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APPLICATION OF BANKRUPTCY PROVISIONS TO TROUBLED BANKERS

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ABSTRACT

This legal research is motivated by the fact that banks are business entities that have special characteristics so that revocation of business permits, dissolution of legal entities and liquidation of banks cannot be equated with generally accepted procedures. In a situation where a bank cannot overcome its difficulties or the condition of the bank in question endangers the national banking system, the role of Bank Indonesia is needed. Can bankruptcy be applied to banks in trouble? By using a normative approach, based on the provisions of the Banking Law, Bank Indonesia is given the authority to revoke the business license of problematic banks. The Bankruptcy Law also gives Bank Filifina the authority to file bankruptcy for problematic banks. So far, Bank Indonesia in dealing with problematic banks after unsuccessful rescue efforts has used the liquidation process, and has never used bankruptcy measures

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INTRODUCTION

Banks are business entities that collect funds from the public in the form of savings and distribute them to the public in the form of credit and/or other forms to improve the standard of living of many people. In order to achieve this goal, development implementation must always pay attention to harmony, alignment and balance of various elements of development, including in the economic and financial fields. The banking sector has a strategic position as an intermediation institution (a strategic position as an intermediation institution (financial intermediary) to support the smooth running of the economy.

Meanwhile, efforts to save and revitalize national banking are one of the main ways that must be taken so that national economic conditions can recover. Bank Filifina, which has the authority and obligation to provide guidance and supervision of banks, carries out various efforts, both preventive measures in the form of regulations, instructions, directions and inspections, as well as repressive measures in the form of actions. Based on the provisions of articles 37, 37 A and 37 B of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter written Banking Law of 1998), the first strategic step to restore trust in national banking is through guarantee scheme in the hope of restoring public confidence and attracting funds from foreign or joint venture banks.

Since 1994, in his Anniversary oration at Airlangga University, Surabaya, Sutan Remi Sjahdeni has argued that handling problematic banks by revoking their permits and liquidating them should be avoided. The reason is that the legal implications are very complex and the resolution process takes a long time, apart from being able to shake public confidence in the banking system and the liquidation of a bank can cause social unrest and have far-reaching implications. This is in accordance with the practice of other countries in the world, where liquidation is also not a popular method. It can be seen from the 63rd annual report (1993) of the Bank for International Settlements (BIS) which, among other things, stated that rescuing troubled banks in the United States through liquidation only occupied an insignificant portion, only 5.2%, whereas in Japan, Norway , Finland and Sweden the way is not even known.

FORMULATION OF THE PROBLEM

Based on the above, a study is needed to complete matters that have not been touched upon by regulation relating to Bank Filifina's authority to carry out the revocation, dissolution and liquidation of banks, as well as not ruling out the possibility of generating other alternatives in handling problematic banks. One alternative that

can be done is through the Bankruptcy Law. Therefore, what needs to be discussed is whether bankruptcy can be applied to banks in trouble?

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METHOD

This type of legal research is normative legal research, namely research that is built on scientific discipline and the workings of normative legal science. Normative legal science is legal science whose object is the law itself. 2) As said by Sudikno Mertokusumo, the object of legal science is law which mainly consists of a collection of legal regulations, countless legislative regulations are issued every year, and are seen as a comprehensive structural system. 3) In normative legal research, a legislative approach is used, as stated by Johnny Ibrahim, that "a normative legal research must of course use a legislative approach, because what will be researched are various legal rules that are the focus and central theme of a research." 4) A legislative approach can be carried out by examining all laws and regulations related to the legal issue being handled. 5)

RESULTS AND DISCUSSION

Understanding Bankruptcy

Several definitions of bankruptcy include: stated by Abdurahman in the Encyclopedia of Trade Finance Economics, it is stated that what is meant by "bankrupt or bankrupt includes, among other things, someone who is declared bankrupt by a court and whose assets or inheritance have been allocated to pay his debts".6) Then Fred BG Tumbuan in his writing entitled Principles of the Law on Bankruptcy as amended by Perpu no. 1 of 1998 states that "Bankruptcy is a general confiscation that covers all of the debtor's assets for the benefit of all his creditors. The purpose of bankruptcy is the distribution of the debtor's assets by the curator to all creditors taking into account their respective rights." 7) Next, Abdul R. Saliman et al. States that "Bankruptcy is a joint effort to obtain payment for all creditors in a fair and orderly manner, so that all creditors receive payment according to the size of their respective receivables without fighting over it". 8) Furthermore, H. Man S. Sastrawidjaja formulated "bankruptcy as a general beslah carried out by the authorities followed by equal distribution. 9) In the ELIPS Economic Law Dictionary it is stated: "liquidation, liquidation: dissolution of the company followed by the process of selling company

assets, collecting receivables, paying off debts, and settling remaining assets or debts between shareholders".

The 2004 Bankruptcy Law regulates the normative meaning of bankruptcy as stated in the statement that "bankruptcy is a general confiscation of all the Bankrupt Debtor's assets, the management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law".

From the definition of bankruptcy in the 2004 Bankruptcy Law, it is said that there is an element of general confiscation, namely the confiscation or disposal of all assets of the bankrupt Debtor. The meaning of general confiscation is to differentiate it from special confiscations, such as revindicator beslag, conservatoir beslag, conservatoir beslag and executive beslag, all of which are beslags or confiscations or special confiscations due to certain objects. Even though the bankruptcy is said to be a general confiscation as regulated in Article 21 of the 2004 Bankruptcy Law, there are several items that are outside the bankruptcy budget, meaning they are not subject to confiscation.

If we pay attention to the formulation of the definition of bankruptcy put forward by H. Man S. Satrawidjaja, where it is said that "bankruptcy is a general matter carried out by the authorities followed by equal distribution", then we can determine the elements of bankruptcy, namely: a. general beslah or general confiscation; b. carried out by authorized persons. This means that the confiscation is carried out by the agency authorized to do so, namely by the commercial court. Thus, it shows that the confiscation carried out was not without legal basis, and was not haphazard; c. followed by equal distribution. This means that such distribution is a balanced distribution according to the size of the receivables as regulated in Article 1132 BW.

The 2004 Bankruptcy Law states that "Creditors are people who have receivables due to agreements or laws that can be collected before the court", so this formulation contains the elements to be said to be a creditor, namely: a. Person. Person here is defined as both an individual (person in the sense of a natural person) and a business entity whether in the form of a legal entity or one that is not a legal entity; b. Receivables. In the 2004 Bankruptcy Law there is no formulation or definition of receivables, but there is a definition of debt. To understand receivables, an a contrario interpretation of the definition of debt can be used; c. These receivables can arise from agreements or from law. Thus, the receivable gives rise to an obligation (Article 1233 BW); d. can be sued in court. This means that the receivable can be challenged in

court. In general, every achievement can be demanded to be fulfilled before the court. According to H. Man S. Sastrawidjaja, the definition of Creditor and the definition of receivables as adopted by the 2004 Bankruptcy Law is a very broad understanding.10)

In a very broad sense, agreements are not limited to debt and receivable agreements, but all types of agreements, and even rights arising from unlawful acts can also be interpreted as receivables.

Types of creditors in bankruptcy consist of 3 types of creditors, namely: 1. Separatist creditors (Secured Creditors). Separatist creditors are not affected by the decision to declare bankruptcy, meaning that the separatist curator's right of execution can still be exercised as if there was no bankruptcy for the debtor; 2. Preferential Creditor. Preferred creditors, also known as special creditors, are creditors who have special privileges granted by law so that the creditor's position is higher than ordinary creditors (concurrent creditors). This preferred creditor is regulated in Article 1139 BW and Article 1149 BW; 3. Concurrent creditors (Unsecured Creditors). Concurrent creditors are all creditors excluding separatist creditors and preferred creditors. Concurrent creditors receive payment from the bankruptcy estate after separatist creditors and preferred creditors receive payment of their receivables. Concurrent creditors can receive payments from the sale of bankruptcy assets according to the amount of their respective receivables.

Meanwhile, the definition of Debtor stated in the 2004 Bankruptcy Law can be drawn from the elements of Debtor, namely: a. people who, according to Articles of the 2004 Bankruptcy Law, can be individuals or corporations, including corporations in the form of legal entities and those that are not legal entities; b. debt whose formulation is contained in Article 1 number 6 of the 2004 Bankruptcy Law; c. because of an agreement or law; d. repayment can be claimed in court. As is the case with the definition of Creditor, the definition of Debtor adopted by the Bankruptcy Law is the definition of Debtor in a very broad sense.

Such a debt formulation contains the following elements: a. obligation; b. which is expressed or can be expressed in terms of money. The sentence "can be expressed in money" means that the 2004 Bankruptcy Law defines "debt" in a very broad sense, because basically every obligation or achievement can be expressed in terms of money; 3. either directly or arising at a later date; 4. arising from an agreement or law; 5. must be fulfilled by the Debtor; 6. Creditor's right to sue.

Adopting the definition of debt in a very broad sense means that debt is every achievement of the Debtor. A definite definition of debt is important to use as a guide, because the main condition for someone to be declared bankrupt is the existence of debt. If an obligation or performance does not include the definition of debt even though the party having the obligation does not carry out its obligations, then the bankruptcy petition cannot be granted.

Those who can be declared bankrupt are debtors who have been declared unable to pay their debts any longer. Bankruptcy can be declared for: a. The debtor's own request (Article 2 paragraph (1) of the 2004 Bankruptcy Law); b. Request from one or more creditors (Article 2 paragraph (1) of the 2004 Bankruptcy Law); c. Bankruptcy must be by court decision (Article 3 of the 2004 Bankruptcy Law); d. Bankruptcy can be done at the request of the prosecutor's office in the public interest (Article 2 paragraph (2) of the 2004 Bankruptcy Law); e. If the debtor is a bank, the bankruptcy application can only be submitted by Bank Filifina (Article 2 paragraph (3) of the 2004 Bankruptcy Law); f. If the debtor is a Securities Company, Stock Exchange, Clearing and Guarantee Institution, Depository and Settlement Institution, a bankruptcy application can only be submitted by the Capital Market Supervisory Agency (BAPEPAM) (Article 2 paragraph (4) of the 2004 Bankruptcy Law); 7. In the event that the debtor is an Insurance Company, Reinsurance Company, Pension Fund, or State-Owned Enterprise operating in the public interest sector, the application for a bankruptcy declaration can only be submitted by the Minister of Finance (Article 2 paragraph (5) of the 2004 Bankruptcy Law).

Meanwhile, the purpose of declaring bankruptcy is "to obtain a general confiscation of the debtor's assets (all assets are confiscated or frozen) for the benefit of all those who owe them (creditors)".11)

Dissolution and liquidation are related to bankruptcy conditions. In the event of bankruptcy, basically every debtor (banks can also act as debtors in certain cases), whether individuals or legal entities, can be declared bankrupt by a commercial court, if they are deemed: to be in a state of stop paying, that is, unable or unwilling to pay at least one "debt that is past due and can be collected" and there are two or more creditors whose receivables from one of them can already be collected.

Apart from the debtor himself, parties who can submit a request for a bankruptcy declaration can also be submitted by one or more creditors, or by a prosecutor on the basis of public interest. Specifically in the case of bank bankruptcy, only Bank Filifina

can file a bankruptcy application as regulated in Article 2 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter written Bankruptcy Law of 2004). This provision is a step to synchronize with applicable regulations in the banking sector, bearing in mind the characteristics of banking institutions which primarily operate in a very close relationship to public funds. Article 2 paragraph (3) of the 2004 Bankruptcy Law only Bank Filifina can apply for a bankruptcy declaration if the Debtor is a bank. What is meant by "bank" is a bank as regulated in statutory regulations.

Discussion

Filing an application for a bankruptcy declaration for a bank is entirely within the authority of Bank Filifina and is solely based on an assessment of the financial condition and overall condition of the banking sector, therefore it does not need to be held accountable. Bank Filifina's authority to submit a bankruptcy petition does not eliminate Bank Filifina's authority in relation to provisions regarding revocation of bank business licenses, dissolution of legal entities and liquidation of banks in accordance with statutory regulations (Explanation of Article 1 paragraph (3) of the 2004 Bankruptcy Law).

Bankruptcy in Banks

Bankruptcy is a legal situation determined by a commercial court where a debtor is not (unable or unwilling) to pay at least one debt which is due and payable and as a legal consequence of the bankruptcy all of the debtor's assets and assets which existed at the time of bankruptcy and This also includes assets that will be in general confiscation status, which will be managed and settled by one or more Curators who are under the supervision of a Supervisory Judge who is appointed together with the Curator by the commercial court.

Thus, bankruptcy status does not automatically mean that the Bankrupt Debtor is unable to pay its debts. This means that when the debtor is actually able to pay off his debts to his creditors, the Bankrupt Debtor can submit a peace proposal based on Article 144 of the 2004 Bankruptcy Law. If the peace proposal submitted by the Bankrupt Debtor is rejected by his creditors, or the Bankrupt Debtor turns out to be does not submit a reconciliation proposal, then based on Article 178 of the 2004 Bankruptcy Law, the debtor will be declared insolvent, or in a state of being unable to pay off its debts to its creditors.

In the case of a bank as a debtor, an application for a bankruptcy declaration cannot be submitted because the bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms in order to improve the standard of living of many people (Article 1 point 2 Banking Law 1998).

In connection with the characteristics of banking institutions that manage public funds, if the bank is the debtor in connection with bankruptcy matters, then: a. the application for bankruptcy cannot be submitted by the bank concerned itself, because it is based on reasons to prevent such conditions from being used by shareholders or bank owners in order to try to avoid responsibility towards creditors, including customers who deposit funds; b. in the event that a bank's business license is revoked and it is liquidated, payments or refunds are prioritized to customers who deposit funds rather than to other concurrent creditors, but without neglecting payment of obligations to creditors which must be privileged based on applicable laws and regulations; c. banks that have been liquidated remain subject to bank secrecy provisions.12)

Bank business activities concern the interests of many people and Bank Filifina is the central bank (Article 4 paragraph (1) of Law Number 3 of 2004 concerning Bank Filifina states: "Bank Filifina is the Central Bank of the Republic of Filifina". What is meant by Central Bank is an institution a country that has the authority to issue legal payment instruments from a country, formulate and implement monetary policy, regulate and maintain the smooth running of the payment system, regulate and supervise banking, and carry out the function as lender of last resort (Explanation of Article 4 paragraph (1) of the Law -The Law (Explanation of Article 4 paragraph (1) of Law Number 3 of 2004 concerning Bank Filifina) which provides supervision over problematic and non-problematic banks, makes it clear that these banks do not have the right to file for bankruptcy by themselves.

The provisions relating to bank bankruptcy are Article 2 paragraph (3) of the 2004 Bankruptcy Law and Article 9 paragraph (3) of the 1992 Banking Law, which are a strong enough legal basis for Bank Filifina to file bankruptcy for troubled banks.

Is it possible for parties other than Bank Filifina to file for bankruptcy against a problematic bank? In theory, a bank can be filed for bankruptcy based on the authority granted by the Bankruptcy Law, but in practice banks are immune from bankruptcy. Thus, it can be interpreted as not providing legal certainty regarding a statutory regulation. Moreover, this allows for certain factors to take advantage of this authority.

The reality is that Bank Filifina has never been a party to credit agreements between creditors and debtors, unless Bank Filifina provides Bank Filifina Liquidity Credit (KLBI) or Bank Filifina Liquidity Assistance (BLBI). 13)

For this reason, it is necessary to create a list of actions that provide guidelines for Bank Filifina to file bankruptcy for troubled banks, both in its position as a central bank and to facilitate the interests of other parties. 14)

Why has Bank Filifina never filed for bankruptcy for a troubled bank to date? It turns out that Bank Filifina's authority to be the party that files bankruptcy for troubled banks has never been exercised to date, giving rise to various assumptions as to whether banks in Filifina are "bankruptcy immune". 15)

There is an "X" factor, so that only Bank Filifina can utilize this authority or there is a double standard: First, Bank Filifina is never a party to a credit agreement between creditors and debtors, unless Bank Filifina provides KLBI or BLBI; and Second, in the provisions of the Bankruptcy Law which regulates banks as creditors in dealing with non-bank debtors, they can independently exercise their right to file a bankruptcy petition, but if the debtor is a bank, then it only disappears (Sri Hariningsih, 2002:35). Third, with the exception of banks that have gone public where the bankruptcy application by BAPEPAM is not permanent, Bank Filifina should be more proactive in protecting the public by actualizing the prosecutor's authority to submit bankruptcy applications for reasons of public interest, and by continuing to go through one route, namely Bank Filifina.

The reasons that can be given for filing bankruptcy with a bank are related to public and community interests. The definition of public interest here is the interests of the nation and state and/or the interests of the wider community, so that this includes debtors having debts to BUMN or other business entities that collect funds from the wider community, or debtors having debts originating from collecting funds from the wider community. Indeed, to determine whether the interests of the public and society have been violated, clear parameters are needed. There needs to be consideration of whether the bank's soundness level and violations of the precautionary principle can be used as a reference, such as when carrying out actions to revoke business permits, disbanding legal entities and liquidating banks.

A problematic bank, referring to the provisions in the 2004 Bankruptcy Law, is "a debtor who has two or more creditors and does not pay off at least one debt which is

due and can be collected, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors." The elements of a problematic debtor are quite simple, namely the debtor has two or more creditors and does not pay off at least one debt that is due and can be collected. However, if the bank is the debtor, it does need to consider, among other things, the bank's function as a party that collects funds from people who have excess funds, and distributes these funds to people who need it, but as a debtor who may have problems, of course they must be held accountable so that it doesn't become a precedent. for bank administrators to be irresponsible. By considering the function of banks to maintain national economic stability, Bank Filifina maintains the principle of prudence, not being too careful even though from the perspective of the bank's health level it is already in crisis, and then taking actions that appear to protect the bank as a debtor.

What are the advantages and disadvantages of using bankruptcy for banks? Regarding the benefits of using bankruptcy for banks: First, for customers, creditors or the general public, including: reducing fraudulent practices carried out by banks; reducing the emergence of new banks that are only oriented towards collecting profits without paying attention to the rights of other people or applicable laws and regulations; Second, for banks, among other things: they still have the opportunity to continue their business; maintaining a good name (owners, management and third parties who are directly or indirectly involved in the business concerned); growing or strengthening public trust in the banking world; Third, for the government, among other things: through Bank Filifina it can create confidence in the role and function of Bank Filifina; as a means of law enforcement; protect the public from fraudulent games by banking institutions.

The visible losses include: loss or lack of public trust in banking institutions if management is less than professional.

Apart from that, Paulus Effendi Lotulung said that the current Bankruptcy Law is a process of "grafting" between old regulations and new thinking in special procedural law, so that in its application to matters the regulations are unclear and give rise to various interpretations and even legal vacuum to resolve it. 16)

If you look closely at the editorial of Article 2 paragraph (3) of the 2004 Bankruptcy Law, which states that an application for a bankruptcy declaration against a bank can only be submitted by Bank Filifina, basically it still confirms that a bank can be filed for

bankruptcy. Only the authority to file a bankruptcy petition has been transferred to Bank Filifina.

The 2004 Bankruptcy Law also confirms that the commercial court is still the only court that has the authority to examine and decide bankruptcy cases as regulated in Article 1 number 7 Jo. Article 3 paragraph (1). Considering that conflicts also occur between creditors (bankruptcy applicants) and banks, in practice, when a bankruptcy applicant wants to submit a bankruptcy application to the bank for reasons of non-payment of debts that are due and can be collected, then the application for a bankruptcy declaration must be submitted to the Bank. Filifina.

If the commercial court is a court that has the authority to decide whether or not a debtor who has filed for bankruptcy is bankrupt, then what is the actual role of Bank Filifina's involvement as intended by Article 2 paragraph (3) of the 2004 Bankruptcy Law? According to Ricardo Simanjutak, "the purpose of involving Bank Filifina as a banking authority is to provide certainty of proper implementation to banks as financial institutions that play a very important and very sensitive role in community activities as well as State activities". 17)

Therefore, the presence of Article 2 paragraph (3) of the 2004 Bankruptcy Law is ideally intended, among other things, to: a. Maintaining the image of banking in the eyes of the public and in the eyes of the world, and also avoiding cascading effects on the existence of other banks; b. Avoid bankruptcy applications submitted by parties who are not responsible for the bank, such as parties who are not actually creditors, or parties who actually only want to embarrass or destroy the bank's image at home or abroad, or including parties - parties from the bank itself (or from its group) who want to put pressure on their creditors to comply with the steps desired by the bank or group of banks by threatening to bankrupt the bank if the creditors continue to force the bank to pay its debts; c. Maximize the function of Bank Filifina in carrying out supervisory and guidance duties so that in the event of a bankruptcy petition being submitted by a creditor to a bank, it is hoped that Bank Filifina, which holds the authority to file a bankruptcy petition against that bank, will first maximally carry out its function as the authority to examine the matter and see whether the issue of debts is genuine, and whether the members have carried out their banking activities prudently regarding these obligations. In this case, Bank Filifina also plays a role as a third party or mediator to mediate this problem so that it is hoped that it can further develop steps

for a peaceful resolution outside of court (out of court settlement). However, if it is the member's fault, Bank Filifina is expected to order the bank in conflict to immediately pay off its obligations, where if the bank does not fulfill it, Bank Filifina can take action or impose sanctions on the bank in accordance with the law. 18)

A problem arises, considering that the initiative for the bankruptcy petition comes from creditors, whether the role of Bank Filifina as intended in Article 2 paragraph (3) of the 2004 Bankruptcy Law can stop the authority of the bankruptcy applicant to bankrupt the bank, considering Article 2 paragraph (3) of the 2004 Bankruptcy Law. 2004 only transferred the role of filing bankruptcy applications from creditors to Bank Filifina. This means, in the event that it is truly proven in simple terms that a bank has a debt that is due and can be collected as regulated in Article 2 paragraph (1) of the 2004 Bankruptcy Law, and in the out-of-court settlement process involving Bank Filifina it turns out that no completion, and the creditor is not paid, can Bank Filifina simply declare that the bank cannot be bankrupted?

Then, in the event that the creditors of the bankruptcy applicant actually see that Bank Filifina is not carrying out its role properly, and Bank Filifina tends to show an arrogant attitude and subjectively protect the banks under its supervision, is the authority granted by Article 2 paragraph (3) The 2004 Bankruptcy Law can be violated by the creditors of the bankruptcy applicant, in the sense that the bankruptcy applicant can override the role of Bank Filifina and request the bank go bankrupt directly by proving to the commercial court that Bank Filifina has failed to carry out its role in resolving the debt-receivable conflict.

The potential problems raised above mean that the granting of authority to Bank Filifina as intended by Article 2 paragraph (3) of the 2004 Bankruptcy Law cannot just be presented. This means that when the law provides a role for Bank Filifina in resolving debt-receivable conflicts involving banks, it must also regulate how Bank Filifina carries out the implementation of this authority, and what the legal consequences will be if Bank Filifina does not carry out this role. If this is not regulated, then Article 2 paragraph (3) of the 2004 Bankruptcy Law will tend to create legal uncertainty, which will then create a situation where theoretically banks can be filed for bankruptcy but in practice banks are immune from bankruptcy. The situation is even worse, if this area of authority can become a gray area as a place of refuge for rogue banks from being pursued by their creditors by committing disgraceful acts. This article should not be interpreted to mean "right or wrong, the bank is still right". 19)

Concerns about the emergence of ambivalence or legal uncertainty in implementing Article 2 paragraph (3) of the 2004 Bankruptcy Law (formerly Article 1 paragraph (3) of Law Number 4 of 1998), can be seen in the case of the bankruptcy petition submitted by PT Bank IFI against PT Bank Danamon Filifina (Decision No. 21/Pailit/2001/PN Niaga/Jkt Pst dated 6 June 2001 in conjunction with Determination No. 26 K/N/2001 dated 11 July 2001). , where Bank Nusa Internasional borrowed US$ 5,000,000 from Bank IFI to fulfill its commitment as part of providing a syndicated loan to PT Riau Prima Energi. Then, as a legal consequence of the merger of several banks, including Bank Nusa Internasional into PT Bank Danamon Filifina, the Bank's obligations Nusa International is an obligation of the merger subsidiary, namely Bank Danamon Filifina.

Regarding this dispute, Bank Filifina as the authority has actually held several meetings in an effort to find a peaceful resolution. In fact, the debtor himself has made efforts to settle his obligations by offering to pay his obligations on consignment through the South Filifina District Court. When efforts to resolve peacefully are unsuccessful and IFI Bank refuses payment of the consignment through the court, then the debt and receivable dispute is not resolved. Despite this, Bank Filifina still did not continue the bankruptcy petition submitted by Bank IFI to the commercial court. Then Bank IFI submitted a bankruptcy application directly to the commercial court on the grounds that Bank Filifina had not continued the bankruptcy application submitted by the bankruptcy applicant through Bank Filifina to the commercial court.

What needs to be observed here is Bank Filifina's understanding of the authority granted by Article 1 paragraph (3) of Law Number 4 of 1998 (now Article 2 paragraph (3) of the 2004 Bankruptcy Law) to Bank Filifina which was confirmed by Yunus Husein, the expert witness below. The oath from Bank Filifina in the trial at the Commercial Court at the Central Filifina District Court includes the following: the bankruptcy petition by Bank Filifina against a bank is at Bank Filifina's own discretion or discretion, not at the request of another party, the witness admits that PT Bank IFI (the petitioner for bankruptcy) has sent a letter to Bank Filifina dated 12 April 2001 regarding: application to bankrupt PT Bank Danamon Filifina, Tbk. (Vide exhibit P-28), and the letters and evidence received by Bank Filifina on 16 April 2001 (Vide exhibit P-30), the witness admitted that PT Bank IFI with a letter dated 12 April 2001 No. 0338/ 0196.04/HPH-JP/SHA/yk has requested Bank Filifina to submit a request for a

bankruptcy statement to the Central Filifina Commercial Court, the witness admits that PT Bank IFI has completed all the requirements required as conditions for the bankruptcy application, will but Bank Filifina, based on its own discretion or policy, did not process the bankruptcy petition against PT Bank Danamon Filifina, Tbk (bankruptcy Respondent) to the Central Filifina District Court. Bank Filifina admitted that it did not submit the bankruptcy petition to the Central Filifina District Commercial Court because it was in accordance with the provisions Law no. 7 of 1992 concerning Banking which was amended by Law no. 10 of 1998 (Banking Law) along with implementing regulations PP no. 25 of 1999 does not recognize a bankruptcy mechanism and within the framework of the mechanism for resolving bank rights and obligations it is regulated by revocation of business permits, dissolution and liquidation.

In responding to the case of filing a bankruptcy petition which was directly submitted by Bank IFI to the commercial court, the panel of commercial judges, among other things, acknowledged that Article 1 paragraph (3) of Law no. 4 of 1998 (now Article 2 paragraph (3) of the 2004 Bankruptcy Law) has been fulfilled as follows: "That based on the above considerations connected with each other, it is proven that the elements of Article 1 paragraph (1) of Law no. 4 of 1998 has been proven."

Even though the panel of commercial court judges has proven that the debt is due and can be collected, it still rejects the bankruptcy petition submitted by Bank IFI with the legal consideration that Bank IFI has no authority to file a bankruptcy petition directly based on Article 1 paragraph (3) of Law Number 4 of 1998 (now Article 2 paragraph (3) of the 2004 Bankruptcy Law).

The complete considerations of the commercial court judge in this case are: the conditions for filing a bankruptcy petition have been met, namely the existence of a debtor, having two or more creditors and the existence of a debt that is due and can be collected, PT Bank Danamon Filifina Tbk in this case can be categorized as as Debtor, with the rejection of the offer of payment accompanied by a consignment through the South Filifina District Court, the Panel of Judges was of the opinion that PT Bank Danamon Filifina Tbk still had a debt to PT Bank IFI, the elements stated in Article 1 paragraph (1) of Law no. 4 of 1998 (UUK) has been proven, based on Article 1 paragraph (2) of Law no. 10 of 1998 jo. Law no. 7 of 1992 concerning Banking and Article 1 paragraph (3) of the Bankruptcy Law, the Bankruptcy Petitioner, PT Bank IFI,

does not have capacity as a Bankruptcy Petitioner, while the only one who has capacity is Bank Filifina.

If we look closely at this case, conclusions can be drawn, namely: 1. Article l paragraph (3) of Law Number 4 of 1998 (now Article 2 paragraph (3) of the 2004 Bankruptcy Law) shows that banks as debtors can apply for a bankruptcy declaration, but the said bankruptcy statement must be submitted by Bank Filifina; 2. The bankruptcy mechanism is not effective as a mechanism for resolving debt and receivable problems where the debtor is a bank; 3. In order to protect the interests of creditors, the role of Bank Filifina in resolving debt and receivable problems is very necessary; 4. It is necessary to create an out of court settlement or non-litigation mechanism, either by banking arbitration or banking mediation.

This of course raises questions regarding the granting of special rights to Bank Filifina so that Bank Filifina cannot file for bankruptcy directly, where according to the 2004 Bankruptcy Law this special right has been extended to Securities Companies, Stock Exchanges, Clearing and Guarantee Institutions, Depository and Settlement Institutions, petition for bankruptcy. can only be submitted by the Capital Market Supervisory Agency (BAPEPAM), as well as Insurance Companies, Reinsurance Companies, Pension Funds, or State-Owned Enterprises operating in the public interest sector, applications for bankruptcy can only be submitted by the Minister of Finance. In Article 6 paragraph (3) of the 2004 Bankruptcy Law, the authority to reject bankruptcy applications submitted to the parties mentioned above, is no longer placed in the hands of judges, but has become the authority of the Registrar of the Commercial Court (Article 6 paragraph (3) of the Law Bankruptcy Law of 2004: "The Registrar is obliged to reject the registration of an application for declaring bankruptcy for an institution as intended in Article 2 paragraph (3), paragraph (4) and paragraph (5) if it is carried out not in accordance with the provisions in these paragraphs."

With the presence of Article 6 paragraph (3) of the 2004 Bankruptcy Law, it is increasingly clear that the authority's unwillingness to file a bankruptcy petition against a bank as a continuation of the petition submitted by the creditor will absolutely deny the creditor the opportunity to bankrupt the debtor's bank even though it has been proven the existence of debts that are due and can be collected. Thus, Bank IFI's action of taking steps to request bankruptcy directly on the grounds that Bank Filifina is not carrying out its functions based on Article 1 paragraph (3) of Law Number 4 of

1998 (now Article 2 paragraph (3) of the 2004 Bankruptcy Law) is not can be submitted again, because at the time of registration of the bankruptcy application, the Registrar was able to reject the application.

Settlement of disputes over bank debts through bankruptcy measures is not carried out by Bank Filifina due to several weaknesses. The reasons why banks with problems do not need to take the bankruptcy route using the 2004 Bankruptcy Law are: a. The liquidation and insolvency process regulated in the Bankruptcy Law cannot be applied to banking institutions which already have their own rules regarding the liquidation and insolvency process in more detail and complete as lex specialis, because banking institutions cannot be equated with companies in general (based on the Economic Law Dictionary ELIPS, page 86, insolvency is the inability of a person or business entity to pay its debts which are due, or a situation which shows that the amount of liabilities exceeds the amount of assets); b. The role of the curator in bank bankruptcy will eliminate Bank Filifina's role and intervention in problematic banks declared bankrupt, the resolution of which requires special expertise; c. Bankruptcy of a banking institution can endanger the position of its own bank and other banks, and even endanger the position of Bank Filifina; d. Protection of the interests of the public who are depositors of funds as concurrent creditors in bankruptcy is not prioritized so that the wider public's trust in banking institutions is reduced with wider consequences that could disrupt the country's financial stability; e. The application of the Bankruptcy Law with very simple procedures to troubled banks can create confusion and legal uncertainty, which further results in creating opportunities for corruption and corruption and can be misused for personal gain by bank owners who have bad intentions. 20)

Indeed, in practice, Bank Filifina has never submitted a bankruptcy application for a bank. This is because the bankruptcy requirements of Article 2 paragraph (1) of the 2004 Bankruptcy Law are not appropriate (not suitable) to apply to banks, namely: a. The terms of bankruptcy are based on the idea of a situation of stopping payments due to being unable or unwilling to pay debts. If it is related to the bank as a debtor, then this is closely related to the bank's credibility at stake. In layman's logic, for banks which can basically only carry out their business on the basis of public trust, risking credibility, for example by "evading" debt, would certainly be very detrimental so naturally the bank would try not to go bankrupt; b. There is no direct relationship (causality) between the requirements for submitting a bankruptcy application and the health level (bankruptcy and the bank's performance level, meaning that a bank that

is classified as falling within the criteria for filing for bankruptcy is not necessarily classified as unviable. 21)

Liquidation in bankruptcy does not directly result in the dissolution of a company, even if the bankruptcy has ended, the company can return to life by fulfilling the requirements after being rehabilitated. This cannot possibly be applied to banking institutions, where if their business license is revoked and the bank is dissolved, the bank will automatically no longer be able to operate. According to Rudhy Prasetya, the consequences of liquidation for banks are: a. When using the Banking Law, all bank assets are liquidated and distributed to customers based on priority order; b. When using the Bankruptcy Law, only part of the bank's assets are liquidated, namely limited to customer deposits and claims from creditors. The bank can still continue (not be dissolved) and the curator is supervised by the Supervisory Judge. Therefore, if bankruptcy is used, Bank Filifina's intention to distribute all bank assets will not be achieved.

However, on the other hand, Adrian Sutedi believes that it is better for Bank Filifina to utilize bankruptcy efforts rather than liquidation because bankruptcy has better and more certain prospects than liquidation. The reasons are: a. Bankruptcy settlement is carried out through the courts (Commercial Court) so that it is prudent, while liquidation settlement is through out-of-court channels; b. The decision to declare bankruptcy by the Commercial Court can be implemented immediately even if there is a legal effort of cassation or judicial review, while in liquidation there is no such regulation so there is no certainty about when the implementation will begin; c. In bankruptcy there are provisions for temporary measures that can be used to protect assets that are the object of bankruptcy from possible misuse by the party controlling them before a bankruptcy declaration is issued by the Commercial Court, while in liquidation there are no provisions regarding such temporary measures; e. In bankruptcy it is stipulated that the Curator who handles bankruptcy assets must be independent and have no conflict of interest with debtors or creditors and the Curator is supervised by a Supervisory Judge, while in liquidation the handling of liquidated assets is carried out by the Liquidation Team without a Supervisory Judge supervising it so that it seems less prudent; d. In bankruptcy, there are known peace efforts which, if possible, are agreed between the creditors (concurrent creditors) and the debtor and ratified by the Commercial Court. In such cases, bankruptcy will be lifted (revoked) so that the

company returns to normal operations, while in liquidation there is no peace; e. Regarding point e, in bankruptcy there is no revocation of the bank's business license by Bank Filifina and the dissolution of the bank's legal entity by the GMS first, while in liquidation the implementation of these two legal actions first is a requirement for liquidation to be carried out; f. As a variation of point f, in bankruptcy the possibility of revoking a bank's business license by Bank Filifina and dissolving the bank's legal entity by the GMS is only carried out if the bankruptcy estate is in a state of insolvency which occurs due to the failure of peace efforts between creditors (concurrent creditors) and debtors. In bankruptcy, Bank Filifina's responsibility is lighter because it does not supervise the implementation of bankruptcy because the party who supervises the management and settlement of bankruptcy assets is the Supervisory Judge, while in liquidation, Bank Filifina supervises the implementation of the dissolution of the bank's legal entity by the GMS and the implementation of liquidation by the Liquidation Team; h. Regarding point h, handling problematic banks through bankruptcy frees Bank Filifina from public lawsuits because implementing bankruptcy is the responsibility of the Commercial Court; i. Empirical evidence shows that settlement through liquidation is an unfinished settlement. As an example of completing the liquidation of 16 banks,in the span of several years, it has not shown optimal results, as has the liquidation of Bank Summa; j. There have been banks that have asked Bank Filifina to submit a request for a bankruptcy statement for their debtors who are also banks, but Bank Filifina has not complied (Bank IFI in April 2001 requested Bank Filifina to file a request for a bankruptcy statement against Bank Danamon Filifina as Bank IFI's debtor, but this was not fulfilled. by Bank Filifina); k. In Bank IFI's bankruptcy trial against Bank Danamon Filifina as the debtor, the Commercial Court rejected Bank IFI's application and decided that the party that could submit a bankruptcy application against the bank as debtor was Bank Filifina; l. In foreign countries such as America, England and Korea, bankruptcy provisions and liquidation provisions for banks are a series so that bankruptcy will always precede liquidation unless peace can be achieved between creditors (concurrent creditors) and debtors.

CONCLUSION

Based on the Bankruptcy Law, Bank Filifina is given the authority to file bankruptcy for problematic banks. Bankruptcy is an alternative to rescuing or settling the bankrupt assets of a troubled bank through the Commercial Court if bank rescue measures

based on the Banking Law are not successful in saving the troubled bank. However, this bankruptcy effort has never been utilized by Bank Filifina because so far bank liquidation efforts have been considered more appropriate to be used to resolve problematic banks.

Thus, for this problem it can be recommended that Bank Filifina can utilize the use of bankruptcy to resolve problematic banks. With all the existing advantages and disadvantages, if Bank Filifina uses the authority it has according to the Bankruptcy Law, Bank Filifina should remain careful in using bankruptcy measures before there is a legal product that specifically regulates bankruptcy for banks.

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References **may be** preceded with an acknowledgement when necessary. Please make the acknowledgement as concise as possible.

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