

## ANALYSIS OF FACTS OR CIRCUMSTANCES THAT ARE PROVEN SIMPLY IN THE CONTEXT OF PROVING OTHER CREDITORS IN BANKRUPTCY APPLICATIONS

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### ABSTRACT

<p><b>Keywords:</b> bankruptcy; creditor; debtor; bankruptcy requirements; simple proof.</p>	<p>In filing a bankruptcy petition, the petitioner must fulfil the requirements for the petition to be granted by the panel of judges. These requirements are stipulated in Article 2 paragraph (1) in conjunction with Article 8 paragraph (2) of Law No. 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations. According to these requirements, the bankruptcy petitioner must provide evidence that there are other creditors, either by presenting these other creditors as witnesses or by the debtor's acknowledgement in the form of promissory notes or other documents. However, in its implementation, it turns out that the method of proving this is subject to multiple interpretations, leading to legal uncertainty, namely whether other creditors need to be present in the hearing or if the debtor's acknowledgement is sufficient. This research will be conducted using a normative research method, which involves studying legislation with an approach to bankruptcy cases in Indonesia.</p>
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### Introduction

Bankruptcy in Indonesian law is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations; the regulation aims to provide reasonable legal protection to creditors, debtors, and the public (Salsabila, 2021). Prior to the enactment of UUK 37/2004, insolvency was regulated in Staatsblad 1905:217 jo. Staatsblad 1906:348 concerning Faillissement Verordening (Law on Bankruptcy). This regulation was later updated through Government Regulation instead of Law Number 1 of 1998, which was later passed into Law Number 4 of 1998 (Damlah, 2017).

Regarding facts or circumstances that are proven is a term that is often used in bankruptcy law in Indonesia. This term refers to two or more creditors and overdue and collectable debts not paid (Anugraha & Budhiawan, 2023). In this case, the application for bankruptcy declaration must be granted if some facts or circumstances simply prove that the requirements of bankruptcy are used as a way out to solve problems regarding debts if the debt condition is due and realised by the debtor. Thus, as the borrower, the debtor submits a bankruptcy application or requests a determination of bankruptcy status in the Commercial Court if it is proven that the debtor can no longer pay his debts (Hartini, 2020). Bankruptcy is the condition of debtors when they have stopped paying their debts because this requires the panel of judges to provide security guarantees in the sense of payment to creditors (Mubaroq, 2023).

Based on UUK 37/2004, bankruptcy can be filed with the Commercial Court (Aprita & Adhitya, 2019). Those who can apply for bankruptcy are creditors, deniturs, Bank Indonesia, Minister of Finance, Capital Market Supervisory Agency, and Prosecutors in the public interest. To be able to apply for bankruptcy, there are several provisions as follows:

1. The debtor has two or more creditors:
2. The debtor does not pay at least one overdue and collectable debt:
3. At the request of the joint debtor or the request of one or more creditors:
4. some facts or circumstances are proven in moderation.

To be declared bankrupt, as referred to in Article 2 paragraph (1) has been fulfilled. A proven fact or circumstance is a fact or circumstance that can be proven easily and does not require complicated evidence. Suppose the debt owed by the debtor to creditors is not a condition for filing a bankruptcy application with the Commercial Court. The judges can grant the bankruptcy application after the applicant fulfils these terms and conditions (Sunday, 2022).

There is difficulty in proving the existence of two or more creditors because the other creditor is a third party, which is likely to be challenging to prove. Therefore, proof of the existence of other creditors must be proven without the need for complicated evidence, as stated in the requirements for filing a bankruptcy application (Istyaningrum, 2016).

Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations also does not explain how other creditors can be proven in bankruptcy applications. So, the essential thing in proving the existence of other creditors must be simple without complex conditions (Sianipar, Azheri, Mannas, & Marjon, 2023).

Proof of the existence of two or more creditors is regulated in Supreme Court Circular Number 7 of 2012. In this SEMA, it is stipulated that to prove the existence of another creditor or second creditor is not by a financial report or debtor's balance sheet but by a letter proving the existence of bills from other creditors or other creditors present before the court as witnesses unless its existence is acknowledged by the debtor against the existence of other creditors (Robert, Sunarmi, Harianto, & Azwar, 2016). Other creditors can be proven to exist legally.

Regarding the debtor's recognition of the existence of other creditors as solid proof of other creditors, the debtor can make a letter entitled debt acknowledgement letter or not entitled debt acknowledgement letter. However, the contents explain that there is indeed an unpaid debt to the creditor, especially if the debtor admits the debt during the trial process.

However, in its application, it was found that the debtor's recognition of another creditor alone could not prove the existence of another creditor. However, another creditor had to appear before a judge. As in the Supreme Court decision Number 655 K / Pdt.Sus-Pailit / 2019, where the panel of judges in the judge's consideration stated that the existence of other creditors must be proven by presenting these other creditors so that the panel of judges does not grant the bankruptcy application. Even though the debtor has

admitted that it is true that there are other creditors and there is evidence of a debt acknowledgement letter by the debtor.

There is a Central Jakarta Commercial Court Decision Number 4 / Pdt. Sus-Bankruptcy / 2019 / PN. Niaga.Jkt.Pst, which in the judge's consideration stated that other creditors can be proven by written letters stating that there are debts to other creditors submitted while the Bankruptcy case hearing is being carried out so that there is no need for these other creditors to be presented during the hearing (Tejaningsih, 2016).

Based on these two bankruptcy cases, there is legal uncertainty in proving other creditors because of the multiple interpretations of the magistrate's application of the law to prove the existence of other creditors. This misinterpretation creates uncertainty regarding the proof of the existence of other creditors in bankruptcy case applications.

### **Research Methods**

The type of research to be carried out by researchers is doctrinal; doctrinal research provides a clear picture of the regulations governing a particular category and then analyses the relationship between regulations and other regulations. Doctrinal legal research has another name, normative legal research, which also conducts library research or literature studies showing favourable regulations or laws. Normative legal research or literature includes research on legal principles, legal systematics, vertical and horizontal synchronisation levels, comparative law, and legal history.

In this study, researchers will use an approach to several laws and regulations associated with several decisions of the Commercial Court Number of Commercial Court Decision Number 4/Pdt. Sus-Bankruptcy/2020/PN. Niaga.Jkt.Pst and Supreme Court Decision Number 655 K/Pdt.Sus-Bankruptcy/2019.

### **Results and Discussion**

#### **A. Analysis of Commercial Court Decision Number 4/Pdt.Sus Pailit/2020/Pn.Niaga.Jkt.Ps**

The form of implementation of the application of the concept of facts or circumstances that is proven simply in Commercial Court Case Number 4/Pdt.Sus-Bankruptcy/2020/ PN. Niaga.Jkt.Pst, about the existence of other creditors, lies in the evidence submitted by the bankruptcy applicant regarding the existence of other creditors.

In this case, the bankruptcy applicant, namely PT. Emitraco Investama Mandiri proves the existence of another creditor of the bankruptcy respondent, namely PT. Sakti Mas Mulia using a Correspondence Letter from PT Indopower Internasional as another creditor No. 23/IPI/SMM/VI/2015 dated June 13, 2015, which stated arrears of Rp. 170,000,000 (one hundred and seventy million rupiah).

The application of proven facts or circumstances lies in the correspondence issued by other creditors, which is filed by the bankruptcy applicant so that other creditors do not need to be present at the hearing of the bankruptcy application, where the correspondence letter can prove the existence of debts from the bankruptcy respondent.

In general, correspondence letters are letters used to communicate with other parties, both personally and formally. Correspondence letters can be used for various purposes, such as conveying information, requests, or complaints.

The correspondence letter used by the bankruptcy applicant to prove the existence of other creditors was also recognised by the bankruptcy respondent, namely PT. Sakti Mas Mulia, the bankruptcy respondent, confirmed that it was true that there was an unpaid debt to another creditor, PT Indopower Internasional.

The bankruptcy applicant also submitted additional evidence regarding the existence of other creditors who are registered limited liability companies and are legal entities in the eyes of the law by the Deed of Establishment of Limited Liability Company PT Indopower Internasional No. 8 dated January 16, 2002, made before Bambang Sularso S.H., Notary in Jakarta, so that the existence of other creditors is genuine and not just a pretext to be granted the applicant's bankruptcy application.

Both documents can be categorised as an implementation of the application of facts or circumstances that are proven in connection with the law of proving the existence of other creditors in the bankruptcy application hearing. The bankruptcy applicant can submit simple evidence, which, in this case, is evidence with letters or documents that can prove the existence of debts from the bankruptcy respondent to other creditors.

The Civil Procedure Law in Indonesia, used as the foundation for proceedings in the Commercial Court, states that the parties can prove their statements with all evidence, including written evidence. This confirms that there is a principle of inclusivity in using evidence.

The use of written evidence can be considered in terms of efficiency and effectiveness in solving cases in court. Written documents can simplify the process of collecting evidence and speed up the trial process, in which the commercial court panel of judges must decide the case within 60 days of the case being registered in the commercial court as stipulated in the Bankruptcy Law.

Written evidence can avoid distortions or errors in the parties' memories. Written documents present records, transactions, or events carried out by the parties in the case of their truth. Civil procedural law in Indonesia recognises the validity of written evidence as one form of evidence that is fixed and accountable. This guarantees the stability and reliability of evidence in legal proceedings. Recognising written evidence's validity reflects the principle of legal certainty. Parties involved in a proceeding can rely on written documents as a clear legal basis for determining their rights and obligations.

In the laws and regulations, written evidence is regulated in Article 164, Article 153, and Article 154. Article 164 HIR states that a person or legal entity writes written evidence to prove something. Written evidence is a vital evidence tool in Indonesian civil procedural law. Written evidence has high evidentiary power, which can be the basis for deciding a civil case.

In this case, the panel of judges, in its legal consideration, stated that the two documents, namely correspondence, are valid and sufficient evidence regarding proving the existence of other creditors and other creditors who are limited liability companies

that are true based on notarial deeds. Both written evidence can prove the existence of other creditors without the need for the presence of these other creditors in the bankruptcy application examination hearing, so in this case, the panel of judges granted the application of the bankruptcy applicant for bankruptcy of the bankruptcy respondent.

**B. Analysis of Commercial Court Decision 22/Pdt.Sus-Pailit/2019/Pn.Niaga.Jkt.Pst jo. Supreme Court Decision Number 665 K/Pdt.Sus-Pailit/2019**

The form of implementation of the application of the concept of facts or circumstances that is proven simply in Commercial Court Case Number 22 / Pdt.Sus-Bankruptcy / 2019 / PN. Niaga.Jkt.Pst regarding proving the existence of other creditors whose existence cannot be proven, which, in his judgment, the judge stated as follows.

"Considering, that in the trial the other creditors were not present at the trial and there was no power of attorney to the Applicant to represent other creditors in the application and the Petitioner only submitted a statement of debt recognition signed by Respondent II to Fajar Mukti Kuncoro as another creditor, so the Tribunal is of the opinion that since other Creditors also have an interest in this application, the Applicant must have a power of attorney to submit the interests of other creditors in this application, whether it is true that the other creditor has the will or seriousness to become another creditor to be able to prove the existence of receivables to the Respondent in the application submitted by the Applicant to the Respondents, moreover, Exhibit P-4 is only a statement of debt recognition which according to the Tribunal the letter is only a unilateral statement and is not supported by other evidence so that the recognition of such debt cannot necessarily prove that Respondent II has debts to such other creditors, and further the Tribunal is of the opinion that the declaration of Insolvency against the Debtor will have a broad effect because the consequences of insolvency relate to the interests of other creditors; Considering, that on the basis of the aforesaid considerations, the requirement of the Debtor to have two or more creditors is not fulfilled according to law;"

The panel of judges stated that the debt acknowledgement letter submitted to be used as evidence regarding the existence of other creditors could not be used, so the other creditors must be presented at the examination hearing to be granted the bankruptcy application. Based on its consideration, the Supreme Court held that the debt acknowledgement letter submitted could not be used as absolute evidence of the existence of other creditors in a bankruptcy case, so other creditors must be presented at the hearing to verify or validate the existence of the debt.

Amar, the decision of the Commercial Court in the first instance and the Supreme Court, which stated that the evidence presented was insufficient and that other creditors had to be presented before the court, made the application an obstacle that resulted in the inability to fulfil the rights of creditors by debtors who were no longer able to pay their debts. However, it can be said that the debtor's confession is simple proof of the bill's existence.

This consideration can be said to be not by what is stated in the Supreme Court Circular Number 7 of 2012, regulates in more detail, and is currently still held as a basis for procedures for proving the existence of other creditors. It reads, "The second creditor

must be proven by proof of a letter (loan agreement) or witness (the second creditor is present) unless admitted by the Debtor."

Based on the provisions of Supreme Court Circular Number 7 of 2012, the recognition of debt is included in the recognition of the debtor, as stated in the first instance hearing. In this case, the debtor's recognition is the voluntary acknowledgement of bills or debts with other creditors.

In essence, debt recognition letters are included in debtors' confessions regarding other creditors as stipulated in Supreme Court Circular Number 7 of 2012; debtors' confessions in written letters can be used as simple evidence of the existence of other creditors. In this case, the Insolvent Respondents also recognised debts against other creditors, which can be used as simple evidence of the existence of other creditors.

Confession is regulated in Article 1923 of the Civil Code and Article 174 HIR, which says that statements or statements made by one of the other parties in the examination of the case, then statements or statements presented before a judge or in a court session, and the statement is an admission that what is postulated or stated by the opposing party is true in part or whole.

The confession can be considered perfect proof, while the three reasons that can be put forward to support the use of confession as evidence are as follows. First, evidence is considered the primary means by which to prove the basis of the case and break the deadlock. Confessions have significant value because they can be used directly after being declared without needing a physical form that can be presented at trial.

Second, if a party has submitted something that the opposing party admits or explains, the judge is no longer allowed to investigate or question the substance of the confession. Therefore, the judge cannot reconsider the veracity of the confession after it has been admitted.

Third, confession binds the judge to settle the case based on the information given in the confession. With the confession, the judge is expected to settle the case by referring to what is admitted by the relevant party.

Confession can be referred to as the opposite of denial. If the defendant admits the arguments presented by the plaintiff, the confession becomes strong evidence and can be the basis for the judge to grant the lawsuit.

In Supreme Court Decision No. 803 K / SIP / 1970, which states that the arguments submitted by the plaintiff that are not denied or denied by the defendant can be considered as evidence of confession or Supreme Court decision No. 965 K / SIP / 1971, which states that the confession of the defendant, means that the plaintiff's claim is considered proven.

Based on the explanation described above, it can be said that the confession made by the Bankruptcy Respondent can be used as solid evidence of the existence of other creditors, which causes other creditors not to be present at the hearing of the bankruptcy application because in the end the existence of other creditors must only be proven. The debt does not need to be due.

### **C. The ideal form of application arrangement to prove the legal existence of other creditors based on facts or circumstances that are proven**

The ideal form of evidentiary arrangements can ensure justice and legal certainty for all parties involved in a case, where legal certainty will benefit people who are litigants or want to litigate.

In bankruptcy law, especially the proof of other creditors. Insolvency law must regulate the requirements and procedures relating to evidence of the legal existence of other creditors. It includes a legal definition of a valid creditor, the procedure to file a creditor claim, and the required evidence standards.

Insolvency law should clearly define who can be considered a legitimate creditor in insolvency. It will identify who has the right to claim in bankruptcy proceedings and determine the criteria that must be met by those who wish to become creditors.

Regarding the simple application, the evidence needed to prove the legal existence of other creditors must be simple and easy to obtain. This will make it easier for other creditors to prove their rights. For example, such as a letter or official document that lists the amount of the debtor, there is no need for a due date because other creditors only need to be proven to exist, not with maturity.

The law governing bankruptcy must clearly define "simple proven facts or circumstances" to make it easier for applicants to understand what can be used as simple evidence in the bankruptcy application hearing.

Regarding these conditions, "facts or circumstances that are proven simply" must also be described in detail, what evidence can be used to prove facts and what evidence can be used to prove the circumstances or evidence submitted by the bankruptcy applicant can be used to prove facts and circumstances.

Suppose the proven facts or circumstances are not explained in detail. In that case, there will be many uncertain interpretations of the phrase, resulting in legal uncertainty even though the facts or circumstances that are proven are conditions that will affect the granting or non-granting of a bankruptcy application by the panel of judges.

Bankruptcy law must provide explicit provisions regarding what evidence or written documents can be used as valid evidence acceptable to the panel of judges in the bankruptcy application hearing, which provisions will be relied upon by advocates or prospective bankruptcy applicants to be able to submit written evidence by bankruptcy law.

Regarding written evidence submitted, bankruptcy law must also explain what additional evidence can be used as evidence regarding the existence of other creditors; in this case, it is not the debt that is proven, but the other creditor is a legal entity or natural person whose existence does exist and can be legally proven.

The evidence must be adjusted to the facts and circumstances; if there is indeed an admission by the debtor about other creditors, it can be said to prove the existence of other creditors. Regarding the recognition of debtors, it is appropriate for bankruptcy law to provide conditions such as what can be said to be valid recognition.

Such as an acknowledgement made in writing in an answer during a litigation hearing or a letter of acknowledgement that needs to be signed by debtors and other creditors so that the letter is not said to be a unilateral confession. If not by oral confession before a panel of judges as stipulated in the Civil Code.

The ideal arrangement must be carried out consistently and fairly, meaning that if the evidence submitted by the bankruptcy applicant is by existing laws and regulations, then it is appropriate for the application to be granted by the panel of judges. This is to prevent the emergence of multiple interpretations of existing laws and regulations.

An ideal setup is needed to help reduce confusion and waste and improve overall efficiency. In this case, if other creditors do not need to be present at the hearing, the kind of written evidence that can prove the debts of other creditors must be explained.

Ideal regulation helps protect individual rights. Well-designed regulations can help protect the rights of creditors whose debts have not been paid even though they are due; if evidentiary arrangements are not ideal, there are difficulties for creditors of bankruptcy applicants who want to obtain their rights.

It can be concluded that the ideal form of application arrangement to prove the legal existence of other creditors based on facts or circumstances that are proven is one that explains in detail what kind of evidence can be categorised as simple evidence in the bankruptcy application hearing so that the bankruptcy process runs efficiently.

## **Conclusion**

The judge's consideration in the Commercial Court Decision Number 4/Pdt.Sus-Pailit/2020/PN. Niaga.Jkt.Pst can be concluded that it is appropriate to apply the law if you look at Law Number 37 of 2004 and Supreme Court Circular Number 7 of 2012 regarding simple proof in proving the existence of other creditors, the evidence submitted by the bankruptcy applicant, namely the correspondence letter is written evidence so that the evidence can be simple. The judge's consideration in Supreme Court Decision Number 655 K / Pdt.Sus-Pailit / 2019, which upheld the Commercial Court Decision Number 22 / Pdt.Sus-Bankruptcy / 2019 / PN. Niaga.Jkt.Pst, there is a slight error if the panel of judges rejects the bankruptcy application because the conditions of other creditors are not met. After all, the evidence submitted is insufficient, so other creditors must be presented in court even though the bankruptcy respondent has admitted debts from other creditors. Compared to Law Number 37 of 2004 and Supreme Court Circular Number 7 of 2012, the admission of the bankruptcy respondent is simple proof, hence the legal uncertainty as to how to prove other creditors in the bankruptcy trial.

The ideal arrangement regarding the proof of other creditors provides a clear and detailed definition of a fact or state of evidence that is proven and then explains the provisions of evidence that can be categorised as simple proof. If this is not explained in detail, then legal uncertainty regarding the simple proof of other creditors will remain.



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