UNNES LAW JOURNAL

Practice of Applying Affidavits in Bankruptcy Law and Postponement of Debt Payment Obligations

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Cite this article as

Leonardus, Rado Fridsel, Alexander Yovie Pratama Yudha, and Tata Wijayanta. "Practice of Applying Affidavits in Bankruptcy Law and Postponement of Debt Payment Obligations". *Unnes Law Journal* 9, no. 2 (2023): 467-488. https://doi.org/10.15294/ulj.v9i2.75588

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ABSTRACT. Civil law regulates the means of evidence as outlined in Article 1866 of the Civil Code/Article 164 HIR/Article 284 RBg which consists of written evidence, witness evidence, allegations, confessions and oaths. The existence of an Affidavit certainly makes it easier to resolve a Civil Case, especially in cases regarding Bankruptcy and Postponement of Debt Payment Obligations. The existence of an Affidavit is one aspect that confirms that the process of proving a legal problem in Indonesia is undergoing adjustments in line with the very rapid development of law in this Era of Globalization. The application of Affidavits in Bankruptcy and PKPU legal processes is important in their development. This research uses Normative Legal Research using the method of the Statute Approach. Article 299 of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations explains that the procedural law that applies in resolving Bankruptcy cases and Postponement of Debt Payment Obligations is Civil Procedure Law. Written evidence is significant in the Bankruptcy Law and PKPU process, although the process still prioritizes simple evidence. *Affidavit is* a written statement by someone who is considered an expert containing an explanation of a particular event object, which is then signed and submitted as written evidence in the trial. In Indonesia, an Affidavit cannot be classified as an Authentic Deed and does not have perfect evidentiary properties, but an Affidavit can be used as ordinary documentary evidence to support other evidence and help judges decide Bankruptcy & PKPU cases efficiently in order to support a simple evidentiary process and considering the short examination time.

KEYWORDS. Practice, Affidavit, Bankruptcy.

UNNES

Practice of Applying Affidavits in Bankruptcy Law and Postponement of Debt Payment Obligations

Rado Fridsel Leonardus, Alexander Yovie Pratama Yudha, Tata Wijayanta*

Introduction

Globalization as a phenomenon that penetrates national boundaries brings with it new issues in human life[2]. Rapidly, the development of law in the current era of globalization has had a positive impact on people's daily activities. However, on the other hand, law development also presents its own challenges for Indonesia's Law Enforcers. Therefore, it is important for Indonesia's Law Enforcers to always have updates about law developments that occur in order to be able to resolve legal problems effectively regarding laws that continue to develop. Law problems that develop indirectly affect the evidentiary process, in this case, there is also a need for adjustments in the evidentiary process in a legal problem that occurs.

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2 Bambang Irawan, "Institutional Pluralism Sistem Peradilan Indonesia Dan Kekuatan Negara Di Era Globalisasi," *Jurnal Borneo Administrator* 15, no. 3 (December 13, 2019): 237–56, https://doi.org/10.24258/jba.v15i3.436.

The existence of an Affidavit is one of the aspects that confirms that the process of proving a law problem in Indonesia is experiencing adjustments in line with the rapid development of law in this era of globalization. In general, an Affidavit is a written statement made by someone who has competence regarding a particular problem object, where the statement is written with an oath in front of the competent authority. The term Affidavit itself initially emerged because of the authority of a notary public to take an oath and make a written statement of a person with an oath so that it becomes an Affidavit for judicial needs. However, notary public originates from the common law legal system. Certainly, there are differences between the common law legal system and the civil law legal system that currently applied in Indonesia. Notary Public is a product of the common law legal system, while in the Civil Law legal system implemented by Indonesia, it is better known as Notary. A notary, based on Article 1 Number 1 of Law Number 30 of 2014 concerning the Position of a Notary is a public official who has the authority to make authentic deeds and has other authorities as intended in this Law or based on other laws. Likewise, the term Affidavit in the Civil Law legal system is different from Common Law. In Indonesia, an Affidavit is known as a letter containing a statement regarding an event by a party who is an expert on the subject of a particular event, and is not accompanied by an oath.

In practice, Affidavits are often submitted as written evidence in civil cases in Indonesia. Civil law regulates the means of evidence regulated in Article 1866 of the Civil Code/Article 164 HIR/Article 284 RBg which consists of written evidence, witness evidence, allegations, confessions, and oaths. The existence of an Affidavit certainly makes it easier to resolve a Civil Case, especially in cases regarding Bankruptcy and Postponement of Debt Payment Obligations. Postponement of Debt Carrying Obligations (hereinafter referred to as PKPU) is conceptually an institution provided by the State to give debtors the opportunity to improve their ability to pay, especially on the basis of temporary conditions.[3] PKPU is actually an institution that can improve the debtor's business conditions at least for a

[3] Susanti Adi Nugroho, *Hukum Kepailitan Di Indonesia: Dalam Teori Dan Praktik Serta Penerapan Hukumnya* (Jakarta: Prenadamedia Group (Kencana Division), 2018).

certain period of time without being "disturbed" by claims from his creditors.[4]

The procedural law at the Commercial Court in Bankruptcy cases and Postponement of Debt Payment Obligations has different characteristics compared to regular civils court, including using simple proofment and limited examination time. Simple proofment is contained in Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations which states that the application for declaring bankruptcy must be granted if there are facts or circumstances that are simply proven. During the examination, Article 233 of Law Number 37 of 2004 states that the Supervisory Judge can hear witnesses or order an examination by an expert to explain the circumstances involving the postponement of debt payment obligations. If it is related to simple proofment, it will become more effective if the examination by an expert in terms of providing an explanation regarding the situation involving bankruptcy and the postponement of debt payment obligations is made in the form of an Affidavit, considering that Bankruptcy and PKPU cases stipulate a limited examination time. Based on the explanation above, the problem formulation that we will discuss is how is practice of applying Affidavits in Bankruptcy and PKPU legal processes?

Method

This type of research uses Normative Legal Research, namely analysis carried out by building legal arguments from the perspectives of concrete cases that occur in the field[5]. Normative Legal Research is also referred to as research into legal systematics, the main aim of which is to identify the meaning or basis in law.[6] Normative legal research is a process of finding legal rules, principles and doctrines to answer the legal issues faced[7].

[4] Tri Budiyono, "Penundaan Kewajiban Pembayaran Utang (PKPU) Dalam Masa Pandemi Covid-19: Antara Solusi Dan Jebakan," *Masalah-Masalah Hukum* 50, no. 3 (2021): 232–43, https://doi.org/https://doi.org/10.14710/mmh.50.3.2021.232-243.

[5] Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana Prenada, 2015), 133.

[6] Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Rajagrafindo Persada, 2016), 93.

[7] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada, 2007), 35.

Normative legal research is applied in this writing to find out how the practice of applying Affidavits in Bankruptcy and PKPU legal processes is.

The research method is using the Statute Approach. The Statute Approach is an approach that uses both legislation and regulations8. This approach aims to find the legal basis, understanding and rules relating to the application of Affidavits in the Bankruptcy Procedure Law and PKPU.

This research uses sources in the form of primary legal materials and secondary legal materials. Primary legal materials are legal materials that have binding force in society[9]. The primary legal materials used consist of statutory regulations and judge's decisions. Meanwhile, secondary legal materials are legal materials that provide information or matters related to the content of primary legal materials[10]. The secondary legal materials used in this research are books, legal journals, and also expert opinions. The data in this research was analyzed normatively and qualitatively. Qualitative research means that the findings in this research were not obtained through statistical procedures nor other forms of calculation[11]. So that the research will be analyzed qualitatively normative is research that is obtained without going through a statistical process to find rules, principles, or legal doctrine to answer existing issues.

Affidavit Development

The term Affidavit was originally born from developments that occurred in the Common Law legal system. The Common Law legal system has its roots in the British Empire which was applied to most of its former colonies such as Singapore and Australia. The Common Law Legal System emphasizes that the main source of law used is jurisprudence. The Common Law system is basically judge-made law. This means that the law is born by judges through the court decisions and the binding force of previous judges' decisions are known as the binding force of precedent[12]. In the Common Law legal system, the legal basis used was a previous court decision, where if

8 Dyah Susanti Ochtorina and A'an Efendi, *Penelitian Hukum (Legal Research)* (Jakarta: Sinar Grafika, 2015), 10.

9 Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 2005), 51.

10 Soekanto, *Pengantar Penelitian Hukum.*

11 Imam Gunawan, *Metode Penelitian Kualitatif, Teori Dan Praktik* (Jakarta: BumiAksara, 2013).

12 I Made Gede Wisnu Murti, "Melihat Berbagai Sistem Hukum Di Dunia Dalam Kajian Pengantar Ilmu Hukum," *Jurnal Komunitas Yustisia* 4, no. 3 (2021): 959–69.

there is a case that has been decided by a judge, the court decision is binding on the parties involved and applies to the public in similar cases as the main legal basis.[13]

The Common Law Legal System adheres to the Stare Decisis Doctrine / Precedent System which, based on Black's Law Dictionary Fourth Edition (1968), is "to stand by decided cases; to uphold precedents; to maintain former adjudications”[14], which in the other words can be interpreted that Stare Decicis is a doctrine in a legal system which, in deciding cases, must uphold precedent and defend previous decisions. The judicial process in the Common Law legal system uses an Adversary System which requires parties in a lawsuit to present each party's truth before a judge, and have the right to refute the truth put forward by their opponent.

The term Notary Public is known in the Common Law Legal System, where a Notary Public is a public official based on appointment from the applicable law and is given the authority to provide services to the public regarding the management of deeds, power of attorney, land, relations with foreign countries, and international business. Notary Public has broad authority in the Common Law Legal System, including the authority to make Affidavits for judicial purposes.

In general, an Affidavit is defined as a written statement made voluntarily under oath by someone authorized to take the oath[15]. In the case of making an Affidavit in the Common Law legal system, an Expert is sworn in before a Notary Public as a form of responsibility for the information provided. This information will later be submitted in court as an Authentic Deed in the form of an Affidavit. Article 1868 of the Civil Code explains that: "an authentic deed is a deed made in a form determined by law by/or before a public official authorized for that purpose, in the place where the deed is made." Therefore, there are different implications for the Affidavit applied in the Common Law legal system and the Civil Law legal system.

The legal system in Indonesia uses the Civil Law legal system, which has different characteristics from the Common Law legal system. The Civil Law legal system has three characteristics, namely codification, judges are

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13 Joseph Dainow, “The Civil Law and the Common Law: Some Points of Comparison,” *The American Journal of Comparative Law* 15 (1966), https://about.jstor.org/terms.

14 “Stare Decisis Definition & Legal Meaning,” The Law Dictionary, accessed August 30, 2023, https://thelawdictionary.org/stare-decisis/.

15 Rocky Marbun, Deni Bram, and Yuliasara Isnaeni, *Kamus Hukum* (Jakarta: Visi Media Pustaka, 2012), 7.

not bound by precedent so that the law is the main source of law, and a judicial system that is inquisitorial in nature.[16] Meanwhile, the characteristics of the Common Law legal system include tourism prudence as a source of law, adhering to the doctrine of stare decisis / precedent, and an adversary system in the judicial process.

Laws are the main source of law, where the law obtains binding force through applicable statutory regulations which are formed by codification. Based on the definition in the KBBI, codification is a collection of various regulations into law; regarding the preparation of statutory books[17]. According to R. Soeroso in the book Introduction to Legal Science, Legal Codification is legal bookkeeping in a collection of Laws in the same material[18]. Judges in the civil law legal system are also not bound by the doctrine of stare decisis, so that the law is the main source of law. Based on this understanding, it is clear that the main characteristic of the Civil Law system is the codification or bookkeeping of laws[19]. These differences in characteristics indirectly influence the differences in the position of Affidavits in the Common Law and Civil Law legal systems. Initially, the Civil Law legal system was not familiar with the term Affidavit, especially in terms of its use as written evidence in a case. In the Civil Law legal system, an Affidavit is only a written statement by someone who is considered an expert containing an explanation of the object of a particular event, which is then signed and submitted as written evidence at trial.

Power of Affidavit

Affidavit defined as "a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to admit such oath[20]". In general, IPM Ranuhandoko is of the opinion that an Affidavit is a written

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[16] Fajar Nurhandianto, "Sistem Hukum Dan Posisi Hukum Indonesia," *Jurnal TAPIs* 11, no. 1 (2015): 36.

[17] "Kodifikasi," KBBI Daring, accessed August 30, 2023, https://kbbi.kemdikbud.go.id/entri/kodifikasi .

[18] R. Soeroso, *Pengantar Ilmu Hukum* (Jakarta: Sinar Grafika, 2015), 77.

[19] Firdaus Muhamad Iqbal, "Kontribusi Sistem Civil Law (Eropa Kontinental) Terhadap Perkembangan Sistem Hukum Di Indonesia," *Jurnal Dialektika Hukum* 4, no. 2 (2022).

[20] "Affidavit," The Law Dictionary, accessed August 30, 2023, https://thelawdictionary.org/Affidavit/.

statement made on oath by the maker, before the competent authority. Based on this definition, an Affidavit has several elements, there are:

a. Written form
   Affidavit as a declaration or statement of fact set forth in writing.
b. made voluntarily.
   In the making, the Affidavit is made voluntarily by the party who wants to make it. An affidavit is not a document that must be made, but it can be made without coercion or pressure.
c. Oath.
   Affidavit is made voluntarily in written form confirmed by oath by the maker. The oath in making an Affidavit becomes the power of truth in its making.
d. before an authorized official.
   The making of the Affidavit is carried out in the presence of an official authorized to administer the oath so that its use is in accordance with the aims and objectives of making the Affidavit itself.

When viewed from the general meaning and characteristics of an Affidavit, an Affidavit can be classified as written evidence in the form of an Authentic Deed to prove a case. In its application in Indonesia, an Affidavit cannot be classified as an Authentic Deed because the Affidavit was not made with an oath by the maker, and was not made in the presence of an official authorized to administer the oath. Thus, an Affidavit only has evidentiary power as complementary evidence, and if it is used as evidence in court it must be supported by other evidence.[21]

Specifically, the assessment of affidavits as evidence lies in Article 282 R.Bg which states that regarding evidence and regarding accepting or rejecting evidence on civil cases in district courts that must pay attention to the basic provisions below. Furthermore, in the case of the party providing evidence, it is stated in article 283 R.Bg. which states: whoever states a right or puts forward an act to confirm his right, or to dispute another person's right must prove the existence of that right or the existence of that act. So it can be seen that to prove a case, each person postulates that he has a right or to confirm his own right or refute another person's right to prove the existence of the event. Therefore, for evaluation, affidavits are used as evidence in civil

[21] Endah Puspita Sari, Sihabudin, and Bambang Winarno, "Kekuatan Pembuktian Affidavit Sebagai Alat Bukti Surat," *Brawijaya Law Student Journal*, 2015, http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/1194/1180.

trials. The legal strength of the affidavit evidence lies in Article 1868 and Article 1888 of the Civil Code, and Article 285 R. Bg of the Civil Procedure Code.[22]

Based on the history of the development of Affidavits as described in Point Number 1, in the Common Law legal system, Affidavits are made in written form, made voluntarily, confirmed with an oath by the maker, and made before an authorized official. A Notary Public in the Common Law legal system is a public official who has the authority to confirm an oath against someone or in this case is an expert who provides information in the interests of justice. In Indonesia itself, which adheres to the Civil Law legal system, a Notary does not have the authority to take an oath regarding making an Affidavit, in fact, the District Court has the authority to take an oath against someone.[23] The differences between the Common Law and Civil Law systems in making Affidavits are very visible in the authorities who are authorized to take the oaths, as well as the status of the Affidavit itself.

Application of Affidavits in the Bankruptcy Legal Process and Postponement of Debt Payment Obligations (PKPU)

Regulations regarding Bankruptcy begins with Government Regulation in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law. The regulation was then changed to Law Number 4 of 1998 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law into Law. As a result of the developments that occurred, the law then became invalid and was revoked with Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, so that not only bankruptcy is regulated but related to postponement of debt payment obligations is also regulated.

Article 1 Number 1 of the Bankruptcy Law and PKPU defines bankruptcy as a general confiscation of all the Bankrupt Debtor's assets, the

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[22] Asep Dwi Mulyana and Fajaruddin, "Penilaian Alat Bukti Affidavit Dalam Sistem Hukum Acara Perdata Di Indonesia (Studi Putusan No. 247/Pdt.G/2019/PN Mdn)," *Jurnal Ilmiah Mahasiswa Hukum* (2020).

[23] Ni Kadek Ditha Angreni and I Nyoman Bagiastra, "Affidavit Sebagai Alat Bukti Terhadap Perjanjian Jual Beli Dibawah Tangan Apabila Salah Satu Pihaknya Meninggal Dunia," *Acta Comitas* 5, no. 3 (2020): 547, https://doi.org/https://doi.org/10.24843/ac.2020.v05.i03.p10.

management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law. Bankruptcy is a process where a debtor who has financial difficulties in paying his debts is declared bankrupt by a court, in this case a commercial court, because the debtor cannot pay his debts.[24] All assets of the Bankrupt Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law[25]. The conditions for a debtor to file for bankruptcy are stated in Article 2 of this law, which contains:

> "A debtor who has two or more creditors and does not pay in full at least one debt that is due and collectible is declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors."

Based on the contents of this article, the debtor can file for bankruptcy if he does not pay off one of his creditors in full.

Meanwhile, Postponement of Debt Payment Obligations (PKPU) is a legal process in which debtors experiencing financial difficulties can postpone payment of their debts to creditors. The aim of PKPU is so that debtors can continue their business and avoid bankruptcy even though payments are difficult[26]. Based on Article 222 paragraph (2) of Law Number 37 of 2004, PKPU aims to make a joint agreement which is included in the peace plan. Article 299 of the Bankruptcy and PKPU Law explains that the procedural law that applies in resolving bankruptcy cases and postponing debt payment obligations is the Civil Procedure Law. Evidence is an important part of the bankruptcy and PKPU legal process. The principles of evidence in civil law are explained in Article 163 HIR, which contains:

> "Whoever claims to have the right to an item, or points to an event to confirm his right, or denies another person's right, then that person must prove it."

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[24] Rai Mantili and Putu Eka Trisna Dewi, "Penundaan Kewajiban Pembayaran Utang (PKPU) Terkait Penyelesaian Utang Piutang Dalam Kepailitan," *Aktual Justice* 6, no. 1 (2021).

[25] Erma Defiana Putriyanti and Tata Wijayanta, "Kajian Hukum Tentang Penerapan Pembuktian Sederhana," *Mimbar Hukum* 22, no. 3 (2010): 483.

[26] Sumurung P Simaremare et al., "Politik Hukum Jangka Waktu Penundaan Kewajiban Pembayaran Utang Di Indonesia," *Jurnal Ius Constituendum* 6, no. 1 (2021).

Article 1865 of the Civil Code explains that every person who claims to have a right, or points to an event to confirm their right or to dispute another person's right, is obliged to prove the existence of that right or the event stated. R. Subekti believes that proving is convincing the judge about the truth of the disputed arguments[27]. The legal system of evidence adopted in Indonesia is a closed and limited system where parties are not free to submit types or forms of evidence in the case resolution process.[28] Article 1886 of the Civil Code explains that evidence includes written evidence, evidence with witnesses, allegations, confessions, and oaths. Based on the contents of this article, what is meant by:

1) Written evidence;
   Written evidence or what is usually called a letter, in evidence is classified into 3, namely ordinary letters, authentic deeds, and private deeds.[29] Sudikno Mertokusumo also believes that written evidence is anything that contains punctuation marks with the intention of conveying someone's thoughts and is used as evidence. Written evidence is divided into 2, namely in the form of deeds and non-deed letters. A deed is defined as a signed document that contains the events that form the basis of a right or obligation, which was made from the beginning intentionally to prove it.[30] A deed made in front of an authorized public official can be called an Authentic Deed. An Authentic Deed has the power of perfect and binding evidentiary value, as long as it is not contradicted by other equivalent evidence. As for letters that are not deeds, which are deliberately made for proof without involving authorized public officials, although the legal force of these letters is limited because in some cases, the recognition of the validity of these deeds is doubtful.
2) Evidence with witnesses;
   Indonesia Dictionary defines a witness as a person who is asked to be present at an event and who is deemed to know about the incident so that at some point, if necessary, they can provide information

[27] Eddy O.S. Hiarieej, *Teori Dan Hukum Pembuktian* (Jakarta: Erlangga, 2012), 2–3.
[28] Nelson Kapoyos, "Konsep Pembuktian Sederhana Dalam Perkara Kepailitan Kajian Putusan Nomor 125 PK/PDT.SUS-PAILIT/2015," *Jurnal Yudisial* 10, no. 3 (2017): 334.
[29] Teguh Samudera, *Hukum Pembuktian Dalam Acara Perdata* (Bandung: Alumni, 2004), 14.
[30] Samudera, 37.

confirming that the event actually happened.[31] According to Sudikno Mertokusumo's opinion, evidence with witnesses is a certainty given to the judge at the trial regarding the disputed event by way of verbal and personal notification by a person who is not a party to the case, who is summoned at the trial.[32] He continued in the book Indonesian Civil Procedure Law, Sudikno Mertokusumo argued that witness statements must be given orally and personally at the trial, so they must be told personally and not represented and must not be made in writing.[33] In presenting his testimony, a witness must experience an event or event himself. If the opinion or allegation expressed is obtained through thinking, it cannot be said to be testimony. Witnesses who get their statements from other people are called *testimonium de auditu* witnesses. In general, this witness cannot be accepted as valid evidence because it does not correspond to the definition of a witness himself, namely a person who sees, hears, and experiences an incident or events themselves. However, judges can construct testimony from testimonium de auditu witnesses into presumptive evidence, as long as this has been considered objectively and rationally, even though in principle, the testimony is considered invalid. Article 172 Rbg explains that parties who cannot be heard as witnesses. The article states:

> "Not allowed to be heard as witnesses are those who:
> 1. Those who have a straight line family relationship due to blood or marriage to one of the parties;
> 2. Mother's brothers or sisters and sisters' children in the Bengkulu, West Sumatra and Tapanuli areas as long as the inheritance law there follows Malay provisions;
> 3. The husband or wife of one of the parties, also after they have divorced;
> 4. Children who are not yet confirmed to be fifteen years old;

[31] "Saksi," KBBI Daring, accessed August 30, 2023, https://kbbi.kemdikbud.go.id/entri/saksi .

[32] Hari Sasangka, *Hukum Pembuktian Dalam Perkara Perdata Untuk Mahasiswa Dan Praktisi* (Bandung: Mandar Maju, 2005), 60.

[33] Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Universitas Atma Jaya Yogyakarta, 2010), 229.

> 5. A crazy person, even though he can use his mind well sometimes."

Apart from that, there is Article 1909 of the Civil Code which regulates:

> "People who are not competent to have their statements heard are:
> 1. Family members by blood and blood from one of the parties in a straight line and
> 2. Husband or wife, even if they are divorced."

So based on these provisions, those who cannot be heard as witnesses are those who have family relationships, children, and crazy people.

3) Allegations;

Allegations is a conclusion from an event that has been proven. Proof by presumption is used when there is difficulty in obtaining witnesses who have personally experienced an event that must be proven. It is called conjecture because one conjecture is not enough to prove something, there must be many conjectures that cover each other and are related so that the event or argument that is refuted can be proven.[34] Allegations are divided into 2 (two), namely allegations based on law and allegations that are not based on law. Allegations according to law are defined in Article 1916 of the Civil Code, namely:

> "An allegation based on law is an allegation that is connected to certain actions or certain events based on law.
> Such estimates include:
> 1. an act declared void by law, because the act is based solely on its nature and form, is deemed to have been carried out to avoid a statutory provision;
> 2. statutory statements concluding the existence of property rights or debt relief from certain circumstances;
> 3. the power given by law to a judge's decision which has definite legal force;

[34] Retnowulan Sutantio and Iskandar Oeripkartawinata, *Hukum Acara Perdata Dalam Teori Dan Praktek* (Bandung: Mandar Maju, 2009), 77.

> 4. the power given by law to the confession or oath of one of the parties."

Meanwhile, allegations that are not based on law are defined in Article 1922 of the Civil Code, namely:

> "Allegations that are not based on the law itself are left to the consideration and vigilance of the Judge, who must not pay attention to other allegations other than those which are important, thorough and certain, and in accordance with each other. Such allegations may only be considered in cases where the law permits proof by witnesses, as well as when a denial is put forward against an act or a deed, based on reasons of bad faith or fraud."

4) Confession;
Sudikno Mertokusumo stated that a confession before a judge at a trial is a one-sided statement, either written or verbal, which is unequivocal and stated by one of the parties to the case at trial which confirms in whole or in part an event, right or legal relationship submitted by his opponent which resulted in the examination. further by the judge is no longer necessary[35]. It can be said that a confession is a statement from one of the parties that confirms an event. Article 1916 paragraph (2) BW/174 HIR explains that a confession is decisive evidence, which does not allow opposing evidence.

5) Oath.
An oath is a firm promise or pledge. An oath can be defined as a statement/information that is said solemnly to provide truthful information while realizing that if you provide information that is not true, you will be punished by God. The existence of an oath as evidence Journal of the Ganesha Polytechnic Institution Medan Juripol, Volume 5 Number 1 February 2022 20 in court, an oath as the last alternative evidence after the parties can no longer provide other evidence that can strengthen the claim or defense during a lawsuit[36].

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[35] Mertokusumo, *Hukum Acara Perdata Indonesia*, 102.

[36] Daud, "Peranan Sumpah Sebagai Alat Bukti Di Dalam Proses Perdata," *Juripol* 5, no. 1 (2022): 19.

Written evidence is vital in the Bankruptcy Law and PKPU process, although the process still prioritizes simple evidence. Simple proof in deciding a bankruptcy petition is contained in *Faillissements Verordening*, Law Number 4 of 1998 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 1998 concerning Amendments to the Law on Bankruptcy into Law[37]. Simple proof as stated in Article 8 paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, the application for declaring bankruptcy must be granted if there are facts or circumstances that are simply proven. The explanation in Article 8 paragraph (4), what is meant by "simple proven facts or circumstances" is the fact that there are two or more creditors and the fact that the debt is overdue and unpaid. Based on this explanation, it can be interpreted that simple proof is something that stands out as a matter of proof in bankruptcy matters compared to civil matters in general. The Bankruptcy Law does not provide further explanation regarding the application of simple evidence, where the interpretation is carried out entirely by the panel of judges who examine and decide the case. So, determining simple evidence also has several weaknesses, one of the main weaknesses is that the judge must be careful in assessing facts that are acknowledged by the opposing party or are not disputed by interested parties because if the judge misjudges the facts, this can affect the decision. end of the trial[38].

In its implementation, bankruptcy and PKPU are carried out based on 4 (four) principles. A principle is a general proposition stated in general terms without requiring specific methods regarding its implementation which is applied to a series of actions to become appropriate guidance for those actions.[39] These principles are explained in the Explanation of the Bankruptcy Law and Suspension of Debt Payment Obligations. The four principles are:

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[37] Devi Andani and Wiwin Budi Pratiwi, "Prinsip Pembuktian Sederhana Dalam Permohonan Penundaan Kewajiban Pembayaran Utang," *JH Ius Quia Iustum* 28, no. 3 (2021).

[38] Rulman Ignatius Rongkonusa, Yuhelson, and Cicilia Julyani Tondy, "Diskresi Penentuan Pembuktian Sederhana Dalam Persidangan Permohonan Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (PKPU)," *SEIKAT: Jurnal Illmu Sosial, Politik Dan Hukum* 2, no. 2 (2023): 138.

[39] Tata Wijayanta, "Asas Kepastian Hukum, Keadilan, Dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga," *Jurnal Dinamika Hukum* 14, no. 2 (2014): 219.

1) Principle of Balance
   The principle of balance is embodied in this law with the aim of:
   a. prevent abuse of bankruptcy institutions and institutions by dishonest Debtors; And
   b. prevent abuse of bankruptcy institutions and institutions by creditors who do not have good intentions.
2) Principles of Business Continuity
   In 2004, in the revision of the Bankruptcy and PKPU Law, it regulated the possibility of prospective debtor companies being able to continue as a going concern, as regulated in Article 104 paragraph (1) of this law which contains:

   > *"Based on the approval of the temporary creditors committee, the Curator can continue the business of the Debtor who is declared bankrupt even though the decision to declare bankruptcy is submitted for cassation or judicial review."*

   The principle of business continuity is embodied in this law to ensure that prospective Debtor companies remain viable so that they can fulfill their obligations to Creditors.
3) Principles of Justice
   The principle of justice is applied to fulfill a sense of justice for the parties who have interests, where this principle seeks to prevent arbitrariness on the part of claimants regarding their respective claims against Debtors, without regard for other Creditors.
4) Principles of Integration
   This principle implies that the formal legal system and its material law are an integral part of the civil law system and national civil procedural law. The application of the Civil Code in proceedings and the Bankruptcy Law and PKPU in its implementation are integrated so that they can run well.

The procedural law in the Commercial Court, in this case specifically regarding Bankruptcy and Suspension of Debt Payment Obligations, applies limited examination times. As stated in Article 6 paragraph (5), paragraph (6) and paragraph (7) of the Bankruptcy Law and Suspension of Debt Payment Obligations, within a period of no later than 3 (three) days after the date the application for bankruptcy is registered, the Court shall study the application.

and set a trial date. The examination hearing on the application for bankruptcy declaration shall be held no later than 20 (twenty) days after the date the application is registered, and at the Debtor's request and based on sufficient reasons, the Court may postpone the holding of the hearing as intended in paragraph (5) until no later than 25 (twenty-five) days after the date the application is registered. Likewise, the rules regarding Postponement of Debt Payment Obligations contained in Article 225 of the Bankruptcy Law and Postponement of Debt Payment Obligations essentially explain that if an application is submitted by the Debtor, the Court within a period of no later than 3 (three) days from the date of registration of the application letter, the Court must grant a temporary postponement of debt payment obligations, however, if a request is submitted by a Creditor, the Court within a period of 20 (twenty) days from the date of registration of the application letter must grant the request for a temporary postponement of debt payment obligations. After the decision to temporarily postpone debt payment obligations is pronounced, the Court, through the management, is obliged to summon the Debtor and Creditor, known by registered letter or via courier, to appear at a hearing which will be held no later than the 45th (forty-fifth) day from the decision to postpone the payment obligation. temporary debt is pronounced.

Based on the explanation contained in the Bankruptcy Law and Suspension of Debt Payment Obligations regarding simple evidence and limited examination time, Affidavits can be used as an effective and efficient written evidence to support existing facts. Affidavits can be used as an appropriate tool to implement simple evidence in limited examination time because an Affidavit can indirectly provide understanding assistance to the Judge in examining the facts and simple evidence available in order to provide the fairest possible decision for the party/relevant parties within a limited examination time. In the context of postponing debt payment obligations, an affidavit can be used as evidence to support a request for postponing debt payment obligations (PKPU). This affidavit can contain a statement about the company's financial condition, the reasons why the company applied for PKPU, and the company's plans to pay debts in the future. This may involve statements regarding the company's assets and liabilities, relationships with creditors, or other details relevant to the PKPU process. Affidavits are often used to assist courts or authorities in understanding the financial situation of companies experiencing PKPU.

Affidavit evidence is used in determining non-contentious matters, i.e., matters on which the parties are in agreement as to the facts of the case

remaining for the court to apply the law on those facts[40]. This means that in evidence, Affidavit evidence is used in determining matters that are not disputed, namely matters involving the parties agreeing on the facts of the case which are left for the court to apply the law to those facts. The use of Affidavits in Bankruptcy and PKPU legal processes is in cases where the facts in dispute are limited. Such matters including interpretation of statutes, agreement of parties to a transaction or judgment of court[41], meaning that the limited facts include interpretation of the law, agreement between the parties in a transaction or court decisions. There is another way to use an Affidavit as evidence, namely in a trial eliminating the presence of witnesses for cross-examination regarding the authenticity and admissibility of documentary evidence relied on by one of the parties in the trial. This means that the information contained in the Affidavit is a substitute for the presence of witnesses to provide testimony at trial.

Supreme Court jurisprudence Number 3901 K/Pdt/1985 on 29th November 1988 stated that statement letters which are mere statements from people who give statements without being examined at trial, do not have any evidentiary power (cannot be equated with testimony). Based on this jurisprudence, the Affidavit as a statement under oath does not have sufficient strength in evidence in court because the truth of the statement contained in the Affidavit is not directly checked at trial. Apart from that, previously in the Supreme Court Decision Number 38 K/Sip/1954 on January 10th 1957, a written statement under oath or an Affidavit from a person cannot be equated with a witness's statement before a judge. The position of the Affidavit, based on the two Supreme Court decisions, cannot replace or be equated with statements from the presence of witnesses at trial. If an affidavit is used in the common law legal system, it is an authentic deed, and if it is used as evidence in justice in Indonesia, it becomes ordinary documentary evidence because the legal systems in common law and civil law are different.[42] An Affidavit can be strong if it is supported by other evidence, so that the nature of the Affidavit itself in Indonesia is only as a complement, not the main thing.

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[40] Stephen Chuka, "Admissibility of Documents Attached to Affidavit Evidence Under Nigerian Evidence Act 2011," *International Journal of Comparative Law and Legal Philosophy (IJOCLLP)* 3, no. 3 (2021): 173.

[41] Chuka.

[42] Mulyana and Fajaruddin, "Penilaian Alat Bukti Affidavit Dalam Sistem Hukum Acara Perdata Di Indonesia (Studi Putusan No. 247/Pdt.G/2019/PN Mdn)."

Conclusion

Finally, this study concluded that the very rapid development of law in the current era of globalization seems to be paving the way for law enforcers to always innovate in order to resolve cases in an increasingly effective way. One of them is the use of Affidavits in proving a case, especially in the Bankruptcy and PKPU Legal Process which prioritizes simple evidence and time efficiency. In Indonesia, Affidavits cannot be classified as Authentic Deeds and do not have perfect evidentiary characteristics so they cannot be equated with witness statements, but Affidavits can be used as ordinary documentary evidence to support other evidence and help judges to decide Bankruptcy & PKPU cases efficiently within a limited examination time.

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