlands, which requires the cessation of debt payments due to the inability of the debtor to carry out its obligations. Moreover, with the provision of authentication that is fast and simple, by only proving the existence of two or more creditors as stated by Article 2 paragraph (1) of Law 37/2004, a company can be declared bankrupt. As a result, several cases have been found in practice where judges have granted bankruptcy requests to companies that actually have solvent financial conditions, which in turn lead to legal uncertainty, injustice and harm the society. The impact of bankruptcy decision on a company is very broad. It can cause various new problems both socially and economically as well as both nationally and internationally. Therefore, when deciding bankruptcy, the judge should carried it out carefully. For this reason, it is necessary to make changes and adjustments to Law 37/2004 in order to be able to meet the needs and interests of the society. To be able to determine whether a company can be declared bankrupt or not, insolvency test should be carried out, so that the judge's decision can ultimately bring justice and benefits to the parties in concern.

Closing: The implementation of insolvency test by the judge is, in practice, not easy, considering the provisions of the bankruptcy law also require the existence of simple authentication in the bankruptcy process. The judge must be able to explore the fact that the debtor who has been requested with bankruptcy does not have economic ability to repay the debts and not for other reasons such us unwilling to repay. The business continuity principle (going concern) which can be obtained through data in financial statements can be used as a consideration and requirement whether a company can be declared bankrupt. Considering the broad impact of bankruptcy, therefore, this principle is needed to measure the debtor ability and potential to continue his/its business activities through insolvency test.

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