

## **Legal Culture Factors Influencing Implementation Of The Bankruptcy Act In Indonesia**

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**Abstract:** Incorporating Commercial Court Judges legal culture will provide a new perspective on the study of how the legal apparatus should perform its functions to apply the substance of the law, as well as to base its abilities in the field of epistemology, as well as to base its willingness on professional ethics with high moral integrity. This research will identify factors and application of legal culture priority aspects in influencing the implementation of the Bankruptcy Act in Indonesia. This research is using qualitative approach with normative juridical method. This research is a field research, using in-depth interviews to obtain primary data from judges of Commercial Court. Data analyzed using descriptive qualitative method.

The research findings shows that (1) the influence of legal culture on Commercial Court show that, the legal culture factors influencing the implementation of bankruptcy act in Indonesia are: (a) lack of coordination between institutions (b) moral integrity of judges (c) avoid conflict of interest, (d) discrimination and uphold honesty (e) the integrity of the judge's profession (f) lack of legal structure. (2) the priority difference in internal legal aspects between Commercial Court judges as a whole of the priority order of the cultural component becomes: Consistency, Openness, avoids discrimination, avoids conflicts of interest. Overall there are differences in ranking between the internal and external legal culture components. Where the main consideration by Semarang, Surabaya and Jakarta Commercial Court are internal factors

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### **I. INTRODUCTION**

Indonesia is a developing country that needs funds for the sustainability of national development. One of the activities that can be done in addition to utilizing domestic financing sources is to invite other sources of financing through investment. In general, it can be argued that there are two main issues underlying investment activity, especially by foreign parties in a country, ie environmental factors or policy frameworks, and economic factors, but beside that two factors, there also other influencing aspects such as market access, resources, and efficiency factors.

Economic progress of a country can not be separated from domestic or foreign investors progress in the business world sector. The business sector that continues to move forward and supported by security stability ultimately creates a favorable investment climate for the business world. Investment is one of the important factors for economic growth and its existence is the basic capital for the realization of sustainable economic growth.<sup>1</sup>

Investment requires a healthy business climate and a clear regulation. Regulation in this case is necessary so that investors who will invest their capital can feel a safety legal protection. Legal protection for investors will eventually become a consideration before they finally decide to invest in a country. In this case, the investor's decision to invest his capital can not be separated from the investor's confidence in the security of their investment funds, including the legal protection obtained for their investment funds if the company or its Debtor goes bankrupt.

There are some regulations in Indonesia that can assure the legal certainty for domestic and foreign investors who invest their capital in Indonesia. The regulation includes Act Number 25 Year 2007 regarding Capital Investment, Act Number 40 Year 2007 regarding Limited Liability Company, and Act Number 37 Year 2004 concerning Bankruptcy and Postponement of Obligation of Debt Payment. These acts are one form of legal certainty provided by the Indonesian government to investors. The legal protection efforts undertaken by the Indonesian government in this respect relate to Act Number 37 Year 2004 concerning Bankruptcy and Suspension of Payment Obligations (hereinafter referred to as the Bankruptcy Act). The existence of such Act allows the Creditor to obtain legal protection for his / her right to the Debtor's bankruptcy property. The

protection of the Act is conducted through a court proceeding on bankruptcy proceedings in the Commercial Court.

Bankruptcy pursuant to Act Number 37 Year 2004 shall be construed as "General Sita for all the wealth of the Bankrupt Debtor whose stewardship and ordering are carried out by the Curator under the supervision of Supervisory Judge" as stated in Article 1 paragraph (1) of the Bankruptcy Act. Based on this, according to the Bankruptcy Act there are several elements of bankruptcy cases, namely the process of foreclosure, elements of wealth of the Bankrupt Debtor, the element of the Curator, and Elements of Supervisors. Simply put, bankruptcy can be defined as a foreclosure of all debtor assets put into bankruptcy application.<sup>2</sup> Bankruptcy is intended to prevent confiscation and execution demanded by the Creditor individually, and only on the non-personal debtor's property. Therefore, the bankrupt debtor does not necessarily lose its ability to take legal action, but loses the right to control and manage its assets inserted in bankruptcy from the date the bankruptcy statement is issued.

Incorporating judicial legal culture will provide a new perspective on the study of how the legal apparatus should perform its functions to apply the substance of the law, as well as to base its abilities in the field of epistemology, as well as to base its willingness on professional ethics with high moral integrity. Where judges are viewed as individuals with a set of beliefs about the values contained will greatly influence how decisions are made when handling bankruptcy cases. Thus as a judicial apparatus, the judge in giving a decision in the case of bankruptcy, is not only properly reviewed and aspect of epistemology, but also good in terms of morality.<sup>3</sup>

Based on the preliminary interview and observations research, shows that Commercial Court judges have a differences in priority of internal and eksternal aspects of legal cultures. Thus each judge will have a difference priority in putting the internal values. The same thing is also applies in how judges place considerations on the basis of external legal aspects. Other observations show that the current Bankruptcy act system in Indonesia greatly influences how judges believe in and believe in the values of justice itself. It can be argued that the legal system affects how the legal culture of the Commercial Court judges handle the bankruptcy cases. In the preliminary research interviews of the Commercial Court judges see the Bankruptcy act system that has not included the limits of bankruptcy of corporate assets to be one of factors that make it easier to filed for bankruptcy rather than consideration to improve the condition of the company. Therefore, the results of this pre-research observation become the basis of how the culture of judges and the legal system owned affects the handling of bankruptcy cases in Indonesia.

Thus this research will identify factors and application of legal culture priority aspects in influencing the implementation of the Bankruptcy Act in Indonesia

## **II. RESEARCH METHOD**

This research is done by using qualitative approach. The method used is normative juridical to secondary data either in the form of document or literature review. This research is also a field research conducted by using in-depth interviews to obtain primary data in the form of views, thoughts, and opinions of Commercial Court judges.<sup>4</sup> Primary data analysis intended to reveal the legal culture in bankruptcy, as well as to obtain and complete research based on literature study.<sup>5</sup>

## **III. RESULT AND DISCUSSION**

### **The Influence of Legal Culture on Settlement of Bankruptcy Cases in Commercial Court**

The study of legal culture is the best effort in understanding and systemically describe that law is one of the other elements that functionally on the other elements. The results of field research indicate that the legal culture of the settlement of bankruptcy cases in the Commercial Court is the result formed in the interaction that arises between the components of the legal system, institutions, and society. The overall legal culture of the Commercial Courts in bankruptcy settlement moves through two directions: the legal system and the society. This provides a complementary and reciprocal interaction.

The findings in this sub-section to find out the legal cultural factors considered by Commercial Court judges when handling bankruptcy cases. Furthermore, these factors then become the legal cultural constructs of Commercial Court judges when handling bankruptcy cases in Indonesia. Implementation of this field research is important because there has never been any implementation that examines the constructs composed of legal legal factors of Commercial Court judges in handling previous bankruptcy. Therefore this research can provide an overview of the legal culture of Commercial Court judges when handling bankruptcy cases in terms of contracts (the factors that make up). For more detailed description of research results will be described as follows:

## **1. The Influence of Legal Culture in the Legal System.**

Studies show how legal culture affects the course of a legal system but in its application in Commercial Courts needs to be implemented. The legal culture is the mirror of identity and the source of reflection, the source of abstraction embodied in the values embodied in every legal product, and institutionalized in every legal institution, in the product of legal substance, and also formed in the attitude and behavior of every official or officer and employee working in the field of law as well as justice seekers and citizens in general. Even the legal culture also influences the way leaders work and the legal leadership mechanisms in practice. Law enforcers are called professionals because the ability to think and act beyond written law without injuring the value of justice, in enforcing justice, prosecuted the ability of law enforcement to criticize law and practice law to find what should be done as a professional.<sup>6</sup>

Interview conducted by the researcher to Mr. Dedy Fardinan S.H, M.H as a Commercial Court judge in Surabaya found that the legal culture developed by the judges of commerce court in the settlement of bankruptcy cases is a culture that is upheld by the judge is "law-abiding judge is not afraid of the law". Thus the public is expected to obey the law wherever and whenever and realize the benefits of obedient law that is creating order for the whole society, this is in accordance with the results of the interview as follows with Mr. Dedy Fardinan S.H, M.H as a judge of Commercial Courts Surabaya:

*Law is a rule aimed at regulating all components of society and providing order from the legal system itself. But of course the judge as a legal component provides an example with having to have a willingness to obey not a scare.*

The efforts of judges in instilling the principle of obedience are not a scare is an attempt to be willing to abide by the legal system without exception and to close all forms of nonconformity with the existing legal system. This principle is built on the awareness that judges are an important legal component so that the consequences of non-compliance with the law will have a major impact on society. In another case, the principle of "law-abiding judges are not afraid of the law" is a legal culture because it has a value that is shared by the judges. Certainly in the implementation of the legal culture has various factors that can affect. This will then be analyzed by researchers in field research results.

The results of field research indicate that there are several factors that can affect the legal culture of Commercial Court judges who influence the settlement of bankruptcy. Interviews conducted with trade court staff indicate that there are some deficiencies in coordination that are deemed to affect bankruptcy settlement. This is the first factor considered to affect the legal culture of Commercial Court in bankruptcy settlement that is coordination between related institutions. The interview with Mr. Wagiyono as a trial judge of Semarang's Commercial Court is described as follows:

*If for the coordination is sometimes still lacking. Given the process of bankruptcy settlement does involve various other related institutions. For example debtors, creditors, prosecutors and institutions such as Bank Indonesia for banks then this is of course an important concern. In fact, sometimes the court lingered. This makes starting from enrollment, the trial goes on until the foreclosure takes a long time.*

The second factor considered to influence the legal culture of the Commercial Courts in the settlement of bankruptcy, among others, is the internal factor of the internal legal culture of another is that the judge in the settlement of the bankruptcy case thinks positivistically. Judges only base on legislation only. The results of interviews with judge Wagiyono as a magistrate in the Commercial Court of Semarang show that basing the settlement of a matter only on existing regulations without considering the possible consequences arising after the Commercial Court settlement. The next will be described in the following interview passage:

"Sometimes it appears that the impression in court settlement in court only based on things that are certain-sure. Yet if one case is examined with another case requires different competencies. Because one case has different characteristics".

The intention of the judge to say "the definite things" is that the judge in settling the case is only based on the provisions contained in the legislation alone. The fact that bankruptcy settlements require in-depth and detailed observations will result in appropriate consideration of justice for the parties. This is supported by the documentation that the existing commercial dispute is "forced" to postulate it relating to matured and collectible debts, and then filed for bankruptcy proceedings. It is shown from 273 cases filed to the Commercial Court from 1998 to 2000, only 131 cases are actually cases based on debt agreement, while others are only associated with the incurrence of an obligation to pay a certain amount of money. This situation has led to conflicting stances among judges, namely between recognizing and not acknowledging a debt, thus affecting the behavior of judges in realizing justice and legal certainty. This further led to the high rate of filing Cassation and Review of the Commercial Court ruling. Of the 273 cases filed to the Commercial Court, 116 were filed by the Cassation, and of those who were dismissed at appeal, 60 were filed a Review. The results of this study indicate that the

existence of legal culture factors that are influenced by the understanding of the provisions and applicable laws and professional integrity.

The third factor is how other legal culture factors that can be incorporated is the moral integrity of judges in applying the law concretely in court in this case its relationship to the profession of Commercial Court judges, when applying the provisions of Bankruptcy act and in applying the proceedings the judge should consider the principles in this Law of Righteousness, here is the judge when examining and breaking the legal subjects of the parties in the case of bankruptcy, the verdict should lead to the existence of a harmonious life among all members of society in general. Here the judge's verdict will be the policy of social interaction, since the judge's verdict is based on its internal and autonomous consent which underlies its decision that its decision is not only for the benefit of the investor and its stakeholders, but also for the benefit of all members of the community, in other words the decision of the judge should avoid conflict of interest, discrimination and uphold honesty. This is based on interviews with the public that show that the judge's decision when the bankruptcy settlement is not fully able to fulfill the sense of justice. This is described based on the results of interviews with Mr. Dedy Fardinan S.H, M.H as a judge of Commercial Courts of Surabaya described as follows:

*If for the public perception of Commercial Court is actually no different from other legal institutions. There is still a fear that legal institutions can not guarantee a sense of justice, primarily the integrity of the judges themselves. If the evidence of course people find it difficult but this is a factor that causes the emergence of negative perceptions of the community.*

The factor of moral integrity is mentioned again based on the results of interviews indicating that the implementation of bankruptcy settlement courts has not reflected the disclosure of judges in the settlement of bankruptcy by the Commercial Court. It may also occur how a Commercial Court judge is subjectively aware that the provisions of the Bankruptcy act if applied in a legitimate manner, the textual decisions shall result in harm not only to the debtor who is still solvally individually, but also to the detriment of his or her stakeholders and all members society, but still applied to concrete events. This is described based on the results of interviews with Mr. Tjiptadi as the debtor described as follows:

*For the integrity of judges it is worth noting once. Suppose I am about time to decide the case. in the law actually has set a certain time limit to decide the case, but judges kok sometimes miss in the time of the verdict. There are also. There is also a complaint for example the Commercial Court that impressed difficult execution of his verdict. Here is another example, in the management and ordering of bankrupt property, it should have been solved through the issuance of Supreme Court Regulation no. 1 of 2000 on Agency Forced Agencies. But the agency forced the body rarely implemented, even almost never against the debtor bankrupt.*

The result of the interview with Mr. Tjiptadi as the debtor shows that there are still many problems, so the integrity of judges in Commercial court is questioned by the public, this is reflected in the case that is beyond the time limit of the decision and the management and ordering of bankrupt property that should be able to use the Agency Forced Agency.

This judgment of judges reflects not only against social social wisdom, but also the manifestation of decisions contrary to the conscience of man, so that such judges can not be declared professional judges and have high moral integrity.<sup>7</sup>

Fourth Factor, regarding the integrity of the judge's profession. This concerns the competence of judges who do not develop in line with the development of the business world today, thus limiting the judges' own judgment in bankruptcy settlement. The results of interviews with Mrs. Rohana as the debtor of one company gives the following description:

*The judge's ability to understand current business developments should be able to follow. If not then the judge's understanding is limited so that the judge's decision can not fulfill the sense of justice. I observed that there was a lack of clarity in incorporating regulations so that the application of one case to another was different.*

This issue also concerns bankruptcy rulings that justify conditions such as (1) does not cover social issues (2) does not understand the details of the problem causing inaccuracies in translating concepts and policies when incorporating into rules will lead to high inconsistencies between and (3) failure to consider local conditions as a consequence of adoption and acceptance of recommendations from foreign experts.<sup>8</sup>

The Fifth Factor, an external review shows that the legal structure of bankruptcy settlement itself has not yet covered the issues and developments of the business world today. The lack of legal structure in this bankruptcy settlement has caused legal certainty in the implementation of the provisions on the detention of insolvent debtors in the UUK and PKPU is still lacking, as there is often no legal certainty in its application due to the many provisions that give rise to legal loopholes, such as the duration of detention, are subjective in carrying out the detention of a bankrupt debtor.

Especially in the weakness of the law in bankruptcy can be seen from the development that is not able to follow the development of the business world today. The minimum requirement of creditors as a bankruptcy applicant is mentioned in an interview with Mr. Wagiyono as a Commercial Court judge in Semarang that one of the weaknesses of the bankruptcy legal system is the minimum requirement of creditors does not guarantee the bankruptcy proceedings that should be for the benefit of all creditors.

*There are still many weaknesses that can be found from the legal system of bankruptcy, thus opening the possibility for the entry of the voice that builds for the advancement of our current legal system. Among them is the minimum number of creditors who in practice can arise problems when other creditors who are not the applicant bankrupt and the bill is due or not yet due does not intend to take legal action (bankrupt the debtor). As a result, other creditors were forced to register as creditor*

It is stipulated in Article 2 paragraph (1) of the Bankruptcy Act that bankruptcy can be filed if it meets two conditions: the debtor has two or more creditors and the debtor does not pay at least one debt that has been due and can be collected. In fact, the practice of this article has not fully guaranteed the interests of creditors, since the minimum number of creditors in practice may arise when other non-bankrupt creditors and their bills are due or not due does not intend to take legal action (bankrupt the debtor). Therefore it should be amended by adding the minimum requirement of the number of creditors as the bankrupt requester must be added. The terms of the debtor may be bankrupt must also meet evidence that a minimum of 75 percent of creditors have debts and are due, plus not paid. Debtors are also burdened to prove that a minimum of 75 percent of creditors have past due receivables.

Similarly, the weakness of bankruptcy Act in the very short period of PKPU. The basic idea of PKPU is to provide an opportunity for the debtor to reorganize or rearrange its business. The rearrangement of the business takes a lot of time. This is in accordance with the interview with Mr. Wagiyono as a trial judge of Semarang

*A fact is the time given by the Bankruptcy Act for only 45 days. This 45-day time is considered difficult to solve peace proposals, lobbying, and business reorganization. He suspects the entry time limit of 45 days is based on a favorable motive creditors.*

Thus the legal culture constructs of Commercial Court judges when handling bankruptcy cases composed of these factors provide findings that are (1) lack of coordination (2) judge views in the settlement of bankruptcy cases in the grounds on positivistic. Thus the judge is based solely on legislation alone (3) the moral integrity of judges in applying the law concretely in court (4) the competence of judges that does not develop in line with the development of the present business world so as to limit the judges' own judgment in bankruptcy settlement. Other findings in this study also indicate that there are other factors that consider the judges of commerce in settling bankruptcy cases in Indonesia. Another factor is the legal structure of bankruptcy settlement itself.

This finding also directs that the factors of legal culture emerging not only arise from the thinking of judges but also formed by the influence of the legal component. This emphasizes that legal culture can affect how the legal system is formed and at the same time running. Where legal culture moves through legal components and has a fairly close level of dependence. The components in question are substantive law, procedural law, decision rule and decision habits. In other ways these four components depart from the values and norms of society. These four components as part of the legal system are greatly influenced both in their formation and in their implementation by the culture of the law, therefore, in concept, the legal system can not be separated from the legal culture.

## **2. The Influence of Legal Culture in Society**

The influence of legal culture in society departs from the awareness that culture departs from the values, ethics and attitudes that arise from society. Thus a good legal culture will not rule out the role of society in shaping a good legal culture alongside the judicial system itself. In another case the other consciousness is how the law itself has a reciprocal relationship with its people. When the structure of society can become an obstacle as well as a social means to enable the law to be applied with the best. This is why legal culture can not be separated from society.<sup>9</sup>

The results of the interview with Mr. Dedy Fardinan S.H, M.H as a Commercial Court judge in Surabaya Commercial Court showed that public participation is very influential in the enforcement of Bankruptcy act. Among them is about the public understanding of the company's health assessment when the creditor will provide an investment, the conditions under which the bankruptcy has taken place, the mechanism of submission. Subsequent interviews are outlined as follows:

*If an important role to enforce Bankruptcy act is actually not only from the role of government agency but also from the role of the public starting from when it concerns the health assessment of the company when the*

*creditor will provide the investment, the conditions under which the bankruptcy has taken place, the submission mechanism. This is important because the law is not repressive but also preventive. So the losses for the community as far as possible are also minimized because although there is resturkturisasi process but can not cover the losses of creditors.*

Therefore, to create a society that has a high awareness and legal culture in order to realize the state of law and the creation of a just and democratic society life, it is necessary to create a grand design (strategy) of developing a legal culture as a reference for raising awareness of the law of the community to know and aware of their rights and responsibilities, and able to behave in accordance with the law.

If applied then many things need to be studied about the role of society in improving the culture of Bankruptcy act. First is the public awareness of the importance and understanding of what are all aspects that underlie creditor debtors' trust and agreement. Belief in the basis of the company's financial history and the conformity of information submitted by the company (negating information asymmetry).<sup>10</sup> Meanwhile the basis of the creditor debtors' agreement should begin with trust but does not rule out a logical calculation of the risks that a creditor has. Requires caution and caution from investors because in understanding the agreement.

Meanwhile, an agreement between the creditor and the debtor resulted in an engagement which one of them required the debtor to return his debt as an achievement to be made. In the event of a breach of default, creditors may engage in legal measures, such as through peace, alternative dispute resolution, postponement of debt obligations, and bankruptcy. Civil law recognizes 3 (three) forms of default, namely:

1. The debtor does not fulfill the achievement at all;
2. The debtor is late in achievement;
3. Outstanding debtors are not as they should be.

Then the public is also able to understand the phenomenon in which the implementation of payment of corporate tax debt in the case of bankruptcy is not optimal. This is because the funds or money from the sale of company assets to pay debts / debts of bankruptcy taxes are less, even the proceeds of the sale of assets of some bankrupt companies have been exhausted so as to pay tax debt is not available, in addition, in fact separatist creditor usually first seize all assets companies because all the assets are burdened by mortgage rights (debt guarantees). Secondly, the emergence of various factors that hinder the implementation of corporate tax debt payment in case of bankruptcy is the substance of the law, inter-party coordination, lack of transparency and accountability, and weak supervision.<sup>11</sup>

Based on the results of interviews with judges indicating that most of the people who filed a sharpness have not been aware of the long process that must be taken during the trial. Sometimes the case submissions are not comparable between the time, effort and expenses that people have incurred with the amount of corporate wealth that is bankrupt. This can sometimes be avoided by the process that can be done before filing a case of bankruptcy that is mediation. In fact, people often rarely know and on the advice of legal counselors to file a bankruptcy case to court without knowing the consequences.

This is why the public should raise awareness to recognize and realize what an investment, consideration steps, binding in the agreement, legal consequences that accompany the engagement in the agreement, legal steps if the debtor breaches and the legal process that must be passed while passing the litigation, thus the legal culture factor can move as a "motor justice" as well as Friedman's statement that serves to bridge the legal system with the attitude of society.<sup>12</sup> This includes non-formal legal systems as additional or substitute for non-formal legal oversight

In other respects, the legal culture in society affects how the value of society changes the legal system itself. Each of these societal values has similarities and differences that ultimately existing equations should be utilized to be able to construct a legal unification, but the differences that should not be underestimated, since it is not often the basis of the system or sub-system community concerned. Therefore, in drafting legislation, legal awareness and improvement of legal culture should have a proportional place. This is necessary, given that many laws and regulations in Indonesia are composed solely on the basis of normative thought and less based on their spouses, namely empirical thinking or values that live and thrive in society.<sup>13</sup>

Interviews indicate that there is still a lack of public confidence in the bankruptcy settlement process in Commercial Courts. Because it is almost certain that the parties that are bankrupted will appeal to the appeal or retrieve. This fact adds to the length of judicial proceedings in bankruptcy cases, so that the impression of the appeal process is only the evasion of the debtor who is bankrupted.

A creditor who has been denied an application for bankruptcy may also file an appeal and a review. Although the submission of appeal and review is the right of the debtor or creditor, but if all bankruptcy cases are filed to the level of review, then the impression of rambling impressed true. Fourth, although there has been no research on this matter, it is estimated that the rate of recovery rate or debt repayment by the debtor through the bankruptcy mechanism is very low value, which is estimated to only range from 10-20%. A more complete description of interviews with Mrs. Rohana as one of the debtor will be described as follows:

*It is possible to apply for a very high appeal as well as the low ability of Commercial Court settlement to provide a mechanism whereby debt repayment by debtors causes public trust is very low. This is seen from the decline of cases handled by Commercial Courts. Some people decide to settle out of court with mediation. Tokh however the creditor's wish just a refund is not a deadly company. It is just as bankrupt as to make the lender lose more than the out-of-court settlement.*

The result of the investigation of the legal effect of Commercial Court law in bankruptcy settlement of the legal system shows that there are several factors affecting the culture of the law itself. Among them are (1) lack of coordination between institutions. This lack of coordination was concluded that in order to handle bankruptcy cases requires cooperation with various institutions and related parties. Let's say (2) internal factors of judicial legal culture that still adheres positivistic. This view leads to how the legal culture based on the positivistic view leads the judge to only consider the court's decision only in the laws and regulations. Furthermore, the judge does not base the settlement of a matter on the consequences that may arise after the settlement of the Commercial Court. This leads to the emergence of practices such as judge decisions that are only due to debt-related maturities and can be billed, and then filed for bankruptcy processes (3) moral integrity of judges containing disclosure, avoiding conflicts of interest, discrimination and upholding honesty. (4) the integrity of the judge's profession (5) the legal structure of the bankruptcy settlement itself does not yet cover the issues and developments of the business world today.

This finding is in line with Kusumastuti's research which discusses aspects of legal culture among legal institutions. Thus these findings reinforce that the legal aspects studied in Kusumastuti and research researchers aligned.<sup>14</sup>The results of research on the legal aspects can still be developed in other legal institutions in addition to the study of how the components of legal culture in Indonesia are composed. Thus, furthermore, it can be developed a study on the comparison of legal culture components in Indonesia with legal culture abroad so as to know the specificity of the relationship formed between the legal system and the society in Indonesia itself.

The findings of this study also support the overall good influence of the legal culture of Commercial Courts in the bankruptcy settlement of the legal system and the society indicates that legal culture is the embodiment of values (which contain the supposed field) in fact, which is reflected in both human and regulatory behavior. The legal culture becomes the bridge between the value system promoted by the law product will be appropriate (because it is a manifestation) with the consciousness value (value consciousness) owned by the community.<sup>15</sup>This means that the legal culture with the community becomes a reciprocal relationship. Overall legal culture in the bankruptcy legal system forms the legal value both procedural and substansif. In more detail Daniel elaborates that the characteristics of society will affect the system and vice versa the legal system in accordance with the characteristics of society tend to get strong support from the community.<sup>16</sup>This emphasizes that the ideal law is a law that is a direct product of the culture of the society concerned so that the value system promoted by the law product will be appropriate (because it is a manifestation) with the consciousness of value (value consciousness) owned by society.<sup>15</sup>Therefore, a rule of law can not be applied properly if it is not adapted to the existing legal culture in society

Thus the rule of law is a blend of values that must be realized and the fact that should not violate those values. The value contained in the law is justice. In his view, the pursuit of justice must be manifested in real rules. Similarly in Bankruptcy act, legal culture has a very close influence in shaping the legal system as well as affecting it in society. Based on the side of the legal system it can be examined that legal culture moves through legal components and has a fairly close level of dependency. Legal culture forms good substantive components of law, procedural law, decision rule and decision habits. Where the four components are departing from the values and norms of society. Not only to shape but also in its implementation is also greatly influenced by the culture of law, the dynamic relationship between the legal culture and the legal system emphasizes how the legal system can not be separated from the legal culture.

Meanwhile, in terms of the relationship of the legal system to the community can be reviewed how the characteristics of society will affect the legal system and vice versa legal system in accordance with the characteristics of society tend to get strong support from the community. A rule of law can not be applied properly if it is not adapted to the existing legal culture in society. The findings indicate that public perceptions of the process in Commercial Court and the understanding of the Bankruptcy Act become influential factors.

### **Implementation of Priority Components of Legal Culture By Commercial Court Judges In Settlement of Bankruptcy Cases in Indonesia**

The analysis of aspects of legal culture aims to know how the judges 'judges' judgment of legal aspects of culture itself in settling bankruptcy cases in Indonesia. Thus, this analysis can be used to find out which priority aspects of legal culture are most discussed when Commercial Court judges settle bankruptcy cases in Indonesia. In general, the results of the study indicate that there are differences in which aspects are most considered between the judges of the courts in Surabaya and Semarang. Based on the analysis in sub-chapter A,

the criteria that will be judged from the opinion of Commercial Court Judges on the priority order of legal culture component consisting of:

*1. Internal Factors*

- a. Commitment to law enforcement
- b. Understanding of law enforcement will be applicable
- c. avoid discrimination
- d. avoid conflict of interest
- e. honesty
- f. openness
- g. consistency
- h. Professional integrity

The result of the analysis is a combination of 3 (three) representative sources from each Commercial Court namely Surabaya Commercial Court, Semarang Commercial Court and Jakarta Commercial Court. Based on the interview result, the internal Legal Component Factor Component factor that becomes the main consideration is internal factor. In detail the order of priorities of legal culture considerations are as follows:

1) Commercial Court of Surabaya

The judges at the Commercial Court of Surabaya view that the sequence of priority aspect implementation starts from three important priorities: consistency, openness, and avoid conflict of interest. For a description of prioritizing priority components of the internal legal culture component will be described as follows:

- a) Consistency
- b) Openness
- c) avoid conflict of interest
- d) avoid discrimination
- e) Professional Integrity
- f) Honesty
- g) Understanding of law enforcement on applicable regulations
- h) Commitment of law enforcement

2) Commercial Court of Semarang

Judges in the Commercial Court of Semarang view three important priorities starting from the aspect of law enforcement commitments, law enforcement understanding of applicable provisions and avoiding discrimination. Overall, the overall component of the internal legal culture has the same priority to be able to run jointly;

- a) Commitment of law enforcement
- b) Understanding of law enforcement on applicable provisions
- c) avoid discrimination
- d) avoid conflict of interest
- e) honesty
- f) openness
- g) consistency
- h) Professional integrity

The above analysis results are supported by interviews with some Commercial Court judges. In the interviews of the judges of Semarang's Commercial Court show that commitment is the first aspect to be considered. According to the trial judges of Semarang, the commitment aspect becomes a basis for the judges to be able to make the decision as fair as possible by considering all aspects of the law. This is in accordance with the interview with Mr. Wagiyono as a trial judge of Semarang as follows:

*Commitment is the first thing that should be considered for the judge because with a commitment then what is the basis for the settlement of bankruptcy cases can be upheld by the judges. The first consideration is the commitment that we judges will render judgments fairly to all parties by basing on all aspects of Bankruptcy act*

This is different from the Surabaya Commercial Court judges who consider consistency in the consideration of the settlement of bankruptcy cases. Consistency in question is to consider cases as equitable in law. Consequently, the consideration of a condition where the company is considered bankrupt is that if two or more creditors and does not pay at least one debt that has been matured and may be collected, declared bankrupt by the decision of the competent Court as referred to in Article 2, either on its own request, or more of its creditors are still considered bankrupt despite special conditions. Where the specific conditions in question is the company's assets are actually able to close the debt or in other conditions the company is still considered to have solvansi. The process of collapse of bankruptcy verdict is certainly beyond the actual consideration period can be utilized by the company to immediately pay for the forest but sometimes there are companies that do not

carry out debt payments. This is described based on the results of interviews with Mr. Dedy Fardinan S.H, M.H as a judge of Commercial Courts of Surabaya described as follows:

Consistency is an important consideration given that the settlement of bankruptcy cases *between* one another has different conditions. In fact, companies often do go bankrupt where they can not afford to pay debts when they mature but in fact they have good assets and solvency. Then, when the decision process falls, the long time can be used to pay the debt but the company does not do. So we can not keep dropping the bankruptcy decision. This is our consistency of putting the legal principle in particular the law underlying the bankruptcy above all else.

It was added in the interview that the Surabaya Commercial Court judge then considered the integrity and professional aspects. Consideration of integrity and professional aspects becomes important to ensure the independence and objectivity of judges when solving bankruptcy cases. This is described based on the results of interviews with Mr. Dedy Fardinan S.H, M.H as a judge of Commercial Courts of Surabaya described as follows:

*For us the judges are the primary consideration of bankruptcy settlement of course the integrity and professionalism that the judges must uphold. So it becomes a dead price for us. Integrity and professionalism is yes if we the judges already have a code of ethics should be upheld. If talk of integrity must be built from the selection until the period of service continues. The building is not separate from the various training we have been going through*

The results of other interviews indicate that judges recognize that integrity and professionalism are two elements that are contained in the notion of a good judge, not an element of birth, but elements derived from recruitment, selection and training as well. According to the interviews that these two aspects have mutual influence where the improvement of professionalism (various exercises as well as improvement of other competencies) has an influence on the aspect of integrity. Judge has integrity, by itself he has the potential, the ability that will eventually bear the authority and honesty as a profession, the judge's office has a code of ethics that should be the basis of the behavior / profession of judges. The code of ethics is made by themselves with the intent to conduct coaching and character formation and to supervise the behavior of judges. Thus, if the character has been formed and the judge's behavior based on the benchmark, it is expected to foster public trust in the judiciary.

In connection with the increased professionalism and integrity of the judges, various trainings are carried out regularly. It aims to increase the level of professionalism and will affect the integrity of the Commercial Court judges. The procurement of this training is actually very important to build capacity in dealing with bankruptcy cases that are increasingly evolving along with the increasingly conflict of industrial relations that exist today. This is in accordance with the results of interviews with the father Dedy Fardinan S.H, M.H as a judge of Commercial Courts of Surabaya described as follows:

If training is conducted to improve the professionalism of judges but the fact is that *due* to the lack of number of judges it is necessary to consider not only to increase professionalism but the number of existing Commercial Court judges. Thus the professionalism of judges is not only about the ability to resolve a bankruptcy conflict but also concerning the proportion of the amount. If this is not done then it is just useless

The results of the application of aspects of legal culture by Commercial Court judges in the settlement of bankruptcy cases in Indonesia indicate that there are different priorities in the implementation of aspects of legal culture by Commercial Court judges. This is indicated by the different considerations between Commercial Court judges when resolving bankruptcy cases. Where the judges of Surabaya Commercial Court and the judges of Semarang Commercial Court consider both the debtor's request and the creditor's request have the same priority to be resolved while the judge of the Jakarta District Court considers that the debtor's request has a priority scale greater than the creditor's request.

### 3) Commercial Court of Jakarta

The judges at the Jakarta Commercial Court agreed on the three most important priorities of consistency, openness and openness. For the next component of internal legal culture of Jakarta Commercial Court judges will be described as follows:

- a) Consistency
- b) Openness
- c) avoid discrimination
- d) Professional Integrity
- e) Commitment of law enforcement
- f) avoid conflict of interest
- g) Understanding of law enforcement on applicable regulations

h) Honesty

## 2. External Factors

The result of the analysis is a combination of 3 (three) representative sources from each Commercial Court namely Surabaya Commercial Court, Semarang Commercial Court and Jakarta Commercial Court. Based on the results of interviews, then set the component of the external legal culture factors into the main consideration. In detail the order of priorities of legal culture considerations are as follows:

### a. Commercial Court of Surabaya

As for the sequence of external cultural priority components in accordance with the rating made by Surabaya Commercial Court judges indicates that there is a similar position between the debtor's application and the creditor's application. Therefore, there is no difference in the rating made by the Surabaya Commercial Court judge to the debtor's application and the creditor's application.

Added in the results of interviews with Judge Sigit Sutriyono S.H, M.H as a judge of the Commercial Court of Surabaya that the debtor and creditor appeals have the same position in the judges' consideration when settling the case of bankruptcy. The result of the interview with Judge Sigit Sutriyono S.H, M.H as a judge of Commercial Court of Surabaya is described as follows:

For consideration of the application of the debtor and the creditor does not have a difference because in judge's judgment yes sebenarnya trying to be fair. This means that the debtor *and* the creditor are trying to be completely fulfilled in the principle of justice. Yes everything is considered both potential and prospects so it does not seem to turn off the business but support the current economic development

Thus the application of the debtor and creditor applicant has the same position in the case of bankruptcy settlement is expected to fulfill the principle of justice in the sense of paying attention to the interests of the company as a debtor or creditor interests in a balanced manner. The potential and prospects of the debtor's business should be well taken into account. Also the debtor still has potential and prospects, so it is the buds that can still develop. Should still be given the opportunity to live and grow. Therefore the collapse of bankruptcy is *ultimum remedium*.<sup>17</sup>

### b. Commercial Court of Semarang

In order of priority components of the external culture in accordance with the rating made by the Commercial Court judges of Semarang apparently have the same rating performed by Surabaya Commercial Court judges. The result of the ranking of the external cultural priority component by the Commercial Court judges of Semarang shows that there is a similar position between the debtor's application and the creditor's application. Therefore, there is no difference in the rating made by the Commercial Court judges of Semarang on the application of the debtor and the creditor's application.

The result of similarity of external culture priority ranking by Semarang court judge is confirmed by interview with Mr. Suryadi as a trial judge of Semarang's Commercial Court. The results of interviews are described as follows:

*For what is considered between the applicant of the debtor and the creditor if for the judge is actually the same. We should certainly consider whether proposed by the debtor and the creditor so that the decision we take does not harm either party*

Thus the results of the above interviews indicate that the results of similarity ranking of external cultural priority components by the Commercial Courts of Semarang on the request of the debtor and creditor is one indicator of the efforts made by the judge against the principles of bankruptcy are met. Where the principles of bankruptcy are among others (1) the principle of Equilibrium in which this Law regulates some provisions which are the embodiment of the balance principle, on the one hand, there are provisions that can prevent the abuse of institutions and institutions of bankruptcy by dishonest Debtors, on the other hand, there are provisions that may prevent abuse of institutions and institutions of bankruptcy by creditors who are not in good faith. (2) Principle of Business Continuity in this Act, there is a provision that allows the prospective Debtor company to continue. (3) Principle of Justice where in bankruptcy of justice principle implies that the provisions concerning bankruptcy can fulfill the sense of justice for the parties concerned. The principle of justice is to prevent the arbitrariness of the collectors who seek payment of their respective bills against the Debtor, with no regard to other creditors. (4) Principles of Integration which implies that the formal legal system and its material law constitute a unified whole of the civil law system and the law of a national civil event.

### c. Jakarta Commercial Court

For the sequence of external cultural priority components in accordance with the rating performed by Jakarta Commercial Court judges indicates that there is a position inequality between the debtor's application and the creditor's request. Where the application of the debtor has a priority scale greater than the creditors'

request. Thus there is a difference in the ranking made by the Jakarta Commercial Court judges against the debtor's application and the creditor's application.

To add the result of the sequence of the external cultural priority component in accordance with the rankings conducted by the Jakarta Commercial Court judges then based on the interview with Mr. Hariyadi Utomo as a Jakarta Commercial Court judge described as follows:

*For actual debtor and creditor applications that are more considered are such conditions to maintain a balance between the interests of the debtor and the creditor. Thus in the exercise of a judge of the Court may require that the creditor provide a reasonable amount of guarantees if such safeguards are granted. In establishing the requirements for such guarantees, the Court must, among other things, consider whether there is a guarantee of the overall wealth of the debtor, the type of debtor's wealth and the amount of collateral to be provided against the likelihood of loss suffered by the debtor if the applicant of the bankruptcy declaration is rejected by the Court.*

The results of the above interviews show that the Jakarta Commercial Court judges in considering the debtor's and creditor's request is more viewed is the practice. Where In establishing the requirements of such guarantees, the Court shall, among other things, consider the presence or absence of collateral for the overall wealth of the debtor, the type of debtor wealth and the amount of collateral to be provided against the likelihood of loss suffered by the debtor if the applicant of the bankruptcy declaration is rejected by the Court.

The result is for the external factors of the three Commercial Courts, the order is

- a. Debtor's Application
- b. Creditor's Application

Overall, for internal and external factor, there is a similarity of judges rating in Commercial Courts of Semarang, Surabaya and Jakarta. Where the main consideration by Semarang, Surabaya and Jakarta Commercial Court judges are internal factors. Thus the results of the analysis as a whole there is a ranking between cultural components that are more considering internal and external law in the settlement of bankruptcy cases.

#### **IV. CONCLUSION**

The results of the analysis show that the legal culture factors influencing the implementation of the Bankruptcy act in Indonesia are:

- a. lack of coordination between related institutions
- b. internal factors of judicial legal culture that still adheres positivistic so that the judge only based their judgment only on legislation.
- c. the moral integrity of judges containing disclosure, avoiding conflicts of interest, discrimination and upholding honesty.
- d. the integrity of the judge's profession
- e. the legal structure of bankruptcy settlement itself does not yet cover the issues and developments of the business world today.

Implementation of priority aspects of legal culture by Commercial Court judges in the implementation of Bankruptcy act in Indonesia indicates that there are different priority aspects of internal law between Commercial Court judges namely (1) judges in Surabaya Commercial Court starting from three important priorities namely consistency, openness, and avoiding conflicts of interest. (2) Judges in the Commercial Court of Semarang view three important priorities starting from the aspect of law enforcement commitments, law enforcement understanding of prevailing regulations and avoiding discrimination. (3) The Jakarta Commercial Court has agreed on the three most important priorities of consistency, openness and openness. (4) the overall priority order of the legal culture component Judges at Surabaya Commercial Court, Semarang and Jakarta can be summarized as: Consistency, Openness, avoid discrimination, avoid conflict of interest, Professional Integrity, Law enforcement Commitment, apply and Honesty.

Furthermore, for consideration of external factors there are also differences that are external legal culture components (1) Surabaya Commercial Court and Semarang Commercial Court view both the request of the debtor and the creditor's request has the same priority to be resolved immediately. (2) in the case of considering the request of the debtor and the creditor, the Jakarta Commercial Court Judge considers that the debtor's request has a greater priority scale than the creditor's request that legal culture interacts between the legal system and the public. (3) For external component rating by Surabaya, Semarang and Jakarta Commercial Court judge indicate that the main consideration in component of legal culture which greatly influence the decision of commercial judge to bankruptcy case is debtor's request.

Overall there are differences in ranking between the internal and external legal culture components. Where the main consideration by Semarang, Surabaya and Jakarta Commercial Court judges are internal factors

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