

# Implementation of Attorney's Authority as Petitioner in Proposing Bankruptcy for Public Interest

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Attorney with special power of attorney could act within or outside the court for and on behalf of the country or government. Based on the provision in Article 2 section (2) of Act Number 37 of 2004 jo Government Regulation Number 17 of 2000, it is regulated that Attorney as one of the parties in power to propose bankruptcy, under the requirements that must be fulfilled is that no other parties proposing similar request for public interest. Therefore, it is necessary to strengthen the implementation of such Attorney's authority as the petitioner in proposing bankruptcy among Indonesian people so that public's understanding towards such Attorney's authority could be applied and useful for the litigant of bankruptcy. The law being studied is *iusconstitendum*. Data used was primary and secondary data, data collection technique was in the form of interview data and library materials. The implementation of Attorney's authority as the petitioner in bankruptcy for public interest is regulated in the applied legislation. The provision stating bankruptcy request for public interest can only be performed if there was not parties proposing bankruptcy request should be given exception by legislator, in case the Attorney request for bankruptcy for public interest regarding with Attorney's state interest should be given authority to act representing or as the power from state's institutions directly bear debts towards Debtor, that the institutions which directly have debts to the debtor do not consider the Attorney works independently disregarding the interest of such institution.

**Key words:** *Attorney's Authority, Bankruptcy, For Public Interest.*

## Background

Currently, bankruptcy regulation in Indonesia is regulated within an Act Number 37 of 2004 about Bankruptcy and Suspension of Installment Payment Obligation which further is called as Act of Bankruptcy. This Act replaces Act Number 4 of 1998 about the Amendment of the Act about bankruptcy which previously was regulated in Legislation Number 1 of 1998 about the Amendment of Bankruptcy Regulation.

Act of Bankruptcy must be able to give some benefits, not only for creditor but also for debtor. Along with it, Act of Bankruptcy must also provide balanced protection for creditor and debtor. Act of Bankruptcy is brought up to provide benefit and protection to creditor if the debtor did not pay their debts. With the act of bankruptcy, it is expected that creditors could obtain access to the property of debtors who are stated bankrupt since they could no longer be able to pay their debts.

From the historical point of view, the Act of Bankruptcy initially aimed to protect creditors in providing clear and certain way out to pay off the debts they cannot pay. In further development, the Act of Bankruptcy aims to protect debtor by providing a way to pay off their debts without paying fully, so that the business could get back up on its feet without debts (Imran Nating, 2004, 4).

The Act of Bankruptcy has adopted the principle of balance by calling it as “fair” principle. In general explanation of such Act, among others are expressed as “Subjects of consummation of Act about bankruptcy including important aspects considered necessary to manifest the issue of debts pay off immediately, fairly, openly, and effectively” (Sutan Remy Sjahdeini, 2008, 34).

Quick completion over this bankruptcy problem would be very helpful to overcome uncertain situation in the field of economy (Ahmad Yani & Gunawan Widjaja, 1999, 4). Since the objective of Bankruptcy is to maximize the economy result of the existing assets for creditor as a group by increasing asset’s value collected for with the rights of the creditor are mixed up (Sunarmi, 2010, 26).

If, after the completion of the debtor’s property carried out by curator and in fact, there are still debts that have not been paid off, the debtor still has to pay the debts. If the completion act or liquidity has been carried out by a curator, debtor is given back its authority to perform legal act related to their property, it means that debtor may go back to run their businesses, but debtor also still has an obligation to pay off their debts which have not been paid (Bernad Nainggolan, 2014, 7).

As for the one that could be stated as bankrupt is a debtor who has been stated unable to pay their debts. Bankrupt could be stated over:

1. The request from the debtor himself
2. The request from one or more of their creditors. (According to Article 8 before the decision, the Court is obliged to call the debtor).
3. Bankrupt must be under the decision of the Court (Article 2 section (1)).
4. Bankrupt could be over the request of the Attorney for public interest (Article 2 section (2)), The court is obliged to call the debtor (Article 8).
5. Should the debtor be a bank, the request for bankrupt could only be proposed by Bank Indonesia.
6. Should the debtor be a security company, stock exchange, clearing and guarantee institution, storage and settlement agency, the request for bankrupt could only be proposed by Stock Exchange Monitoring Agency (Bapepam).

1. If the debtor was insurance company, reinsurance company, pension funds or State Owned Enterprises that runs in the field of public interest, the request for bankrupt status could only be proposed by the Ministry of Finance (Abdul R. Saliman, 2005, 120).

Therefore, according to the Act of Bankrupt and Suspension of Debt Installment Obligation Number 37 of 2004 Article 2 section (2), that Attorney has the authority to propose Bankruptcy for public interest.

The request of bankrupt towards Debtor could also be proposed by the Attorney for public interest (Article 2 section (2)) of the Act of Bankruptcy and Suspension of Debt Installment Obligation. The definition of public interest is the interest regarding with the state and the country and/or public interest, for example:

1. The debtor escapes
2. The debtor hides some parts of their property
3. The debtor has some debts to State-owned Enterprise (BUMN) or other business that collects money from the people
4. The Debtor has some debts from the collector from the people.
5. The Debtor does not have a good will or not cooperative in the completion of debts that has passed due, or;
6. Other thing according to the Attorney is public interest (Aco Nur, 2015, 141)

In the Government Regulation Number 17 of 2000 about the Request of Bankruptcy Statement or Public Interest that could be defined that the Attorney could propose the request

without going through the service from an Advocate since in this case, the Attorney plays a role as State Attorney.

The regulation written in Article 7 section (1) or Act Number 37 of 2004 that obliges the request of bankrupt statement should be proposed by an advocate does not apply for bankruptcy request proposed by Attorney (Article 7 section (2)).

Therefore, The Attorney should bring Designation Letter of State Attorney (Special Power of Attorney) in the proposal of bankruptcy statement request to Commercial Court.

In a decade history of the journey of Bankruptcy case done by the Attorney as the petitioner in the case of bankruptcy in Indonesia, there have been recorded 2 (two) cases, they are:

1. Case Number. 02/Pailit/2005/PM. Medan commerce carried out by the State Attorney of Lubuk Pakam, North Sumatera towards PT. Aneka Surya
2. Case Number. 23/Pdt.Sus/Pailit/2013/PN. Central Jakarta Commerce carried out by State Attorney (Kejari) of Cibadak, West Java towards PT. Qurnia Subur Alama Raya (QSAR) and HM. Ramli Araby, SE as personal and as the director.

The implementation or the act from the implementation of a plan that has been well-arranged, in detail and efficient in understanding what actually happens after a program is stated to apply or formulated including either business to administer it or to cause real effect to the people or an event.

Initiated from the aspect of legal pluralism and the need of human over order and justice, the process of law enforcement seems to be something that is very significant in the life of nation and state, where the law becomes social control tool and a tool for social engineering in order to create a balance. In its development, law to the direction of legal system that enable the creation of rule of law, it takes regulation of law in Attorney institution regulating the actions of the attorneys as one of the apparatus of law enforcement in implementing their duty and authority.

Attorney as the petitioner in proposing the Bankruptcy for public interest, then what needs to be paid attention to is how the application of law and the implementation of authority of the Attorney of the Republic of Indonesia as the petitioner in bankruptcy for public interest, it also needs an attention about how the effectiveness of authority law for Attorney as the petitioner in proposing the case of bankruptcy for public interest.

Currently, the implementation of authority of Attorney as petitioner in this Bankruptcy has been presented in legal regulation applied in Indonesia. While for the effectiveness of law is

still felt less since it was proven by the low number of cases of bankruptcy handled by the Attorney, among others is because the lack of knowledge from the public about the role of Attorney as State Lawyer Attorney in handling Bankruptcy cases.

Based on the above explanation, there have been formulated two issues; (1) how the application of law and the implementation of the authority of the Attorney of the Republic of Indonesia as the petitioner in bankruptcy for public interest. (2) How is the effectiveness of the authority of the Attorney as the petitioner in proposing a case of bankruptcy for public interest.

### **Research Method**

On this research method, the data type used was primary and secondary data. Primary data was obtained through documents and field research. As for as for the secondary data itself consists of primary legal material, secondary legal material and tertiary legal material. Data collection technique used in this research was secondary data collection which was through literature study or document and for complimentary data collection from the research also conducted an interview with Attorneys in the Area of West Java in order to complete the accuracy material of this research so that it could present scientific writing about the implementation of the authority of Attorney so far in bankruptcy case for public interest.

### **Result and Discussion**

#### ***The Application of Law and the Implementation of Authority of Attorney of Republic of Indonesia as Petitioner in Bankruptcy for Public Interest***

Act Number 16 of 2004 about the Attorney of Republic of Indonesia provides an authority to the Attorney to implement duty and the authority in the field of civil code and State Administration so that it is known as State Attorney (JPN).

State Lawyer Attorney, from its public interest characteristic, it should merely be social, and from its objectives it should improve the prosperity of common people, non-profit, related to national interest, common people or public service.

The duty and the authority of the Attorney is actually very wide including criminal code area, civil code area or state administrative. That the duties of Attorney could be divided into two fields, the first, judicial duty and the second is non-judicial duty. Nevertheless, judicial duty of the Attorney actually increased based on the Act Number 5 of 1991 jo Act Number 116 of 2004, Attorney receives the authority as state lawyer. Article 30 section (2) of Act Number 16 of 2004 states that, “in the field of civil code and state administrative, attorney with

special power could act inside or outside the court to and on behalf of the state or government.”

The authority to propose bankruptcy request given to the Attorney is for public interest. Generally, there is no standard rules about public interest that becomes the authority of the attorney in proposing bankruptcy request.

Act Number 37 of 2004 in its explanation, Article 2 Section (2) it is given the limitation of public interest, what is meant by public interest, what is meant by public interest is national interest and or common interest.

In bankruptcy, there are a lot of interest involved. Other than the interest of the creditor, there are also common interest that needs to be protected, they are:

1. A country that lives from the tax paid by the debtor that is used for development in order to prosper the people,
2. People who need a work opportunity from the debtor,
3. People who supply goods and services to the debtor,
4. People who depend their lives from the goods and services supply of the debtor, either they are as consumer or trader.
5. Stockholder from debtor’s company, moreover if it is public company.
6. People who save their money in bank, if the one bankrupted is the bank, people who received credit from a bank, would face a hard times if the bank was declared as bankrupted.

Government Regulation Number: 17 of 2000 about Bankruptcy Request for Public Interest, especially in Article 2 section (2) stating that the Attorney could propose the bankruptcy statement with common interest if the debtor has 2 (two) or more creditor and they do not pay at least 1 (one) debt that has been due and could be collectable, and there is no party proposing such bankruptcy statement request.

“Public interest” mentioned is the interest of nation and country and/or public interest for example debtor escapes, debtor hides some parts of the properties, debtor has some other debts to the people by collecting funds from them, debtor does not have a good will and non-cooperative in completing the problem of debts that have been due and in some other things according to the Attorney is public interest.

A guide for Attorney institution in proposing a request for Bankruptcy, the author conducted a research using normative judicial research method supported by empirical judicial towards the Decision of Commercial Court of Central Jakarta over the case Number: 23/Pdt.Sus/Pailit/2013/PN.Niaga/Jkt.Pst.

In that case, the Attorney as State Lawyer for the public interest proposed the bankruptcy of PT. Qurnia Subur Alam Raya and HM. Ramli Araby, SE as the personal and as the Director President, by violating public interest in the form of overdue debt as the consequence of the way PT. QSAR work is withdrawing the people's fund (investor) through a cooperation in the field of Agribusiness. The number of Investor that had a chance to make it was around 6,480 (six thousand four hundred and eighty) people with the amount of investment of Rp. 467.000.000.000 (four hundred sixty seven billion rupiah).

With public interest as the reason, then the District Attorney of Cibadak sent the bankruptcy to the Commercial Court of Central Jakarta by referring to Article 2 section (2) of the Act of Bankruptcy an the Rule of Attorney General of Republic of Indonesia Number 040/A/JA/12/2010, where this regulation gives an authority to the Attorney to propose bankruptcy request for the sake of common interest, with this bankruptcy process, the entire asset of PT. QSAR would be withdrawn and estimated by Curator so that the all Creditor will receive the payment based on their position, so that the Attorney has been able to implement the execution of Decision of Supreme Court of Republic of Indonesia Number 308 K/Pid/2004, since the Attorney does not have the capacity to estimate and the value the position of the creditor, therefore, by proposing the bankruptcy request, it is expected that the violated rights of the creditor would be achieved.

The process of request for the Attorney in proposing such case of Bankruptcy to the Commercial Court could be implemented by the following ways:

1. Receiving information based on self-initiative or based on input from the people, institution, Government institutions, and other entities established by the government such as the Committee of Financial Sector Policy.
2. Based on such sources, further, the Head of District Attorney writes an Instruction Letter to the execution unit to find and obtain the information.
3. Further, a research study is made by the execution unit and delivered to the Head of District Attorney.
4. The Head of District Attorney would then write a Special Power of Attorney to the team of State Lawyer Attorney that would carry on the suit/request.
5. The State Lawyer Attorney makes the suit/request of bankruptcy.
6. The Team of State Lawyer Attorney proposes a suit/request to the authorized Commercial Court.

The request of bankruptcy statement for public interest proposed by the Attorney should be proposed to the Head of Commercial Court, whose legal area including the bankrupted debtor's legal area and it should be registered through the registrar of such Commercial

Court. Where to the petitioner, a written receipt should be given and signed by the authorized officers on the data of the registration. Similar with the common civil code case, then the form of the request of bankruptcy should also be written just like the lawsuit containing the identity of the parties, the foundation of the suit (Posita) and the matters requested (Petitum)

The registrar is obliged to refuse such request of bankruptcy statement administration if it was implemented outside the applied provision. The registrar should deliver the request of bankruptcy statement to the Head of the Commercial Court at least 2 (two) days after the request date registered. Within at least 3 (three) days after the date of bankruptcy statement request is registered, the Court would study the request and determine the day of the court. The examination court over the request of bankruptcy statement registered, the court studies the request and determines the day of the court. The court of examination over the request for bankruptcy statement was held no latter than 20 (twenty) days after the date of the request was registered.

The Act of Bankruptcy and Suspension of Debt Payment Article 6 section (6) states that, over the request of the debtor and based on the adequate reasons, the court may suspend the conduction of the court up to no latter than 25 (twenty five) days after the date of the request was registered.

In the case of the request of bankruptcy statement proposed by the Attorney for public interest, then the provision of Article 7 Section (1) of the Act of Bankruptcy and the Suspension of the Debt Payment Obligation, obliges the request of bankruptcy statement proposed by an advocate to be not valid. Therefore, the provision of Article 7 section (1) is not applied for the request of the bankruptcy statement proposed by the Attorney, therefore, to replace it, the Attorney must provide the Designation Letter of Instruction of State Lawyer Attorney in the court.

The Act of Bankruptcy and the Suspension of Debt Payment Obligation further in Article 7 section (2) states that, the Court is obliged to call the debtor in terms of the request of bankruptcy statement proposed by the creditor, Attorney, Bank Indonesia, Stock Market Monitoring Board or the Ministry of Finance. If the request of bankruptcy statement proposed by the debtor carries some doubts that the requirements to be stated as bankrupt has been fulfilled, then the court could call the creditor.

Article 7 section (5) from the Act of Bankruptcy and the Suspension of Debt Payment Obligation reveals that the Decision of Court over the request of bankruptcy statement must be uttered at least 60 (sixty) days after the registered date of the request of bankruptcy statement. The copy of decision of court is obliged to be delivered by the Bailiff through a registered mail to the debtor, the party proposing bankruptcy statement request, the curator

and the Monitoring Judges at least 3 (three) days after the decision date over the request of the statement of bankruptcy is uttered.

In the research result carried out by the author by studying documents about bankruptcy statement request towards PT. QSR and HM. Ramli, SE, personally and as the director proposed by the District Attorney of Cibadak for public interest and towards the Decision of Commercial Court of Central Jakarta over the case Number 23/Pdt.Sus/Pailit/2013/PN.Niaga/Jkt.Pst, then besides the decision of bankruptcy statement to PT. QSAR and withdraw all assets of PT. QSAR which further would be paid or shared to the creditor base on their position, and also punish HM. Ramli Araby, SE personally and as the director, with 8 (eight) years in prison and a fine of Rp 10,000,000,000.- (ten billion rupiah) subsidiary of 1 (one) year in prison, since he has collected the funds from the people (investor) without a permit from the authorized institution (Bank Indonesia) which was carried out together and continue, it causes the presence of debt to about 6,478 (six thousand four hundred and seventy eight) creditors and have done some mistakes and negligence in running the management of the company, the negligent in running the implementing the trust given (fiduciary duty).

The regulation for the Attorney in carrying out the detention towards the debtor who are still in process of bankruptcy cases i.e based on Article 93 of Act Number 37 of 2004, where the Attorney appointed by the Monitoring Judges could carry out the detention. In such article, it states that:

“The court with the decision of bankruptcy statement or any time after that, over the proposal from the monitoring judges, the request of curator or over the request of a creditor or more and after hearing the monitoring judges, it could be instructed that the bankrupted debtor should be detained, either in the State Prison or in his/her own house, under the supervision of the Attorney appointed by the monitoring judge (section1).”

The detention as mentioned in section (1) is carried out by the Attorney appointed by the Monitoring Judges (section 2) and the period of the detention is 30 (thirty) days top counted from the day of the detention (section 3) and is extendable for 30 days top over the request from one or more creditors or over the initiation from the monitoring Judges (section 4).

The detention towards the bankrupted debtor is proposed under the following circumstances:

1. Intentionally does not fulfill the obligation to help the curator carrying out his effort to secure the bankrupted properties and hide all securities and other important documents. (Article 110 of the Act of Bankruptcy & the Suspension of Debt Payment Obligation).

2. Intentionally not willing to be called by the Monitoring Judges, curator or creditor's registrar to provide information. (Article 110 of the Act of Bankruptcy and Suspension of Debt Payment Obligation).
3. Not willing to provide information about the causes of bankruptcy the situation of bankrupted properties to the Monitoring Judges for creditor's interest (Article 121 section (1) and (2) of the Act of Bankruptcy and the Suspension of Debt Payment Obligation).
4. The request to detain the bankrupted debtor should be granted by the Court should the request was based on the reason as stated above (Article 95 of Act of Bankruptcy & the Suspension of Debt Payment Obligation).
5. Other than the legal consequences as mentioned above, the fact of bankruptcy towards the company causes the narrowing down the space to move for the management of the company to run their activities in their business field since there is a restriction to leave their place or residence without approval from the Monitoring Judges (Article 97 of The Act of Bankruptcy & the Suspension of Debt Payment Obligation).

### ***The Effectiveness of Attorney's Authority as the Petitioner in Proposing Bankruptcy Case for Public Interest***

The duty and authority above could be said as something contradictory, since in general, people understand that the duty and the authority of the Attorney always consider with the issue of case of Common Criminal case handling or Special Criminal Case as the prosecutor regulated in Criminal Code. While, on the other side of the Attorney could also play a role as State Lawyer Attorney just like the common Lawyer. Especially in terms of civil code, the Attorney has a duty to implement and or to control the reinforcement activity, support, consideration and legal service as well as other legal action to the state, government and the people in the field of civil code.

The effectiveness of law appears in a legal system theory from L.M Friedman, i.e the effectiveness of law is determined by the substance, institution and legal culture.

The basis of how the law works is the people, then the law would be influenced by factors or social power start from the creation stage up to the application. Social power would try to enter in each process of legislation effectively and efficiently. The regulation issued is expected to match with the wish, but the effect of the regulation depends on the social power such as its good legal culture, then the law would work well too, but on the contrary, if the power is decreased or none, then the law would not run. Because the people is the basis of how the law works.

**Lawrence M. Friedman** in his book entitled *The Legal System A Social Science Perspective*, 1975; states that legal system consists of legal structure component (in the form of legal institution), legal substance (legislation) and legal culture.

These three components support the run of the legal system in a country. In social reality, the presence of legal system among the people encounter changes as the consequences of influence, what is called as modernization or globalization either evolutionary or revolutionary.

Further, **Lawrence M. Friedman** states that the conditions that must be there are, that the law should be able to communicate. Communication itself is a process of delivery and acceptance of symbols containing certain meaning. The objectives of communication is to create common understanding, in order to change the minds, attitude or behaviour. Legal communication is addressed more on the attitude, because attitude is a mental readiness (pre disposition). Therefore, someone has the tendency to provide good or bad perspective, which then is manifested in a real behaviour (Soerjono Soekanto, 1988, 17-18).

The crucial role in Indonesian legal system demands an Attorney not only to master the discipline of criminal code, but also civil code and state administrative. Attorney is not only demanded to master general positive law (*lex generalis*), but also the specific ones (*lex specialist*) which currently present.

Along with its development, the Attorney as as the prosecutor either as State Lawyer Attorney, it should be able to carry out the renewal in terms of law, especially in the field of law enforcement to manifest the identity of the institution of Attorney of Republic of Indonesia which is more professional and more dynamic in order to face the development of the people. Therefore, it is expected that the Attorney through his performance in the field of prosecution or as State Lawyer Attorney could establish a legal system to the better direction.

The legal system theory by **Lawrence M. Friedman** could be used as one of the basis to study the performance of the Attorney in establishing national legal system. Because basically, Attorney is one of the parts of the legal structure influencing the run of the law. Therefore, the performance of the attorney in the field of general prosecution or as the State Lawyer would be very influencing for national legal system.

As has been recognized that the legal reinforcement should be followed by the professionalism of the legal reinforcement force including Attorney. But, this would not be manifested if the legal system in Indonesia is still chaotic and there is no change in the legal structure, legal substance and the legal culture such as mentioned by Lawrence M. Friedman.

The legislation fulfills the legal needs regarding the such civil code field by establishing a working unit within the Attorney environment on behalf of The Young Attorney General and State Administrative (JAM DATUN). The presence of Young Attorney General and State Administrative (JAM DATUN) is a form of effort of recovery and the rescue of State's property in order to recover the economy as well as to increase the prosperity and people's standard life.

Since established on 21 January 1992, for 20 years, Young Attorney General and State Administrative (JAM DATUN) has contributed to determine the performance of the Attorney as one of the law reinforcement institution with the mission given to them.

Based on the regulation restricting it, based on the record about the number of state institution, central government and local institutions. State-owned Enterprises/Local-owned Enterprises, in fact there is only around 20% (twenty percent) that use the role of Attorney in the filed of civil code and state administrative.

Therefore, it means that the role of Attorney, especially in the field of Civil code has not been empowered by stakeholder in implementing the legal action so far. Until today, the attorney in handling Civil code case has not yet shown its existence on the surface, in the context of fulfilling the implementation as the forum of the implementation of civil code case completion. This is influenced by many factors, either from the aspect of legal subject itself or environmental factor or the legal area of the Attorney. This becomes the cause that makes the people in general do not know the role of Attorney as State Lawyer Attorney mentioned by the legislation.

Bankruptcy is one of the cases in the field of Civil Code and State Administrative in the Attorney of the Republic of Indonesia. Philosophically, our act of bankruptcy is addressed more on the bankrupt/debtor, i.e boedel sharing or debtor's property who stops paying the debt. The nature of the objective of the bankruptcy is the process related to the property sharing from the debtor to the creditors. Bankruptcy is a way out to process the debtor's property distribution which later becomes the bankrupt boedel certainly and fairly.

However, if we study the concept of Bankruptcy further, the requirements of a debtor that could be stated as bankrupt by the Attorney Request is not easy.

The research result of the author towards District Court (Kejari) Cibadak, Sukabumi, West Java who proposed a request to bankrupt PT. Qurnia Subur Alam Raya (QSAR) in the Commercial Court of Central Jakarta, since the Attorney does not have the capacity to count

and to value the creditor, therefore, if the request to bankrupt PT. QSAR is granted, then the handling of this distribution should be handled by the curator appointed by the Court.

The bankrupt suit is issued since the Supreme Court (MA) refused the cassation proposed by the General Attorney of Kejari Cibadak, so that they could not execute one of the decisions by the District Court of Cibadak and Superior Court of Bandung which determined a number of evidence shared to the investor fairly and balanced. But, since the decision which substantially shares the evidence in the form of money, moving objects, and non-moving objects to the investor fairly and balanced, makes the process of execution faces many obstacles.

The many number of creditors and evidence of ground and building in a number of location needs a right execution mechanism so that the decision sounds fair and balanced. The division of evidences that had been auctioned with the formula of 1:47 (the number of investor divided by the number of money from the auction), is in fact ineffective. Therefore, the number of money division is inadequate compared to the loss suffered by the investor. Such division only accommodates the congruent creditor, while among the 6,480 people, there are preference creditors. The execution process becomes protracted without any correct mechanism to overcome the problems.

The effectiveness of legal authority in bankruptcy case taken care by the Attorney is, the minimum or the lack of knowledge of the people about the authority of Attorney that could handle the Bankruptcy case where they rarely propose the such bankruptcy request, since the stakeholder such as bank, financial institution and creditors also lack of knowledge and do not understand the Attorney's authority as the State Lawyer in such Bankruptcy case.

Attorney in this case, for common people is not popular in overcoming the case of Bankruptcy compared to Common Criminal or Special Criminal, for there are some perspectives towards the obstacle influencing it. As for the obstacles are as follows:

1. Internal obstacle of the Attorney Institution;

Not all internal elements of the Attorney understand the presence of the duty and the function as well as the Civil code organization and State Administrative, so that the functions have not yet been felt optimally implemented. With such background of function, the Human Resource of the Attorney should be more prepared to face the duty and function of the Attorney as the Public Prosecutor and as the State Lawyer.

2. External obstacle of the Attorney Institution, in legislation.

Obstacles in legislation felt is the lack of legislation supporting the implementation of Attorney's authority in terms of Civil Code, especially in Bankruptcy litigants. To support the implementation of Attorney duty in the field of civil code in general, it takes some requirements as follows:

a. The needs of confirmation that the Attorney also acts as State Lawyer Office.

In order to stabilize the duty and the authority of the Attorney in the field of Civil Code and State Administrative in maintaining the integrity of the government to rescue the State asset and public interest, as well to handle the case/civil code case and State Administrative professionally, there needs to be a confirmation function of the Attorney as State Lawyer Office, besides the duty and the authority that have been given in the field of Criminal Code and Order of the Public Order.

b. The Confirmation of the Field of DATUN (Civil Code and State Administrative) of the Attorney has the authority as Class Action Institution.

Referring to the Act of Attorney Number 16 of 2004, State Lawyer Attorney is useful for:

- 1) State/Government, State-owned Enterprises, based on the Article 30 section (2) of the Act of Attorney; in the field of Civil Code of State Lawyer Attorney takes action for and on behalf of the State and Government.
- 2) Representing the Interest of People's Civil Code/Class Action, as in Article 21 letter f of Presidential Decision Number 86 of 1999, it is mentioned "the implementation of legal action in or outside the court, representing the interest of civil code of the State, Government and the People, both based on the position or the special power domestically and internationally.

Quite often, the public interest suffers as the consequences of someone's action or legal entities. Public interest needs to be protected or recovered from any action against the law. In this case, it is very correct to empower the Attorney as the apparatus of State Law Enforcement to protect the public interest.

However, even though the confirmation of the Attorney could represent the people's civil code interest, so far, it is included in the Act Number: 40 of 2007 jo of Act Number 1 of 1995 about Limited Company and the Act Number 37 of 2004 jo of Act Number; 4 of 1998 about Bankruptcy, yet the implication has not been felt in the social application, this is because:

1. The unclear understanding about Public Interest for Attorney to complete the case of Civil Code and State Administrative, especially in handling Bankruptcy cases. Therefore, the benchmark to determine the presence of public interest element in case the Attorney proposes the request of bankruptcy statement to a Debtor is just handled over casualty to the judge of

Commercial court examining the request of bankruptcy statement. This is along with the spirit of the provision of Article 57 of Act Number 2 of 1986 about General Judiciary providing the authority to the Head of the Court to determine that a case involving public interest.

2. The clearly non-existence a Legislation regulating the Attorney as State Lawyer Office that is obliged to complete the cases in the field of civil code and State Administrative personally or in terms of business entities. Because from the research result, the writer sees a direct competition with Private Lawyer Office with imbalance position. Such limitation would bring the consequence of the limited movement of the Attorney, recalling that this globalization era, the private role seems to be getting prominent compared to the role of the government. Meanwhile, the current policy of Attorney, especially in the field of Civil Code and State Administrative is service oriented or prioritize service to the people with the case both individually or legal entity, without any charge. On the contrary, Private Lawyer Office emphasizes the presence of service and profit oriented. This policy is based on the fact that State Lawyer Attorney (JPN) in implementing their duty have received salary from the State and they have funds provided by the budget to handle cases.

3. The non-existence of firm Legislation where not all institution/government institution, individual or legal entity are not familiar with the role of Attorney as State Lawyer. If there was a socialization and regulation in the legislation of the Republic of Indonesia regulating the above matters mentioned, then it is expected that it could provide trust to the Attorney to help overcoming problems in the field of Civil Code and State Administrative entirely.

4. The concern of Institution and Government institutions, people as individual or legal entity to hand over the special power to the Attorney, since it was concerned that it would reveal the weakness of the Institution or the Government Institution, People as Individual or Legal Entity and will be used to attack them in the field of Criminal Code.

5. In the payment of the case charge which is very general, there is no difference between the bankrupted petitioner in its capacity as debtor in terms of proposing the statement of bankrupt for and over the business interest, the petitioner of bankrupt in its capacity as State Lawyer Attorney in terms of the proposal of bankrupt statement request for and on behalf of public interest. In practice, the presence of obstacle about the budget in proposing the request of bankrupt statement where the government for Attorney institution does not include the funds for proposing bankruptcy request, this clearly complicates the process of bankruptcy request proposal by the Attorney Institution.

## **Conclusion**

The effectiveness of law towards the Authority for Attorney as Petitioner In Proposing the Case of Bankruptcy for Public Interest takes the performance of Attorney in establishing national legal system. Since, basically Attorney is one of the parts of the legal structure that influences the legal function. Therefore, the performance of the attorney in the field of



general prosecution or as the State Lawyer would very much influence national legal system. As for the obstacle found in the effectiveness of the role or the authority of the Attorney as the petitioner in this bankruptcy case, i.e. are: the lack of knowledge of the people about Attorney as State Lawyer Attorney who also have duty and authority in handling the case of Bankruptcy for public interest as well as limited understanding and knowledge about Bankruptcy to the human resource of the Attorney. This is because the lack of the number of cases of Bankruptcy entering from the numbers of cases on the field of Common Criminal or Special Criminal on each unit of Attorney in Indonesia. Therefore, the attorneys are distributed to complete those cases of Common Criminal or Special Criminal.

The research result could be suggested that by the central or local government in general and the Attorney Institution specifically, could focus more on the socialization in the form of legal consultation to the people or legal entity about the duty and authority of the Attorney as State Lawyer Attorney so that the people, either individual or legal entity is expected to be able to play active role to report many cases of Bankruptcy occurs to the Attorney Institution so that the Attorney as State Lawyer Attorney as the competent party proposes the request of bankruptcy request for public interest could run its role, function and position better based on the Act Number 37 of 2004 about Bankruptcy and Request of Suspension of Debt Payment and Act Number 16 of 2004 about the Attorney of Republic of Indonesia.



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**File/Boedel**

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