

# INDONESIA BANKRUPTCY LAW

## Chapter I Bankruptcy

### Section 1. Bankruptcy Declaration

#### Article 1

1. A debtor having two or more creditors and failing to pay at least one debt which has matured and became payable, shall be declared bankrupt through a Court decision as intended in Article 2, either at his own petition or at the request of one or more of his creditors.
2. Petitions intended in paragraph (1) may also be filed by the Attorney General in the interests of the public.
3. In the event that the debtor is in the form of a bank, the petition for a declaration of bankruptcy may only be filed by Bank Indonesia.
4. In the event that the debtor is in the form of a securities company, the petition for a declaration of bankruptcy may only be filed by the Capital Market Supervisory Agency.”

#### Article 2

1. Decisions regarding petitions for bankruptcy and other related matters as intended in this Law shall be stipulated by the Court the jurisdiction of which covers the debtor's legal domicile.
2. In the event that the debtor leaves the territory of Indonesia, the Court authorized to make a decision in respect of a petition for the declaration of bankruptcy shall be the Court the jurisdiction of which covers the most recent legal domicile of the debtor.
3. In the event that the debtor is the shareholder of a firm, the Court the jurisdiction of which covers the legal domicile of the office of such firm shall also be authorized to make a decision.
4. In the event that the debtor is not domiciled within the territory of the Republic of Indonesia, but practices his profession or conducts his business within the territory of the Republic of Indonesia, the Court entitled to make a decision shall be the Court the jurisdiction of which covers the legal domicile of the office in which the debtor practices his profession or conducts his business.
5. In the event that the debtor is a legal entity, the legal domicile thereof shall be as set forth in the Articles of Association.

#### Article 3

- (1) In the event of a petition for declaration of bankruptcy being filed by a married debtor, such petition may only be filed upon the approval of his/her spouse.
- (2) The provision set forth in paragraph (1) shall not apply if there is no mingling of property.”

**Article 4**

1. Petitions for the declaration of bankruptcy shall be filed with the Court through the Clerk of the Court.
2. The Clerk of the Court shall register the petition for declaration of bankruptcy on the date of such petition being filed, and a written receipt signed by the Clerk of the Court bearing the same date as the date of registration shall be provided to the party filing such petition.
3. The Clerk of the Court shall submit the petition for declaration of bankruptcy to the Chairman of the District Court no more than 24 hours from the date of registration of such petition.
4. Within a period of 2x24 hours from the date of registration of the petition for declaration of bankruptcy, the Court shall study such petition and shall determine the day of the session.
5. The session for the hearing in respect of the petition for the declaration of bankruptcy shall be held within 20 (twenty) days from the date of the registration of such petition.
6. At the debtor's request and based on sufficient grounds, the Court may postpone the hearing referred to in paragraph (5) until no later than 25 (twenty-five) days from the date of registration of the petition.
7. The petition for declaration of bankruptcy of a company must include the name and place of residence of each shareholder being jointly and severally liable for the entire debts of the company concerned."

**Article 5**

Petitions as intended in Article 4, Article 7, Article 8, Article 9, Article 11, Article 56A, Article 66, Article 151, Article 161, Article 197 and Article 205 must be filed by an attorney licensed to practice."

**Article 6**

1. The Court: a. must summon the debtor, if the petition for declaration of bankruptcy is filed by the creditor or the Attorney General; b. may summon the debtor, in the event that the petition for the declaration of bankruptcy is filed by the debtor and there is some doubt that the conditions for being declared bankrupt as intended in Article 1 paragraph (1) have been met.
2. The summons as intended in paragraph (1) shall be made by the Clerk of the Court by no later than 7 (seven) days prior to holding the first session for the hearing.
3. The petition for declaration of bankruptcy must be granted if there are facts or circumstances which prove simply that the conditions for stating bankruptcy as intended in Article 1 paragraph (1) are fulfilled.
4. A decision must be made concerning a petition for declaration of bankruptcy within 30 (thirty) days from the date of registration of the petition for declaration of bankruptcy.

5. The decision concerning the petition for declaration of bankruptcy as intended in paragraph (4) must be pronounced in a public session and may be executed prior to any legal process being filed in respect of such decision.
6. Within a period of no more than 2x24 hours from the date of determining a decision in respect of the petition for the declaration of bankruptcy, the Court must forward, by official registered letter or by courier, to the debtor, the party filing the petition for the declaration of bankruptcy and the liquidator as well as the Supervising Judge, a copy of the Court's decision setting forth in full the legal considerations underlying such decision.

#### **Article 7**

1. Pending a decision concerning the declaration of bankruptcy, any creditor or the Attorney General may file a petition with the Court to:
  - a. place a seizure on a part of or the entire assets of the debtor; or
  - b. appoint a provisional liquidator to:
    - 1) supervise the management of the debtor's affairs; and
    - 2) supervise payments to creditors, the transfer or utilization of the debtor's assets for which the liquidator's approval is required in respect of the bankruptcy.
2. A petition as intended in paragraph (1)
  - (1) shall only be granted if based on sufficient and convincing evidence proving that such is needed to protect the creditor's interests.
3. In the event that the petition as intended in paragraph (1) letter a is granted, the Court may stipulate the requirement for the creditor to provide a security in an amount considered fair by the Court.

#### **Article 8**

1. The legal action which may be taken in respect of the decision regarding a petition for declaration of bankruptcy shall be an appeal to the Supreme Court.
2. Petitions for appeal to the Supreme Court as intended in paragraph (1) shall be filed within 8 (eight) days from the date of the decision in respect of which the appeal is filed, by registering the same at the Clerk of the Court which rendered the decision regarding the petition for the declaration of bankruptcy.
3. The Clerk of the Court shall register the petition for appeal to the Supreme Court on the date on which the petition concerned is filed, and a written receipt signed by the Clerk of the Court bearing the same date as the date of receipt of the registration shall be submitted to the petitioner.

#### **Article 9**

1. The petition for appeal to the Supreme Court must submit to the Clerk of the Court a brief for the appeal and to the other party a copy of the petition for appeal

accompanied by a copy of the brief for the appeal, on the date of registration of the petition for the appeal to the Supreme Court.

2. The Clerk of the Court must send the appeal petition and the brief for the appeal as meant in paragraph (1) to the other party within 24 hours of the registration of the petition for appeal to the Supreme Court.
3. In the event that the other files counter brief for the appeal, the other party must submit such counter brief to the Clerk of the Court and a copy of the counter brief to the petitioner for the appeal, no more than 7 (seven) days from the date that the other party receives the documents as intended in paragraph (2).
4. Within no more than 14 (fourteen) days from the date the petition for appeal to the Supreme Court is registered, the Clerk of the Court must submit the petition for appeal to the Supreme Court, the brief for the appeal and the counter brief for the appeal concerned to the Supreme Court through the Clerk of the Supreme Court.

#### **Article 10**

1. The Supreme Court shall, within no more than 2x24 hours from the date the petition for appeal is registered with the Clerk of the Supreme Court, study such petition and determine the day of the session.
2. The session for hearing the petition for appeal to the Supreme Court shall be held within 20 (twenty) days from the date of the decision in respect of which such petition for appeal is registered.
3. The decision regarding the petition for appeal to the Supreme Court must be determined within 30 (thirty) days of the date such petition for appeal to the Supreme Court is registered.
4. The decision concerning the petition for appeal to the Supreme Court as intended in paragraph (3) shall be pronounced in a public session.
5. Within no more than 2x24 hours from the date a decision concerning the petition for appeal to the Supreme Court is determined, the Supreme Court must submit to the Clerk of the Court, the petitioner, the party in respect of whom the petition is made and the liquidator and the Supervising Judge a copy of the decision concerning the appeal to the Supreme Court setting out in full the legal considerations underlying such decision.

#### **Article 11**

A judicial review may be filed to the Supreme Court in respect of a decision concerning a petition for declaration of bankruptcy which is final.

#### **Article 12**

1. From the date of determining a decision concerning the declaration of bankruptcy, the liquidator shall be authorized to perform duties for the management and or settlement of the bankrupt estate, even if an appeal to the Supreme Court or judicial review is filed in respect of such decision.
2. In the event that the decision concerning the declaration of bankruptcy is revoked as a result of an appeal to the Supreme Court or a judicial review, all actions undertaken

by the liquidator before or on the date the liquidator receives notice regarding the revocation of decision as intended in Article 14 shall remain valid and binding on the debtor.

### **Article 13**

1. In the decision on the declaration of bankruptcy the following persons must be appointed: a. a Supervising Judge appointed from the Court Judges; and b. a liquidator.
2. In the event that the debtor or creditor do not proposal the appointment of another liquidator to the Court, the Orphans' Chamber (Balai Harta Peninggalan) shall act as liquidator.
3. The trustee appointed in a manner as intended in paragraph (1) letter b must be independent and have no conflict of interest with either the debtor or the creditor.
4. Within 5 (five) days of the date of determination of the decision for the declaration of bankruptcy the liquidator shall announce in the Official Gazette of the Republic of Indonesia and in at least 2 (two) daily newspapers determined by the Supervising Judge the following matters :
  - a. a summary of the decision on the declaration of bankruptcy;
  - b. the identity, address and occupation of the debtor;
  - c. the identity, address and occupation of the members of the provisional creditors' committee, if already appointed; and
  - d. the place and time the first creditors' meeting.
  - e. the identity of the Supervising Judge.

### **Article 14**

1. As soon as a bankruptcy declaration is canceled because of an appeal or challenge, in the event the period in which to file an appeal has expired without an appeal being filed, the clerk of the District Court that pronounced the cancellation shall notify the cancellation to the Balai Harta Peninggalan, to the administration of the post and telegraph services offices and all post and telegraph services at the bankruptcy debtor's domicile. The Balai Harta Peninggalan shall provide notice thereof in the newspapers provided in Article 13.
2. In the event the bankruptcy declaration is canceled at the appeal level, a similar notification shall be sent to the District Court that made the decision.
3. The District Court that adjudges the cancellation of the bankruptcy decision shall also determine the amount of bankruptcy fees; the District Court shall charge this amount to the person who has filed the petition for the bankruptcy, to the debtor, or to both in a proportion determined by the judge. No challenge shall be open to such decision. With regard to the decision there should be an order for the execution to be used by Balai Harta Peninggalan.
4. If the decision on the bankruptcy declaration is canceled, then any temporary reconciliation which may be in existence shall be legally invalid.

**Article 15**

1. If the condition of the bankruptcy gives rise to information to revoke the bankruptcy, the District Court may order an examination free of charge upon a suggestion of the examining magistrate and if there is a creditors' committee, after hearing the committee or after hearing or legally summoning the bankrupt debtor, to revoke the bankruptcy declaration and the revocation of bankruptcy shall be made in the form of a judge's decision and shall be decided before a public session.
2. The judge ordering the termination of bankruptcy shall determine the amount of the bankruptcy expenses and the fee for the liquidator's services, and shall charge the same to the debtor.
3. Such expenses and fees for services must be given priority over all debts unsecured by a collateral.
4. No legal actions whatsoever may be brought against the judge's decision concerning the expenses and fees for services as intended in paragraph (2).
5. For the implementation of the payment of the expenses and fees for services as intended in paragraph (1), the judge shall issue an execution fiat.

**Article 16**

1. Any mandatory publication in the State Gazette provided under this section shall be free of charge.
2. All documents prepared in accordance with the provisions of this ordinance are exempt from stamp duties.
3. However, the exemption from stamp duty shall not include any notice and deed containing a sale or other agreement, registration deed regarding immovable goods or vessel which is included in the bankruptcy estate, and also with regard to any letter regarding lawsuits on rights and obligations of the bankrupt debtor, except the one issued upon the instruction of the examining magistrate as provided in Article 118.
4. The order to exempt the bankruptcy matters on a free of charge basis shall also constitute an exemption from any fee of the court clerk.

**Article 17**

The decision to revoke the bankruptcy shall be declared in the same manner as the bankruptcy declaration, the creditors and debtor may thereupon file any challenge in the same manner and within similar periods as prescribed with regard to a decision rejecting the bankruptcy declaration. If, after such revocation, a new report or petition for bankruptcy is filed, the debtor or the petitioner shall be required to prove that sufficient funds are available to pay the costs of the bankruptcy proceedings.

**Article 18**

1. In every District Court, the court clerk shall manage a public register in which any bankruptcy shall be recorded including its date, containing the following:

- (1) a summary of the District Court decision containing the bankruptcy declaration canceling the bankruptcy;
  - (2) a brief description of the agreement and the ratification of the reconciliation agreement;
  - (3) the deletion of the reconciliation;
  - (4) the amount of allocations upon settlement;
  - (5) the revocation of the bankruptcy pursuant to Article 15; and
  - (6) the rehabilitation.
2. Further provisions concerning the form and contents of list as intended in paragraph (1) shall be further stipulated by the Chairman of the Supreme Court.
  3. The list as intended in paragraph (1) shall be open to the public and may be perused by any individuals without imposition of any charges.
  4. The register shall contain an index in alphabetical order.

## **Section 2. Consequences of the Bankruptcy Declaration**

### **Article 19**

The bankruptcy shall include the total wealth of the bankruptcy debtor at the time of the bankruptcy declaration, together with that which he acquires during the bankruptcy.

### **Article 20**

Notwithstanding this, the following matters shall be excluded:

1. (Gew.S.13-79; S.1934-214 jo. S. 1934-214 jo. S. 1938-2) The goods as referred to in Article 451, numbers 2-5 of the Rules of Civil Procedure, money or yearly salaries as referred to in Articles 749-3 of said Rules, and copyrights in the event that they are not subject to confiscation as well as that which is described in the Article 452 paragraph 1 of said Rules, unless in the frame of bankruptcy there shall appear creditors collecting the claims on debt as referred to in the paragraph 2 of that Article (F.7, 92; Aut. 2);
2. (Gew. S.1926-335 jis. 458, 565 and S.1927-108, S.1927-216, S. 1938-622.) That which the bankrupt debtor obtains during the bankruptcy through his independent activities, salary because of a duty or services, or wages, pension, waiting for or allowance , as long as determined by the examining magistrate. (F 21, 66)
3. The money given to the bankrupt debtor for the daily basic need purposes in accordance with the prevailing laws; (Art. 104, 213, 225, 246, 321 of Civil Code);
4. A certain amount of money to be determined by the examining magistrate from any proceeds referred to in Article 311 of the Civil Code, to cover the charges referred to in Article 312 of the Civil Code; (F 66)

5. Any allowance that the bankruptcy debtor enjoys from the income of his children by virtue of the provision of Article 318 of the Civil Code.

#### **Article 21**

(Gew. S 1927-216) The term "bankrupt debtor" in the previous article, the spouse of the bankrupt debtor, who has been married in community property shall be deemed to be included.

#### **Article 22**

Due to the bankruptcy declaration, a bankrupt debtor shall by law forfeit his right to control and manage his assets included in his bankruptcy as of the commencement of the bankruptcy declaration, including the day of the declaration.

#### **Article 23**

(Gew. S. 1937-590) With regard to any contract entered into by the bankrupt debtor after the bankruptcy declaration the bankruptcy shall not be responsible, except if there will be a benefit to the bankruptcy estate from such contract.

#### **Article 24**

1. A lawsuit concerning the rights and obligations of the bankrupt debtor on his assets shall be filed against as well as by Balai Harta Peninggalan.
2. If such lawsuit being filed or continued against the bankrupt debtor causes a penalty to the bankrupt debtor, then such penalty shall have no legal enforcement against the assets included in the bankruptcy declaration. (F 27, 29)

#### **Article 25**

Any lawsuit filed for the fulfillment of the contract from the bankruptcy estate during the bankruptcy period, even filed against the bankrupt debtor, may only be filed by reporting them for verification.

#### **Article 26**

1. If the lawsuit filed by the creditors during the bankruptcy period becomes uncertain, the lawsuit shall be adjourned upon the request of the defendant in order to afford him an opportunity, within a period determined by the examining magistrate, to have the case taken over by the Balai Harta Peninggalan. (Rv 248)
2. If the Balai Harta Peninggalan does not respond to the summons to take over the dispute, the defendant shall be entitled to request the dismissal of the case; in the absence of such request, the case between the bankrupt debtor and the defendant may be continued and shall not be part of the bankruptcy estate.
3. At any time without being summoned, the Balai Harta Peninggalan shall be authorized to take over the proceeding and, release the bankrupt debtor from the dispute.

**Article 27**

1. If there is a lawsuit filed by a plaintiff against the defendant bankrupt debtor which is in a pending condition during the bankruptcy proceeding, the plaintiff shall be entitled to request adjournment of the case to enable the plaintiff, within a certain period determined by the examining magistrate to summon the Balai Harta Peninggalan into the proceeding within a period determined by the district court.
2. Upon appearance of the Balai Harta Peninggalan before the examining magistrate, it may constitute that the Balai Harta Peninggalan takes over the case, and the bankrupt debtor shall be legally released from that proceeding.
3. If the Balai Harta Peninggalan, upon such appearance before the examining magistrate acknowledges the case, immediately, approves the claim on debt, then any costs of the opponent (plaintiff) proceeding shall not be considered as a debt of the bankruptcy estate.
4. If the Balai Harta Peninggalan does not appear before the examining magistrate, the provision of Article 24 paragraph 2 shall not be applicable to the decision against the bankrupt debtor.

**Article 28**

Insofar as the timing of the bankruptcy declaration, if pending legal proceedings are filed in order to obtain a fulfillment of the contract, these proceedings shall be adjourned, and shall only be continued if the verification of the claims on debts are challenged. In that case, the persons who challenge shall become the party in the proceeding take place of the bankrupt debtor.

**Article 29**

1. If, prior to the bankruptcy declaration, the documentation in respect of the suit has been submitted before the examining magistrate to make a decision, then the Article 24 and Articles 26 through 28 shall not be applicable.
2. Articles 26 through 28 shall not be applicable if the judge who is dealing with the proceeding has decided to continue that proceeding.

**Article 30**

If the proceeding filed by or against the Balai Harta Peninggalan, in the case of Article 28 is continued against a creditor, either the Balai Harta Peninggalan or said creditor may file a request to nullify any actions undertaken by the bankrupt debtor prior to his bankruptcy declaration, if there is evidence that such actions intentionally harmed the creditor's interest and that this was already known by the opponent. (F 14v)

**Article 31**

In the case of the lawsuits filed by or against the Balai Harta Peninggalan, or in respect to Article 118, brought against a creditor, the examining magistrate may require the bankrupt debtor to make a declaration under oath, as stipulated in Article 1940 of the Civil Code.

**Article 32**

1. The decision on the bankruptcy declaration will cause; any decision of the examining magistrate against any part of the assets of the bankrupt debtor which existed prior to the bankruptcy declaration to be immediately terminated and at the same time, there shall be no decision executed by physical force to the bankruptcy debtor.
2. (Ing. S-1927-216) Any decision of confiscation whether or not have been executed shall be nullified by law; if it is deemed necessary the examining magistrate may confirm such matters by ordering deletion of such confiscation.
3. Without prejudice to Article B4, the bankrupt debtor who is imprisoned shall be released as soon as the decision of bankruptcy declaration has legal enforcement, except in the event of the implementation of Article 84. (F 56 V)

**Article 32a**

(Ing. S.1938-360 jis. 361, 276) During the bankruptcy, a penalty, pursuant to the Rules of Civil Procedure Article 606a, should not be paid.

**Article 33**

In case, prior the bankruptcy declaration of the bankrupt debtor, any reclamation of the movable or immovable goods has reached the stage at which the date of the auction is determined, then the Balai Harta Peninggalan, upon authorization by the examining magistrate, may continue to auction on account of the bankruptcy. (F 63, 66v, 70, 75)

**Article 34**

(Gew. S-1933-47 jo S-1938-2) The ownership registration of any immovable goods or vessels by virtue of a transfer agreement of such goods, the establishment of a mortgage [hypotec] on immovable goods or on ships as agreed in the previous agreement, as well as the establishment of a mortgage [hypotec] on the harvest, may not be legally effected after a bankruptcy declaration (Overschr. 1; Tbs. 3, 21v, 24; Oogstv 1-7)

**Article 35**

Claims for verification shall avoid any expiration date.

**Article 36**

1. In the event that at the time declaration of bankruptcy is determined there is a mutual agreement which is not yet or is only partially fulfilled, the party with which the debtor entered into such agreement may petition the liquidator to confirm the continued implementation of such agreement within the period agreed upon by the liquidator and said party.
2. In the event that no agreement is reached concerning the period as intended in paragraph (1), the Supervising Judge shall determine such period.
3. If within the period as intended in paragraphs (1) and (2) the liquidator does not respond or is not prepared to continue the implementation of such agreement, the agreement shall terminate and the party intended in paragraph (1) may claim compensation and shall be treated as an unsecured creditor.

4. In the event that the liquidator states his preparedness, the party intended in paragraph (1) may request that the liquidator provide guarantee of his preparedness for the implementation of such agreement.
5. The provision as intended in paragraphs (1), (2), (3) and (4) shall not apply to agreements requiring the debtor to independently undertake the action agreed upon.

#### **Article 37**

If in the circumstances set forth in the previous article, there is a contract to deliver traded goods which are ordinarily traded through a future trading and the delivery of such good will be performed at a certain period or is over after the bankruptcy declaration, then the agreement shall be canceled, and the opposing party of the bankrupt debtor may simply claim compensation as a concurrent creditor with other creditors. If the bankruptcy estate is harmed by such cancellation, the opposing party shall be required to compensate such harm. (F. 106; Art. 1266 of Civil Code; Art. 59 of Commerce Code)

#### **Article 38**

If the bankruptcy debtor is a lessee of a good, the Balai Harta Peninggalan as well as the lessor may terminate the lease, provided that such termination will be at a time that is in accordance with the local custom for the termination of such agreements. In addition, in case of termination, the period of time which is agreed or the customary period must be observed, and it is understood that in any case a period three months shall be sufficient. If the rent price has been paid in advance, the lease cannot be terminated unless shortly prior to the end of the period for which the advance rent was paid. As from the date the bankruptcy declaration becomes effective, the rent price shall be a debt of the bankruptcy estate. (F 67, 76, Art. 1266v, 1548, 1550v, 1571, 1585v, 1588v of Civil Code).

#### **Article 39**

(Gew S.1926-335 jis 458, 565, S 1927-108) Employees of the bankruptcy debtor may request to resign and the Balai Harta Peninggalan may dismiss them without prejudice to the employment period as stipulated in the employment contract or based on the prevailing laws, and shall give a notification within the period of six weeks. As from the date of the bankruptcy declaration becoming effective, the remuneration shall be a debt of bankruptcy estate.

#### **Article 40**

1. Any inheritance which is the right of the bankruptcy debtor during the bankruptcy shall not be simply accepted by the Balai Harta Peninggalan other than with the privilege right to carry out inventory of the bankruptcy estate.
2. The Balai Harta Peninggalan shall obtain power of attorney from the examining magistrate to refuse the inheritance.

#### **Article 41**

1. In the interest of the bankruptcy assets it may be requested that any legal actions of a debtor declared bankrupt causing loss to the creditor's interests, which are undertaken prior to the determination of declaration of bankruptcy, be nullified.
2. The nullification as intended in paragraph (1) may only be implemented if it can be proven that at the time of such legal action the debtor and the party with which such

actions was undertaken were aware or should have been aware that such action would cause loss to the creditor.

3. Exceptions from the provision intended in paragraph (1) shall be legal actions of debtors undertaken on the basis of the agreement and or because they are required by Law.

#### **Article 42**

In the event of legal actions causing loss to the creditor undertaken within 1 (one) year prior to the determination of the decision of the declaration of bankruptcy, while such actions are not mandatorily undertaken by the debtor, then, unless it can be proved to the contrary, the debtor and the party with which such actions were undertaken shall be deemed to have been aware or should have been aware that such actions would cause loss to the creditor as intended in Article 41 paragraph (2), in the event that such actions:

- a. are obligations in which the debtor's liabilities exceed by far the obligations of the party with which such commitment is entered into;
- b. constitute payment for, or provision of guarantee for debts which have not yet reached maturity or which are not yet payable;
- c. are undertaken by an individual debtor, with or in respect of:
  - 1) her husband or his wife, adopted child, or his/her relatives up to the third degree;
  - 2) a legal entity in which the debtor or the parties intended in figure 1) are members of the board of directors or management or if such parties, either (severally?) or jointly, participate either directly or indirectly in the ownership of the aforementioned legal entity by at least 50% (fifty percent) of the paid-up capital;
- d. is undertaken by a debtor constituting a legal entity, with or in respect of:
  - 1) a member of the directors or management of the debtor, or the husband/wife, or the adopted child or relative up to the third degree, of such members of the board of directors or management;
  - 2) individuals, either severally or jointly with husband/wife, or adopted child, or relatives up to the third degree of such individuals, participating directly or indirectly in the ownership of the debtor by at least 50% (fifty percent) of the paid up capital;
  - 3) individuals, the husband/wife, or adopted child, or relatives up to the third degree of whom participate either directly or indirectly in the ownership of the debtor by at least 50% (fifty percent) of the paid-up capital;
- e. is undertaken by a debtor constituting a legal entity with or in respect of another legal entity, if:
  - 1) the individual member of the board of directors or management in both such business entities are the same person;

- 2) the husband/wife, adopted child or relatives up to the third degree of the individual member of the board of directors or management of the debtor are members of the board of directors or management of another legal entity, or vice versa;
  - 3) the individual member of the board of directors or management, or the members of the supervisory body of the debtor, or the husband/wife, or the adopted child, or relatives up to the third degree, either severally or jointly, participate either directly or indirectly in the ownership of the legal entity by at least 50% (fifty percent) of the paid up capital, or vice versa;
  - 4) the debtor is a member of the board of directors or management of another legal entity, or vice versa;
  - 5) the same legal entity, or the same individual, either jointly or not with her husband/his wife, and his/her adopted child and relatives up to the third degree participate directly or indirectly in both such legal entities by at least 50% (fifty percent) of the paid up capital;
- f. is undertaken by the debtor constituting a legal entity with or towards another legal entity within the group of legal entities of which the debtor is a member.

#### **Article 43**

The nullification of grants made by the debtor may be requested if the liquidator can prove that at the time such grant was made the debtor was aware or should have been aware that such action would cause loss to the creditors.

#### **Article 44**

Unless it can be proven otherwise, the debtor shall be deemed to be aware or should be aware that such grant would cause loss to the creditor if such grant is made within 1 (one) year prior to the determination of the decision on the declaration of bankruptcy.

#### **Article 46**

The annulment of debt payment by the bankrupt debtor may only be carried out if it is proved that the person to receive the payment was aware that the bankrupt debtor had submitted a report requesting a declaration of bankruptcy, or if the payment resulted from the deliberation between the bankrupt debtor and the creditor, and such payment causes the creditor concerned to enjoy a benefit and to have a prioritized payment over other creditors. (Bw 1341, 1382v)

#### **Article 47**

1. Pursuant to the previous article, a reclamation cannot be taken from an individual as a holder of commercial paper in the form of order payment or any bearer payment because of his legal relationship with the former holders who were obligated to accept payment.
2. In that case, the person who enjoys a benefit from the commercial paper shall be obligated to return the sum paid to the bankruptcy estate, when it is proved that the commercial paper work was issued pursuant to the previous article, or if the issuance was decided as the result of deliberation as mentioned in the previous article.

**Article 48**

1. Any lawsuits pursuant to the provisions in Articles 41 through 47, shall be submitted to the Balai Harta Peninggalan.
2. Nevertheless, the creditors, pursuant to said provision, may argue over the admittance of a claim. (F. 24v, 67v, 75)

**Article 49**

If the bankruptcy is concluded through a ratified reconciliation, the lawsuit as mentioned in the previous article shall be cancelled, unless the reconciliation includes cessation of the bankruptcy estate, which for the interest of the creditors may be continued or initiated by the trustee of the bankruptcy estate.

**Article 50**

1. Without prejudice to the provision in Article 45, because of the cancellation of legal actions, the sum given which came from the bankruptcy estate must be returned by the person who has been notified of the cancellation of such legal action.
2. If said person is unable to return the good in the original condition, he is obligated to compensate the bankruptcy estate.
3. Any rights pertaining to the return of goods, in good faith, shall be protected by law.
4. Any goods or value of money shall be returned by the Balai Harta Peninggalan in so far that such goods benefit therefrom. Any outstanding balance due to such legal action, may be claimed thorough stepping in as a concurrent creditor by the person concerned.

**Article 51**

1. (Gew. S. 37-590.) Any payments made by individuals to the bankrupt debtor in order to comply with an agreement already existing before the declaration of bankruptcy will release the individuals and exclude them from being in the bankruptcy estate, as long as they are not aware of the bankruptcy declaration.
2. The payment as mentioned in the previous paragraph which has been already executed after the bankruptcy declaration cannot be released or excluded from the bankruptcy estate, unless the individual concerned proves that the bankruptcy declaration and its publication pursuant to the law was impossible to be known at their domiciles, notwithstanding the right of the Balai Harta Peninggalan to prove otherwise, that in fact the bankruptcy declaration should have been known by the individuals concerned.
3. For the bankrupt debtor, the release from bankruptcy, at least, can be executed unless the payment already received by the bankrupt debtor gives certain benefits to such bankruptcy estate.

**Article 52**

1. Both the debtor and creditor shall be permitted to make a comparison between the debts and credits, if claims on the debts and credits occurred and the legal action was taken prior to the declaration of bankruptcy being resolved.

2. If it is deemed necessary, the debts and credits toward the bankrupt debtor shall be calculated in accordance with the provisions set out in Article 126 and Article 127.

#### **Article 53**

1. (Gew. S. 27-216) Nevertheless, an individual who has taken over the debt or credits of the bankrupt debtor from a third party prior to the bankruptcy declaration cannot request to make a debt and credit comparison if, the taking over of the debt and credits was based on bad faith. (Bw 613)
2. The comparison of debt and credits can never be made for any debt or credits which are taken over after the bankruptcy declaration was resolved.

#### **Article 54**

A debtor of the bankrupt debtor, in making a comparison of the debt and credits upon the documents of payment order or endorsed payment, shall be required to prove that at the commencement of bankruptcy declaration he has been a good faith owner of the document concerned. (WvK 100v, 110v, 115, 174v, 191v, 196, 229v; Bw 613; F. 52v, 233 (3); Levensv. 57.)

#### **Article 55**

An individual being in partnership with the bankrupt debtor which is dissolved during the bankruptcy or due to the bankruptcy, shall be entitled to deduct the share of the bankrupt debtor at the time of the profit distribution which should be owned for calculation purpose of the debts in the partnership.

#### **Article 56**

1. Bearing in mind the provisions of Article 56A, any creditor holding security rights, pledge or collateral right on other property, may execute his rights as if no bankruptcy occurred.
2. If their claims on the collectible payment are such as mentioned in Articles 126 and 127, the claims on the collectible payment shall be executed after a verification of the debts and credits, and their claims on the collectible payment shall only be in the sum of payment for the amounts which were acknowledged as correct.
3. The holder of the harvest security pursuant to their existing contract may file a lawsuit for his right as if there no bankruptcy. (Oogts. 11v)

#### **Article 56A**

1. The creditor's execution right as intended in Article 56 paragraph (1) and the right of a third party to claim his assets which are under the control of the bankrupt debtor or the liquidator shall be deferred for a period of not more than 90 (ninety) days from the date the decision on the bankruptcy is determined.
2. The deferment as intended in paragraph (1) shall not apply to claims of creditors which are secured by cash and rights of creditors to reconcile debts.
3. During the period of the deferment as intended in paragraph (1), the liquidator may use or sell the bankrupt estate which is under the supervision of the liquidator in

respect of the continuation of the business of the debtor, provided that reasonable protection has been given for the interests of the creditors or any third parties as intended in paragraph (1).

4. The period as intended in paragraph (1) shall expire by law upon the earlier termination of bankruptcy or upon commencement of insolvency as intended in Article 168 paragraph (1).
5. Creditors or third parties whose rights are deferred may file a petition to the liquidator to remove such deferment or alter the conditions of such.
6. If the liquidator rejects the petition as intended in paragraph (5), the creditor or the third party may file such petition to the Supervising Judge.
7. The Supervising Judge must, no later than one working day from the filing of the petition as intended in paragraph (6), order the liquidator to immediately summon, by registered letter or courier, the creditor and the third party as intended in paragraph (6) for a hearing.
8. The Supervising Judge must decide upon such petition within no more than 10 (ten) days from the filing of the petition referred to in paragraph (6) to the Supervising Judge.
9. In deciding upon the petition intended in paragraph (6), the Supervising Judge shall take into consideration:
  - a. the period of deferment which has already elapsed;
  - b. the protection of the interests of the creditor and third party concerned;
  - c. the possibility of reconciliation; and
  - d. the impact of such deferment on the continuation and management of the debtor's business and the settlement of bankrupt estate.
10. The decision of the Supervising Judge regarding the petition as intended in paragraph (6) may be in the form of removing the deferment for one or more creditor, and or determining the conditions concerning the period of deferment, and or concerning one or more of the collateral items which may be executed by the creditors.
11. If the Supervising Judge refuses to remove or change the conditions of such deferment, the Supervising Judge must order that the liquidator provide reasonable protection for the interests of the petitioner.
12. The creditor or the third party which files the petition as intended in paragraph (6) or the liquidator may file a response with the Court in respect of the decision of the Supervising Judge within 5 (five) days counting from the time such decision is determined, and the Court must decide upon such response within no more than ten days from the date such response is filed.
13. No appeals to the Supreme Court or judicial review may be filed in respect of the Court's decision as intended in paragraph (12).

### **Article 57**

1. With due consideration of the provisions of Article 56A, a creditor holding rights as intended in Article 56 paragraph (1), must exercise such rights within 2 (two) months from the commencement of insolvency as intended in Article 168 paragraph (1).
2. Upon the expiration of the period intended in paragraph (1), the liquidator must demand the transfer of goods serving as collateral to be sold in accordance with the procedure as intended in Article 169, without prejudice to the said right of the holder of right to obtain the proceeds from the sale of such collateral.
3. The liquidator may release goods serving as collateral at any time by paying the to the creditor concerned either the market price of the collateral goods or the total debt secured by such collateral goods, whichever is the smaller amount.

### **Article 58**

1. The holder of right as intended in Article 56 paragraph (1) who exercises his rights must account to the liquidator for the proceeds of the sale of goods serving as collateral and submit to the liquidator the balance of the proceeds from the sale after deducting the amount of the debt, interest and expenses.
2. Upon the claim of the trustee or creditor with priority right, the holder of right as intended in paragraph (1) must submit a part of the proceeds of such sale, in an amount which is the same as the amount of the claims which are prioritized.
3. The provisions of paragraph (1) and paragraph (2) shall also apply to holders of collateral right on harvest.
4. If the proceeds from the sale as intended in paragraph (1) are not sufficient to settle the debt concerned, the holder of such right may file a claim for the settlement of such deficit from the bankrupt estate as an unsecured creditor, after filing a request for the verification of claims.

### **Article 59**

The creditors who are entitled to retain the goods owned by the bankrupt debtor until their claims on debt are satisfied, shall not lose this right to retention in relation to the bankruptcy declaration. (F. 106, 109, 115, 149, 170; WvK 84v, 493, 533, 684; Bw 575v, 715, 772, 1159, 1364, 1576, 1616, 1729, 1812)

### **Article 60**

1. In case of the bankruptcy of a husband, his wife is permitted to recover all movable and immovable goods, which belong to her and which are not held in community property.
2. The portion of goods which do not form part of the community property when the contract for marriage was entered into, will be proved as is prescribed in Article 150 of the Civil Code.
3. In the event of a dispute, proof must be furnished with regard to movable goods which a wife has acquired through an inheritance, legacy or gift and which do not form part of the community property, thus in any manner as prescribed in Article 166 of the Civil Code.

4. The goods arising from capital investment or purchased with moneys belonging to the wife and which do not form part of the community property also may be recovered by her, if she can prove it satisfactorily with sufficient evidence documentation and the judge shall give his decision on such case.
5. If the goods which belong to a wife have been disposed of by her husband, but the proceeds have not yet been paid or it is still separate from the bankruptcy estate (has not yet been inserted/mixed within the bankruptcy estate), she may claim her right to take the payment or of such goods. 6. In respect of her personal debts wife may act as a creditor. (F. 3, 61v, 104v, 227; BW. 119v, 155v, 176v, 180v; Indonesian Commercial Code 230v, 245)

#### **Article 61**

1. A wife cannot, in the event of a prenuptial agreement about property, claim any benefits against the estate. Notwithstanding this, creditors shall not enjoy the benefits that the wife has promised to the husband in the marriage with prenuptial agreement. (F. 60, 62, 227; BW 139v, 168v).

#### **Article 62**

1. The bankruptcy of a husband or a wife who was married with any community property shall be considered as a bankruptcy of the said community property. Without prejudice to the exception provided in Article 20, this bankruptcy shall include all property in the marriage with the community property and shall apply to all creditors who have a claim in respect of the community property. If the husband or the wife who is declared bankrupt owns any goods which do not form part of the community of property in the marriage, these shall also be included in the bankruptcy, but the debt of the bankruptcy shall only be those to which the bankrupt is committed personally.
2. The provisions in this Law regarding legal actions by the debtor shall, in case of a bankruptcy of a married spouse, be applicable to a husband or wife on the basis that there would be community property, and apply to the actions which are legally bound to community property, regardless of which spouse has committed these. With regard to the legal action causing bonded community property there should be no consideration to whether the husband or wife entered into such legal action. (F. 3, 22, 40v, 60v, 101; BW 105v, 155v)

### **Section 3. The Management of the Bankruptcy Estate\* Examining Magistrate**

#### **Article 63**

The examining magistrate shall control the management and settlement of the bankruptcy estate. (F. 13, 67, 84, 168v)

#### **Article 64**

The District Court is obligated to hear the advice of the examining magistrate before deciding any matters related to the management and settlement of the bankruptcy estate. (F. 63, 66, 82, 84v, 168v)

### **Article 65**

1. The examining magistrate is authorized to hear the witnesses or order an investigation by experts in order to obtain all information with regard to the bankruptcy.
2. The witnesses will be summoned in writing on behalf of the examining magistrate.
3. Witness failing to appear or refusing to testify shall be subject to the provisions of Article 140, Article 141 and Article 148 of the Revised Regulations of Indonesia (Het Inlandsch Reglement) or Articles 166, 167 and 176 of the Civil Procedure for Regions Outside Java and Madura (Rechtsreglement Buitengewesten).
4. If the legal domicile of a witness lies outside the jurisdiction of the Court determining the decision on the declaration of bankruptcy, the Supervising Judge may delegate the hearing of the testimony of the witnesses to the Court the jurisdiction of which covers the legal domicile of such witness.
5. The spouse or ex-spouse, the children and other descendants, and the parents and grandparents of the bankrupt debtor may be excused on their objection to be a witness on such case. (F. 63v; BW 1909v)

### **Article 66**

1. All decisions by the examining magistrate may be appealed within five days to the District Court. The District Court will make a decision after a hearing on due summons of the interested parties.
2. (Gew.S. 1927-216) Nevertheless, no appeal shall be made on decisions mentioned in Articles 20, 20 and 40, 33, 57 paragraph 1, 76, 95, 97, 121, 123 paragraph 4, 169, 170 paragraph 2, 171 paragraphs 1 and 2, 172, 174 and 175. (F. 5, 67, 82v) \* Concerning the Liquidator

### **Article 67**

1. The task of the liquidator shall be to manage and or settle the bankrupt estate.
2. In performing its tasks, the liquidator:
  - a. shall not be required to obtain the approval of or to give prior notice to the debtor concerned, even though in circumstances outside bankruptcy such approval or notice is a requirement;
  - b. may obtain a loan from a third party, only in respect of increasing the value of the bankrupt estate.
3. If in obtaining a loan from a third party the liquidator needs to encumber the bankrupt estate with a security right, pledge or collateral right on other property, the prior approval of the Supervising Judge must be obtained for such loan.
4. The encumbering of the bankrupt estate with security rights, pledge or collateral right on other property as intended in paragraph (3) may only be executed in respect of those parts of the bankrupt estate that have not been made security for a debt.

5. To appear before the Court, the liquidator must first obtain the approval of the Supervising Judge, unless in respect of disputes concerning the verification of claims or in matters as intended in Article 36, Article 38, Article 39 and Article 57 Paragraph (2).

#### **Article 67A**

1. The liquidator referred to in Article 67 shall be: a. The Orphans' Chamber; or b. another liquidator.
2. The following parties may be liquidators as intended in paragraph (1) letter b :
  - a. individuals or civil partnerships domiciled in Indonesia possessing specific expertise required in respect of the management and or settlement of the bankrupt estate; and
  - b. registered at the Ministry of Justice.

#### **Article 67B**

1. The court may at any time approve a proposal for the replacement of the liquidator, after having summoned and heard the liquidator concerned, and may appoint another liquidator and or appoint additional liquidators :
  - a. upon the request of the liquidator itself;
  - b. upon the request of another liquidator, if any;
  - c. upon the request of the Supervising Judge; or
  - d. upon the request of the bankrupt debtor.
2. The court must discharge or appoint a liquidator at the request or at the proposal of an unsecured creditor based on the resolution of the creditors' meeting held as intended in Article 81, provided that such decision is taken on the basis of a vote of approval of more than 1/2 (one half) of the total unsecured creditors or their proxies who are present at the meeting and who represent more than 1/2 (one half) of the total claims of the unsecured creditors or their proxies who are present at such meeting.

#### **Article 67C**

The liquidator shall be responsible for any faults or negligence in performing its management and or settlement tasks which cause loss to the bankrupt estate.

#### **Article 67D**

With due attention to the provisions of Article 69, the amount of the fee for the services of the liquidator shall also be included in the decision on the declaration of bankruptcy.

\* Committee (Commission) of the Creditors (move to between Articles 70 & 71)

### **Article 68**

1. The creditors, or the committee appointed by the debtors and the bankruptcy debtor also may institute a petition against any legal action by the Balai Harta Peninggalan to the examining magistrate or obtain the amendment letter from the examining magistrate to make the Balai Harta Peninggalan carry out certain planned legal actions.
2. The examining magistrate shall forward the petition on such matters immediately to the Balai Harta Peninggalan which within three days after receipt of the petition shall send its advice thereon to the examining magistrate. The examining magistrate shall decide within three days after receiving the advice from the Balai Harta Peninggalan. (F. 63, 66v, 71, 76)

### **Article 69**

The amount of the fee that must be paid to the liquidator shall be determined on the basis of guidelines stipulated by the Minister of Justice.

### **Article 70**

In the absence of a proxy from the examining magistrate when required, or non-observance of the provisions as mentioned in Articles 75 and 76 with regard to third parties, it will have no effect on the validity of the legal action of Balai Harta Peninggalan which shall only be responsible to the bankrupt debtors and creditors. (F. 36, 38v, 57, 67, 100, 157, 188; BW. 1365)

### **Article 70A**

1. If more than one liquidator is appointed, the liquidators shall require the approval of more than 1/2 (one half) of the total number of liquidators in order to undertake any legal and binding actions.
2. In the event of a tie, the approval of the Supervising Judge shall be required for the actions intended in article (1).
3. A liquidator appointed for a specific task based on the decision for the declaration of bankruptcy shall be authorized to act independently within the scope of its assignment.

### **Article 70B**

1. The liquidator must submit quarterly reports to the Supervising Judge concerning the condition of the bankrupt estate and the implementation of its tasks.
2. The report intended in paragraph (1) shall be open to the public and may be perused by any individuals free of charge. 3. The Supervising Judge may extend the period intended in paragraph (1).

### **Article 71**

1. The District Court may, by the bankruptcy declaration or by a later decision if it is deemed necessary or if it is desirable for the interest of the bankruptcy estate, establish a temporary committee consisting of one to three members appointed from the creditors known to him, in order to provide advice to the Balai Harta Peninggalan,

provided that no decision has yet been reached on the establishment of a committee as set forth in the following Article.

2. (Ing. S. 1926-517) The appointees as the members of the committee, may be represented by other persons for the activities connected with the membership of the committee.
3. If a member of the temporary committee does not accept his appointment as a member; he is discharged as a member; or dies, the District Court shall fill the vacancy with a person who is appointed from the candidates nominated by the examining magistrate. (F. 13, 63, 65, 82, 162)

#### **Article 72**

1. Upon the completion of the verification of claims, the Supervising Judge must offer the creditors the formation of a permanent Creditors' Committee.
2. At the request of the unsecured creditors based on the decision of the unsecured creditors made by an ordinary majority vote in the creditors' meeting, the Supervising Judge shall:
  - a. replace the provisional creditors' committee, if such provisional creditors' committee was appointed in the decision on the declaration of bankruptcy; or
  - b. form a creditors' committee, if no creditors' committee was appointed in the decision on the declaration of bankruptcy.
3. If a member does not accept the appointment as a member of the permanent committee, is discharged or dies, the examining magistrate shall fill the vacancy by making an appointment. (F. 66, 71, 115, 117)

#### **Article 73**

The committee is entitled at any time to request an inspection of the books and documents relating to the bankruptcy. The Balai Harta Peninggalan is obligated to provide all information as requested by the committee. (F. 71, 89, 101, 133)

#### **Article 74**

The Balai Harta Peninggalan may at any time arrange a meeting with the committee in order to obtain its advice, if necessary. (F. 71, 75)

#### **Article 75**

1. (Gew.S.1927-216) The Balai Harta Peninggalan shall request the advice of the committee before initiating lawsuit or continuing pending ones, defending itself against a lawsuit instituted or handling in-process lawsuit, unless it deals with the verification of debts-credits as well as with regard to whether or not to continue the management of a company, also in the circumstances referred to in Articles 36; 38; 39; 57 paragraph 2; 97; 98; 170 paragraph 3 and 172 and generally with regard to the settlement and sale procedures of the bankruptcy and the time and amount of allocations of the estate to be made (F. 24, 26v, 41v, 66, 95, 118, 168v)
2. Such advice shall not be required in the event that the Balai Harta Peninggalan has summoned the committee to have a meeting to give its advice, however there is no

advice to be issued, although the Balai Harta Peninggalan has taken a proper period in observance for such purpose. (F. 15, 68, 71, 81, 91, 100v, 135v)

#### **Article 76**

The Balai Harta Peninggalan shall not be bound to the advice of the committee. It shall immediately notify the committee which may thereupon invoke the decision of the examining magistrate. If the committee declares its intention, the Balai Harta Peninggalan shall be obliged to postpone the implementation of the action which is contrary to the advice of the committee for a three-day period.

\* Meeting of the Creditors

#### **Article 77**

1. The examining magistrate shall be the Chairman of the Creditor's Meetings. 2. The Balai Harta Peninggalan is required to attend the Meetings. (F. 81, 104, 112, 137, 173)

#### **Article 77A**

1. The Supervising Judge shall determine the day, date, time and venue of the first creditors' meeting, which must be held within 15 (fifteen) days from the date of determination of the decision on the declaration of bankruptcy.
2. Within no more than 3 (three) days from the determination of the decision on the declaration of bankruptcy, the Supervising Judge must submit to the liquidator the proposal to convene the first creditors' meeting as intended in paragraph (1).
3. Within no more than 5 (five) days from the date of determination of the decision on the declaration of bankruptcy, the liquidator must notify the creditors by registered letter or courier.

#### **Article 78**

1. Unless stipulated otherwise in this Law, all decisions of the creditors' meeting shall be made on the basis of a vote of approval of more than 1/2 (one half) of the votes cast by the creditors and/or their proxies attending the meeting concerned.
2. The counting of voting rights of the creditors shall be further stipulated in a Government Regulation.
3. The solving of claims after the determination of declaration of bankruptcy shall not have voting rights.

#### **Article 79**

The acknowledged and conditionally admitted creditors are entitled to vote, including the bearer of credits which are verified based on bearer commercial papers. (F. 117, 121, 126, 130v.)

#### **Article 80**

All summons and notification will be sent directly to the proxy in the event the creditors have informed the Balai Harta Peninggalan that they have appointed a proxy or

who have themselves been represented at a meeting for the bankruptcy, unless a written request is made to the Balai Harta Peninggalan that the summons and notification shall be sent to themselves or to another proxy. (F.114, 138, 146, 163, 173, 178).

#### **Article 81**

1. Except for meetings to be held upon this request, meetings of creditors will be called at anytime whenever it is deemed necessary by the examining magistrate or for an acceptable reason which is requested by the committee of creditors or by at least five creditors who represent one fifth of the acknowledged and conditionally admitted claims on debt.
2. The examining magistrate will determine the date, time and place of the meeting, for such purposes, the creditors who are entitled to vote shall be summoned by the Balai Harta Peninggalan by a newspaper advertisement as stipulated in Article 13 and by letter, designed for such purposes mentioning the subject to be discussed at the Meeting.
3. The examining magistrate will also determine the period between the date of the notice and the date of the meeting, excluding the date of the notice and the day of the meeting itself. (F.104, 137, 173)

\* The Decisions of the Examining Magistrate

#### **Article 82**

All decisions in respect of the administration or settlement of the bankruptcy estate will be made by the district court through the latest level of court, unless otherwise provided. (F.15, 66, 69, 71v., 85v., 149v. 181v. 209v.)

#### **Article 83**

All decisions in respect of the administration or settlements of the bankruptcy estate also made by the examining magistrate may precede, upon the original decision letter, unless otherwise provided. (F.4, 66, Rv. 54v.)

\* Further Actions After Bankruptcy Declaration and the Duty of the Balai Harta Peninggalan

#### **Article 84**

1. The District Court may, upon pronouncing the bankruptcy declaration, or at any time thereafter, but finally only upon a proposal by the examining magistrate or of one or more creditors and after having heard the examining magistrate, order that the bankrupt debtor shall be put in custody, either in a prison or detention institution, or in the house of a creditor under supervision of the authorities.
2. The provisions of Paragraph 1 above will be carried out by the public prosecutor.
3. The custody pursuant of Paragraph 1 above will be valid for not more than thirty days, after the day of the execution. At the end of said period, the District Court may, upon a proposal by the examining magistrate or upon request and after a hearing as referred in the paragraph 1 above, extend the order for not more than thirty days. Then the same can be carried out for another thirty days. (F.82, 102)

**Article 85**

1. Upon a proposal by the examining magistrate or upon request by the bankrupt debtor, the District Court is authorized to release the bankrupt debtor from detention, with or without bail, that he will appear at anytime if there is any summons for him.
2. The amount of the bail will be determined by the District Court and will benefit the assets in the event of non-appearance. (F.82, 102)

**Article 86**

In the event there is an evidence that bankrupt debtor intentionally neglects and without valid reasons fails to fulfill the obligations imposed as referred to in Articles 88, 101 and 102, the request for detention of the bankrupt debtor must be approved. (F.102, Sw.226)

**Article 87**

1. In all cases, in which the presence of the bankrupt debtor is required for one or another activity concerning the bankruptcy estate, he will, upon orders of the examining magistrate in case he is being detained, be transferred from the place of detention to the proceedings.
2. The order hereto will be executed by the public prosecutor. (F.66, 84v, 102, 112, 140, 148, 151)

**Article 88**

During the bankruptcy, the bankrupt debtor is prohibited from leaving his domicile without permission from the examining magistrate. (F.66, 86, 102, Bw.17v.)

**Article 89**

(Gew.S.27-146) Immediately upon receipt of the notice required in Article 13 paragraph 3, the Balai Harta Peninggalan shall take care of the bankruptcy estate through all necessary and proper means. It will immediately take possession of all documents, moneys, jewelry, stocks and other valuable papers against a receipt. (F.90v., Rv.447v., 454v.)

**Article 90**

1. The bankrupt estate may be sealed upon the approval of the Supervising Judge, for the purpose of safeguarding the bankrupt estate.
2. The sealing as intended in paragraph (2) shall be executed by the Clerk of the Court or the Clerk of the Court's Substitute at the place of such assets in the presence of two witnesses, one of whom shall be the representative of the local Regional Government.

**Article 91**

1. The Balai Harta Peninggalan will begin to prepare an inventory of the bankruptcy estate as soon as possible.
2. The description of the bankruptcy estate may be drawn up privately and the evaluation performed by the Balai Harta Peninggalan, with the ratification of the examining magistrate.

3. The members of the temporary committee of creditors shall be entitled to be present when the inventory is carried out. (Rv.672v.)

#### **Article 92**

The goods as referred in Article 20 paragraph 1, shall be attached to the description; while in Article 89 they shall be included in the description. (F.91)

#### **Article 93**

The Balai Harta Peninggalan shall proceed to prepare a description showing the nature and the amount of the bankruptcy estate, the names and domiciles of the creditors, including the amount of debts to each creditor, immediately after the description of the assets. (F.16, 91, 93, 101 jo 86)

#### **Article 94**

The description of the bankruptcy estate in Article 91 and the description referred to in Article 93 will be deposited at the office of the Balai Harta Peninggalan for free perusal for the public interest.

#### **Article 95**

1. On the basis of the approval of the Creditors' Committee, the liquidator may continue the business of the debtor who is declared bankrupt even if an appeal to the Supreme Court or a judicial review is filed in respect of such determination of the declaration of bankruptcy.
2. If a Creditors' Committee is not appointed in the determination of the declaration of bankruptcy, the approval for the continuation of the business as intended in paragraph (1) may be given by the Supervising Judge.

#### **Article 96**

1. The Balai Harta Peninggalan will open all letters and telegrams sent to the bankrupt debtor. Those which do not refer to the bankruptcy estate shall be handed immediately to the bankrupt debtor. Upon a notice from the administration of the postal and telegraph service and post telegraph offices at the domicile of the bankrupt debtor is obliged to submit to the Balai Harta Peninggalan all letters and telegrams addressed to the bankrupt debtor, until they are released from that obligation by the Balai Harta Peninggalan or the examining magistrate or receive a notice as meant in Article 14.
2. All protests regarding the bankrupt debtor shall be submitted to the Balai Harta Peninggalan. (F.13, 66)
3. (Toeg. S.27-216) Writs, which are meant to carry out the legal action mentioned in Article 50, must be addressed to the Balai Harta Peninggalan.

#### **Article 97**

The Balai Harta Peninggalan is authorized according to the circumstances to pay out a sum of money which is determined by the examining magistrate to the bankrupt debtor and his family to provide for his cost of living.

**Article 98**

1. Upon the approval of the Supervising Judge, the liquidator may transfer the bankrupt estate insofar as this is necessary to cover the costs of the bankruptcy or if its retention would cause loss to the bankrupt estate, even if an appeal to the Supreme Court or a judicial review is filed in respect of the determination of the declaration of bankruptcy.
2. In the event of the above, the provision of Article 169 (read: 171 paragraph 1) is applicable. (F.75, 168v, Bw.389, 393v)

**Article 99**

1. The Balai Harta Peninggalan will keep all moneys, jewelry, stocks and other valuable papers in its direct custody, unless the examining magistrate has determined another manner of safekeeping.
2. Cash moneys which are not necessary for the management will be invested by the Balai Harta Peninggalan in accordance with the instruction. (F.66, 89, Bw.391; S.97-231 art. 110)

**Article 100**

The Balai Harta Peninggalan shall be authorized, after obtaining the advice from the committee of creditors, if any, and with the approval of the examining magistrate, to carry out any legal actions pertaining to reconciliation and any agreement for a good settlement. (F.66, 71, 75' Bw.1851v; K. 198)

**Article 101**

1. The bankrupt debtor shall be obliged to appear before the examining magistrate, the Balai Harta Peninggalan or the committee of creditors to render all information to them, if the bankrupt debtor is summoned for such purposes.
2. In case of the bankruptcy of a married person with community property, the obligation to provide such information shall be borne by each spouse for what legal actions each has taken on their own actions (F.62v, 65, 67, 73, 102; Bw.226)

**Article 102**

In case of the bankruptcy of a limited liability company, a mutual insurance or security company, a cooperative or other business entity which has legal entity status, an association or a foundation, then the provisions of Articles 84 through 88 shall apply toward the management of such entity, whereas Article 101 paragraph 1 shall apply to the board and commissioners. (F.113)

**Article 103**

The Balai Harta Peninggalan shall be obligated to give copies of the documents which can be seen free of charge by the public to every creditor at their request and on their account and to the creditor concerned. (F.16, 94, 110, 133, 135, 144, 179).

**Section 5. Verification of Debts and Claim on Debts****Article 104**

1. If the value of the bankrupt estate which can be paid to privileged creditors and unsecured creditors exceeds the amount of claims on the bankrupt estate, within no more than 14 (fourteen) days from the time the decision on the declaration of bankruptcy becomes final, the Supervising Judge may determine: a. the time limit for the submission of claims; b. the day, date, time and venue of the Creditors' Meeting for the verification of claims.
2. There must be at least 14 days between the dates mentioned in letter a and letter b above.

**Article 105**

The Balai Harta Peninggalan must immediately notify all known creditors of such date in writing and shall make an announcement of such designated date in the newspapers as meant in Article 13. (F.104, 111, 115)

**Article 106**

1. The filing of claims with the Balai Harta Peninggalan shall be done by showing an account, statement letters or any other written statements, indicating the nature and the amount of such claim, accompanied by evidence or copies thereof and proceedings stating whether the creditor has a pledge, a mortgage [hypotec], a harvest security or right to withhold goods.
2. The creditors are entitled to demand a receipt of delivery from the Balai Harta Peninggalan. (F.56v; Bw.1139v, 1149v, 1162v)

**Article 107**

(Gew.S.27-216) The Balai Harta Peninggalan shall examine the truth and verify the claims on debts submitted against the notes and information from the bankrupt debtor, consult with the creditors if there are objections to the submitted claims, and shall be authorized to demand the creditor concerned submit any documents not yet submitted, as well as showing the note and the original evidence. (F.89, 101, 106)

**Article 108**

The Balai Harta Peninggalan shall also include a list of claims on debts that are approved, a list of provisionally acknowledged claims, and a separate list of claims disputed, mentioning the grounds for the dispute. (F.16, 207).

**Article 109**

1. The list as intended in Article 108 shall also include a note against each claim stating whether in the liquidator's opinion such claims are prioritized or secured by security rights, pledge, or collateral rights on other assets or whether the retention right for such claims may be exercised.
2. If the trustee contests only the existence of priority right or retention right in respect of a claim, such claim must be included in the list of provisionally admitted claims, together with the liquidator's notes concerning his contest and the reasons thereof.

**Article 110**

The Balai Harta Peninggalan shall keep a copy of each list referred to in Article 108 in its office for the seven days prior to the verification of debts/claims on debt meeting for examination free of charge by any interested party. (F.16, 94, 103, 111)

**Article 111**

In respect of the deposit of the lists referred to in Article 110, the Balai Harta Peninggalan must notify it, as well as all known creditors, attaching a further summons for the verification of debts/claims on debt meeting and mentioning whether a draft of reconciliation from the bankrupt debtor has also been deposited at the Balai Harta Peninggalan. (F.104v, 135)

**Article 112**

The concerned bankrupt debtor must attend the verification of debts/claims on debt meeting in person, in order to give all information on the causes of the bankruptcy and condition of the bankruptcy estate demanded by the examining magistrate. The creditors may request the examining magistrate to obtain further information from the bankrupt debtor regarding certain matters indicated by them. The questions put to the bankrupt debtor and the answers given by him shall be entered into the minutes. (F.77, 86, 113)

**Article 113**

In the case of the bankruptcy of a limited liability company, a mutual insurance and guarantee company, a cooperative or other legal entity such as an association or a foundation which has legal entity status, the obligation for the above mentioned bankruptcy rests on the board. (F.2, 102; K.36v, 44, 286, 308)

**Article 114**

The creditors may appear at the meeting in person or by a proxy. The power of attorney for this purpose is exempt from stamp duty. (F.80, 112, 115)

**Article 115**

1. At the meeting, the examining magistrate shall read the list of provisionally acknowledged claims on debt and that of the claims disputed by the Balai Harta Peninggalan, each of the creditors appearing on such lists may submit a request for information from the Balai Harta Peninggalan regarding any claims on debt and their placement on the list, or it is permissible to contest the right of priority or the right to withhold goods, or to uphold the cancellation by the Balai Harta Peninggalan.
2. The Balai Harta Peninggalan shall be authorized to withdraw its provisional acknowledgment of claims on debts or cancellations made earlier, and shall be authorized to demand that the creditor confirm or take an oath on the truth of his claim on debt which are not contested neither by the Balai Harta Peninggalan nor by the bankrupt debtor; if the original creditor has died the rightful creditor shall declare on oath that they believe in good faith that the claim on debt is existing and unpaid.
3. If the meeting is adjourned, it will be continued on a date determined by the examining magistrate that is eight days after the adjournment without further summons. (F.77, 108v, 117v, 120v)

**Article 116**

1. The oath meant in Paragraph (2) of the previous article must be pronounced by the creditor in person or by proxy before the examining magistrate, either at the meeting itself or on a later day to be determined by the examining magistrate. The power of attorney for such purpose may be private.
2. If the creditor who is to be put on oath is not present at the meeting, then the court clerk must immediately inform him of the order to pronounce the oath and of the date determined for the pronouncement of the oath by such creditor.
3. The examining magistrate must inform the creditor of the pronouncement of the oath, unless the oath is taken at the meeting of creditors, in which case a notation will be made in the minutes of the meeting. (F.16, 66, 114, 120, 191; Bw.1796, 1945)

**Article 117**

1. Claims on debt that are not contested will be entered in the minutes concerning acknowledged creditors which are entered into the official record. The Balai Harta Peninggalan will denote the acknowledgment on the order to pay letter or the order to pay the bearer letter.
2. Claims on debt documents which the Balai Harta Peninggalan still needs confirmed on the oath of the creditor before the Balai Harta Peninggalan, will be provisionally admitted until there is a permanent resolution of the oath at the time stipulated in Article 116 paragraph (1).
3. The minutes of the meeting shall be signed by the examining magistrate and the court clerk. 4. The acknowledgment of the claims on debt in the bankruptcy denoted in the minutes shall be legally enforceable. The Balai Harta Peninggalan may only demand their cancellation on grounds of fraud. (F.24, 191; Bw.1328; Sw.378v.)

**Article 118**

1. If the examining magistrate in the case of a contest claim cannot bring the two parties to agreement, and insofar as the contested is not yet examined, the examining magistrate shall order the two parties concerned to settle the contest in a court of justice session on a determined date without the need of a court of justice notice summons.
2. The solicitors acting for the parties concerned must declare their representation at the opening of the court session.
3. The case will be summarily tried.
4. If the creditor who has demanded a verification of claims on debt does not appear at the court session on the day determined, then he is considered to have withdrawn his demand; if he who files a contest toward the claims on debt does not appear at the court session, he is considered to have withdrawn his contest and the examining magistrate will acknowledge the claim concerned.
5. Creditors who have not filed a contest at the verification of debts-claims on debt meeting may not attend the court session, either as individuals included in the case or as mediators in the case. (F.16, 25v, 31, 66, 115, 118a, 119v)

### **Article 118a**

1. (Ing.S.27-216) If a contest of claim on debt is filed by the Balai Harta Peninggalan, then the course of the proceedings shall be legally adjourned if reconciliation in the bankruptcy has been decided and becomes legally enforceable, except for the documentation of the proceedings which were already submitted to the judge for a decision, in which case the claims on debts concerned are acknowledged as a bankruptcy claim, while the decision on the costs of the proceedings are borne by the debtor concerned taking the place of the Balai Harta Peninggalan which originally bore the costs.
2. It is permissible for the debtor concerned by writ to appoint a solicitor to take over the case starting from the latest stage of the case that has been submitted to the Balai Harta Peninggalan.
3. As long as such matter has not been done, the opponent can demand the debtor concerned take over the case.
4. If the debtor concerned also does not appear, then Article 254 paragraph 1 of the Rules of Civil Procedure shall apply.
5. If the contest was made by a co-creditor, such case can be continued by the parties after the ratification of the reconciliation in the bankruptcy has become legally enforceable, however, this applies only to the request for the court decision on the costs of the case. (F115,154v).

### **Article 119**

The creditor whose claim on debt has been contested is not obligated to submit other evidence confirming the claim's evidence, other than the evidence he is ordered to give. (F54, 115, 118).

### **Article 120**

1. If a creditor whose claim on debt has been contested is not present at the Court session, the committee will immediately inform him by a registered letter of the disposition made and of the stage of the claim.
2. The creditor in the proceedings shall not file a lawsuit concerning the lack of notification. (F. 116)

### **Article 121**

The claims on debt which are contested by the examining magistrate may be acknowledged conditionally with the determination of the amount thereof. If the priority right has been contested, such right may be conditionally acknowledged by the examining magistrate. (F. 79, 81, 115, 138, 141, 159, 176, 178).

### **Article 122**

1. The bankrupt debtor is also authorized to file any challenge on the admission of a claim on debt, in whole or in part, or regarding the priority right. In this case the contest and the respective grounds will be noted in the minutes, without any obligation of the party to appear before the district court, and without any impediment of the acknowledgment of the claim on debt in the bankruptcy.

2. A contest without any reason, or which does not address the whole claim on debt, but which does not explicitly indicate which part of it is acknowledged and which part contested, will not be considered as a contest. (F. 115, 117[dst.], 154, 191[dst.]

#### **Article 123**

1. Claims on debt which are filed with the Balai Harta Peninggalan after the lapse of the term mentioned in Article 104.1o, however no later than two days before the date of the verification of the claims on debt meeting, shall be verified upon a request therefor at the meeting, if there is no objection from the Balai Harta Peninggalan or any of the creditors present.
2. Claims which are filed after the time mentioned above will not be verified at the meeting.
3. The provisions of paragraphs (1) and (2) mentioned above do not apply if the creditor, having domicile very far away, was unable to report the matter sooner.
4. In the case of an objection as meant in paragraph (1), or in a dispute concerning whether or not an impediment exists, as meant in paragraph (3), the examining magistrate shall decide upon consultation with the meeting (F. 173, 181, 186).

#### **Article 124**

1. Interest on a debt which arises after the determination of the declaration on bankruptcy may not be included in the verification of claims unless and only insofar as it is secured by security right, pledge or a collateral right on other assets.
2. Pro memoria verification of claim must be conducted in respect of interest as intended in paragraph (1).
3. If the interest concerned cannot be settled from the proceeds from the sale of goods serving as collateral, the creditor concerned cannot exercise his right which arise from the verification of claims.

#### **Article 125**

A claim on debt pursuant to conditional agreement to cancel must be verified for the entire sum without prejudice, taking account of the condition to cancel, if it occurs (F.126, 257; Civil Code 1253[dst.], 1265[dst.]).

#### **Article 126**

1. A claim on debt pursuant to a conditional agreement which is adjourned may be verified for its amount at the moment of the bankruptcy declaration.
2. If the Balai Harta Peninggalan and the creditors cannot agree on the manner of verification, then such claim on debt will be conditionally acknowledged for the entire sum (F. 52, 56, 79, 81, 138, 141, 159, 176, 178, 184, 258; Civil Code 1253v [dst.], 1263; Commercial Code 281)

### **Article 127**

1. A claim on debt which, at its due date, has not been determined or which allows for periodic installment will be verified for its value on the date of the bankruptcy declaration.
2. All claims on debt which fall due within one year of the commencement of bankruptcy will be verified as if the claims on debt were claimable at that point in time. All claims on debt falling due more than one year afterwards in the verification must be claimable at the value after the lapse of one year from the bankruptcy declaration.
3. The above calculation must be made with due care taking into consideration the time and manner of debt installments, earnings on the interest if any, and whether the debt yields interest as high as in the agreement. (F.52, 56, 259; Civil Code 1268, 1271, 1765, 1772, 1774; Commercial Code 281).

### **Article 128**

Creditors whose claims are secured by security rights, pledge or collateral rights on other assets or those having priority rights on an asset within the bankrupt estate and who can prove that part of such claim probably cannot be repaid from the proceeds from the sale of the goods serving as collateral, may request that the rights of unsecured creditors upon such portion of the a claim be granted to them, without prejudice to the right to be given precedence over goods serving as collateral for their respective claims.

### **Article 129**

1. Claims on debt with an indefinite value, or that cannot be expressed in Indonesian currency, or that cannot be expressed at all in monetary value, will be verified on their estimated value in Indonesian currency. (F.118, 125[dst.], 257; Civil Code. 1239).
2. The determination of the value of a claim in Rupiah as intended in paragraph (1) shall be made on the date of the determination of decision on the declaration of bankruptcy.

### **Article 130**

Claims on debt to bearer may be verified in the name of the "bearer". Each verified claim on debt in the name of the "bearer" will be considered as a claim from each creditor (F.79, 141, 257).

### **Article 131**

1. A creditor whose claim on debt is secured by a guarantor may file for his claims on debts, deducted by the amount that he has received from such guarantor.
2. The guarantor is entitled to be repaid for the money he has paid to the creditor. Moreover, he is entitled to the claim on debts in the amount paid to the creditor as a conditional claim on debts, as long as the creditor does not file for that matter. (F.79, 81, 138, 141, 159, 176, 178, 184, 257; Civil Code 1443, 1832, 1840).

**Article 132**

1. (s.d.v.dg.S.1927-216) If there are jointly one or more bankrupt debtors, the creditor may appear voluntarily for and on behalf of one bankrupt debtor, either for one or each debtor, to pay the entire amount of the debt during the bankruptcy until it is settled. (F. 257).
2. A debtor who has joint debts who is entitled to demand compensation from the bankruptcy estate may only be accepted on a condition that the creditor himself does not appear with respect to that matter.
3. If entirely there is more than one hundred percent available, the excess percentage will be distributed to those concerned according to their legal relationship (F.131; Civil Code 1280, 1283)

**Article 133**

1. After the verification is completed, the Balai Harta Peninggalan must report on the bankruptcy estate, and furthermore provide creditors with any information as requested by such creditors. After the meeting is completed, the report will, together with the minutes of the verification meeting, be deposited at the clerk's office with copies at the Balai Harta Peninggalan, so it may be reviewed by any persons concerned at no cost. No fees will be paid for the copies of the documents.
2. (s.d.t.dg.S. 27-216) The Balai Harta Peninggalan as well as the creditors and the bankrupt debtor may, after the deposit of the minutes, request correction thereof to the District Court in case it appears from the bankruptcy documents that an error has occurred in such minutes.

**Section 6. Reconciliation****Article 134**

The bankrupt debtor is entitled to provide a reconciliation to all creditors jointly. (F.197 jo.201, 135[dst.], 152, 160, 165, 168, 277)

**Article 135**

1. If the bankrupt debtor has submitted a draft reconciliation within eight days before the meeting for verification of the claims, and the District Court clerk's office and at the office of the Balai Harta Peninggalan provide an announcement for free perusal by whoever so desires, then the draft reconciliation must be discussed after the verification of claims on debt meeting and a decision should be taken, except in cases stipulated in Article 137.
2. At the same time as it is made public at the court clerk's office, a copy of the draft reconciliation shall be sent to each member of the temporary committee of creditors. (F.103[dst.], 111, 133, 136)

**Article 136**

The Balai Harta Peninggalan and the committee of creditors must submit written advice at the above mentioned verification of claims on debt meeting (F.16, 67b[dst.], 71[dst.], 135, 137).

### **Article 137**

The meeting to discuss and the decision on the draft reconciliation plan shall be postponed by the examining magistrate until a subsequent meeting at the latest three weeks afterwards:

- (1) if, during the meeting, a permanent committee of creditors is appointed which members do not consist of the same persons as the temporary committee, and the majority of creditors present demand written advice on the draft reconciliation provided.
- (2) if the draft reconciliation has not been made public in the specified place by the court clerk's office nor the office of the Balai Harta Peninggalan within such determined period and the majority of creditors present wishes a postponement of the meeting. (F.66, 72, 78, 135, 138).

### **Article 138**

If, in the meeting, the discussion and the voting on the draft reconciliation are postponed until a subsequent meeting as a result of the provisions of the previous article, the Balai Harta Peninggalan shall immediately inform in writing in brief regarding the content of the draft reconciliation to the acknowledged or conditionally accepted creditors who were not present at the verification meeting. (F.80, 114).

### **Article 139**

1. With due attention to the provisions in Article 128, if in respect of the rights of the creditors holding security rights, pledge or collateral rights on any other assets or holders of collateral right on harvest and any creditors who are privileged, including creditors whose rights are prioritized, file an objection, such creditors may not vote in respect of a reconciliation proposal, unless they have forfeited their priority rights in the interests of bankrupt estate prior to the vote concerning such reconciliation proposal.
2. Those who release their right will be concurrent creditors, even if the draft reconciliation is not accepted. (F.56[dst.], 109, 141[dst.], 152).

### **Article 140**

The bankrupt debtor shall be entitled to give information and defend such draft reconciliation and to make alterations on such draft reconciliation during the process of deliberation to reach a consensus at the meeting. (F. 134, 148, 153, 262)

### **Article 141**

The reconciliation proposal shall be accepted if approved in the creditors' meeting by more than 1/2 (one half) of the total of unsecured creditors attending the meeting and whose rights are admitted, or are provisionally admitted, who represent no less than 2/3 (two thirds) of the total unsecured claims which are admitted or provisionally admitted of the unsecured creditors or their proxies attending such meeting.

### **Article 142**

1. If more than 1/2 (one half) of the number of creditors who are present at the Creditors' Meeting representing at least 1/2 (one half) of the total claims of creditors

having voting rights agree to accept the reconciliation proposal, within a period of no more than 8 (eight) days from when the first vote was held, a second vote shall be held without need of a summons.

2. At the second vote, the creditors shall not be bound by the vote they cast in the first vote. Article 143 Later changes in the number of creditors or in the amount of claims on debts shall have no effect on the acceptance or rejection of the draft reconciliation which has been conducted. (F 117, 121, 125, 131 dst., 173, 181)

#### **Article 144**

1. (s.d.u. dg.S. 1927-216) The minutes of the meeting shall mention the content of the draft reconciliation, the name of the creditors entitled to vote by being present at the meeting, the vote cast by each one, the result of the voting and other matters that were discussed at the meeting. The minutes shall be signed by the examining magistrate and the court clerk.
2. Anyone may have free perusal of the minutes and its copy at the court clerk's office which shall be deposited at the latest on the day after the conclusion of the meeting in the office of the Balai Harta Peninggalan. 3. For the copy and deposit as above mentioned, no fees will be required. (F. 15, 77, 103, 117, 152)

#### **Article 145**

The creditors who have voted in favor of the draft reconciliation, as well as the bankrupt debtor may, during eight days after the meeting request the District Court to make a correction in the minutes that have been prepared, if the examining magistrate has misunderstood the draft reconciliation causing him to reject it. (F. 820)

#### **Article 146**

1. If the draft reconciliation is accepted, the examining magistrate shall, before concluding the meeting, determine the date of the following session which the District Court will make a decision on the ratification of the draft reconciliation.
2. In case Article 145 is applied, the determination date of the following session will be stipulated by the District Court in its decision letter. The Balai Harta Peninggalan will notify the creditors in writing of its decision. 3. The session will be held at the earliest eight days and at the latest fourteen days after the consensus on the draft reconciliation is achieved, or, when Article 145 is applied, after the decision letter of the District Court. (F. 66)

#### **Article 147**

During said period, the creditors may give in writing the reasons to the examining magistrate for why they rejected the ratification of the draft reconciliation. (F16, 179)

#### **Article 148**

1. On the determined date, in a public session, the examining magistrate will read a written report where each of the creditors, himself or by proxy may state the grounds on which he desires or rejects the ratification of the draft reconciliation.
2. The bankrupt debtor shall also be entitled to communicate one or more matters to defend his interests. (F. 16, 63 dst., 114)

### **Article 149**

1. On the same date or otherwise as soon as possible, the District Court will render its decision together with the grounds therefor.
2. The District Court shall reject the ratification of the draft reconciliation if:
  - (1) the assets of the bankruptcy estate, including any goods on which rights of withholding are exercised, considerably exceed the sum which was stipulated in the draft reconciliation;
  - (2) the draft reconciliation is not fully guaranteed;
  - (3) the draft reconciliation is based on fraud, giving unusual benefits to one or more creditors, or by using other unfair means, regardless whether the bankrupt debtor was involved in conducting such acts or not;

### **Article 150**

If the ratification of the draft reconciliation is rejected, within eight days of the decision by the District Court, the creditors who voted in favor of the reconciliation plan as well as the debtor itself, may file an appeal regarding the decision on the ratification. If the ratification is approved, the creditors who voted against it or were absent at the voting may also file an appeal within the same time. In the latter case, the creditors who voted in favor may also have the equal right but only on the ground of having discovered any actions as mentioned in Article 149 paragraph 2 under 3 after the ratification of the draft reconciliation. (F. 7 dst., 82)

### **Article 151**

1. An appeal to the Supreme Court in respect of the decision of the Court as intended in Article 150 shall be undertaken in accordance with the provisions set forth in Article 8, Article 9 and Article 10.
2. The provisions referred to in Article 148, except the provision concerning the Supervising Judge, and in Article 149 paragraph (1), shall also apply in the hearing of the petition for appeal referred to in paragraph (1).

### **Article 152**

The ratified draft reconciliation is binding for all concurrent creditors who have no priority right without exception, no matter whether they have or have not appeared in the bankruptcy. (F. 56 dst., 154 dst.)

### **Article 153**

If the draft reconciliation or the ratification of the draft reconciliation is rejected, the bankrupt debtor may not offer a new draft reconciliation. (F. 165, 168)

### **Article 154**

The decision on ratification of the draft reconciliation which is legally binding on claims on debt as long as the bankrupt debtor has not contested then pursuant to Article 122 regarding minutes of the verification of the claims on debt, will be an enforceable legal basis against the bankrupt debtor. (F. 117, 191, 206; Rv. 435 dst.)

### **Article 155**

Notwithstanding the draft reconciliation, the creditors will retain their rights against the guarantors and co-debtors, and on the debts of the bankrupt debtor. (F. 131 dst.) (s.d.t. dg. S. 1937- 590.) The rights which the creditors may assert on goods of third persons may continue to exist as if there was no draft reconciliation.

### **Article 156**

As soon as the ratification of the draft reconciliation has become legally binding the bankruptcy will cease. (F. 22, 49, 150 dst., 168, 188)

### **Article 157**

1. After the ratification of the draft reconciliation has become legally binding, the Balai Harta Peninggalan is obliged to render a calculation and explanation to the bankruptcy debtor before the examining magistrate.
2. If it is not stipulated otherwise in the reconciliation, Balai Harta Peninggalan shall, against proper receipt, return all goods, moneys, books and documents included in the bankruptcy estate to the debtor. (F.22, 89, 188)

### **Article 158**

1. The amount on which there is an acknowledged priority right that may be claimed by the creditors whose claims on debts have been verified, including the costs of the bankruptcy, must be deposited into the hands of the Balai Harta Peninggalan, unless that matter has not been fulfilled. As long as this has not been complied with, the Balai Harta Peninggalan is required to hold all goods and moneys belonging to the bankruptcy estate in its custody, until this amount and the above costs are paid to the rightful claimants. (F. 109 jo. 117)
2. When one month has elapsed after the ratification of the draft reconciliation becomes legally binding without the fulfillment of each one's right by the bankrupt debtor, the Balai Harta Peninggalan shall be obliged to make full payment by taking benefits from the available assets of the bankruptcy estate. (F. 169)
3. The amount as referred to in the first paragraph, and the parts thereof which are to be allocated to each creditor by virtue of his priority right, if deemed necessary, shall be stipulated by the examining magistrate. (F. 66)

### **Article 159**

With regard to claims on debts for which priority is conditionally acknowledged, the obligation to fulfill the claim concerned as meant in the previous article is limited to granting a guaranty, and if such obligation is not fulfilled, the Balai Harta Peninggalan shall be obliged to provide a reserve from the assets of the bankruptcy estate in an amount which can be claimed on the basis of such priority right. (F. 121, 139, 185)

### **Article 160**

1. Each creditor may request the cancellation of the ratified reconciliation because the bankrupt debtor neglects to comply with the contents of such reconciliation.

2. The evidence of the fulfillment of the reconciliation shall be the obligation of the bankrupt debtor.
3. The examining magistrate, because of his duty, shall have the full authority to accommodate the bankrupt debtor to fulfill such obligation at the latest within one month. (Civil Code 1266, etc., 1865).

#### **Article 161**

A request to cancel the reconciliation shall be filed and decided in the same manner as determined in Articles 4 and 6 through 9 for submitting the application for conducting the bankruptcy.

#### **Article 162**

1. In the decision to cancel such reconciliation, there should be an order to re-open the bankruptcy, appoint the examining magistrate as well as the committee of creditors, if the previous bankruptcy proceeding has appointed such committee.
2. The appointed examining magistrate and members of the committee shall be the same persons who filled such positions in the previous bankruptcy proceeding.
3. The liquidator must disclose and announce the decision as intended in paragraph (1) in the manner as intended in Article 13 paragraph (4).

#### **Article 163**

1. If the bankruptcy is re-opened, Article 12 paragraph (1), Articles 14 through 17 and Articles which are contained in Parts 2, 3 and 4 of this Section will apply.
2. Also applicable are the provisions from the part of the verification of claims on debts except that such verification is limited to the claims on debts which have not been verified before.
3. Nevertheless, the creditors whose claims on debts were verified before will also be summoned to attend the meeting of verification of claims on debts, and they will be entitled to arrange a challenge to the required claims being accepted and ratified. (F. 19 etc., 63 etc., 84 etc., 104 etc., 108 etc., 114 etc., 162, 165).

#### **Article 164**

Without prejudice to the application of Article 41 and the subsequent Articles, if there is a reason to do so then all the legal actions of the bankrupt debtor between the period of the legalization of the reconciliation and the re-opening of the bankruptcy are binding on the bankruptcy estate.

#### **Article 165**

1. After the re-opening of the bankruptcy, a second reconciliation may not be offered;
2. The Balai Harta Peninggalan shall immediately settle such bankruptcy (F.134 etc., 162 etc., 168 etc.)

**Article 166**

1. During the re-opening, if the reconciliation has been fulfilled partly or entirely towards several creditors, then at the time of distribution of the payment to the new creditors and to the old creditors who have not been settled, there should be an advance payment based on the percentage agreed by the creditors who have already received part of the settlement.
2. The balance shall be divided between the old and new creditors on a pro rata basis (F. 160 etc., 167, 174 etc., 188, 190).

**Article 167**

Article 166 will also be applicable to the bankrupt debtor, who has not yet fulfilled his obligations on such reconciliation, and shall be declared bankrupt for the second time. (F. 156).

**Section 7. Settlement of the Bankruptcy Estate****Article 168**

1. If at the meeting of verification of claims on debt no reconciliation is offered, or if the offered reconciliation is rejected or the ratification of such reconciliation is definitely rejected, therefore, for the sake of law, the bankruptcy estate is insolvent.
2. Articles 95 and 97 are not applicable if there is a certainty that the company of the bankrupt debtor will not be continued in accordance with such Articles, or when the continuation of the company is terminated.

**Article 168a**

1. If, at the meeting of verification of claims on debt no reconciliation is offered or if the offering of a reconciliation is rejected, then the Balai Harta Peninggalan or one creditor present at such meeting may suggest that the company of the bankrupt debtor be continued (F. 134 etc., 141, 146).
2. The creditors' committee, if any, or a similar committee and the Balai Harta Peninggalan must provide advice on the proposal of one creditor as meant in paragraph (1) (F. 71 etc., 76).
3. Upon the request of the Balai Harta Peninggalan or a creditor who is present at such meeting, the examining magistrate may postpone the discussion and the examination of such proposal until a meeting to be determined in no later than fourteen days.
4. The Balai Harta Peninggalan shall immediately inform the creditors who are not present at the meeting in writing about the meeting to be held, stating the above proposal, and to remind them of the provision in Article 110.
5. In such a meeting, if necessary, the verification on claims on debts which were filed after the lapse of the period as meant in Article 104 paragraph 1 will also be held, and not in accordance with Article 123. For such claims, the Balai Harta Peninggalan shall act in accordance with the provisions in Articles 107 through 110.

**Article 168b**

1. The proposal shall be accepted if the number of creditors who represent more than half of all claims which are acknowledged and conditionally admitted, and which are not secured by a pledge or a mortgage [hypothec], approve such proposal (F. 56 etc., 115, 128, 139, 168d).
2. In this case the provision in Article 72 will be applicable if there is no committee of creditors.
3. The minutes of the meeting shall mention the name of the creditors present, vote cast by each of them, the result of the voting and all matters occurring during the meeting.
4. Within eight days, anyone is permitted to request to see such minutes of meeting without cost at the clerk of court's office.

**Article 168c**

1. If within eight days after the ratification of the reconciliation is definitely rejected, the Balai Harta Peninggalan or one creditor files a proposal with the examining magistrate to continue the company of the bankrupt debtor, therefore, the examining magistrate shall hold a meeting at a determined date, time, and place to discuss such proposal and to make a decision.
2. The Balai Harta Peninggalan shall invite the creditors, in writing, at the latest ten days before the meeting is held, stating the proposal submitted, and at the same time reminding them of the provision as meant in Article 110. Moreover, the Balai Harta Peninggalan shall advertise the same notice in the newspaper as meant in Article 13.
3. Article 168a paragraphs (2) and (5) and Article 168b will be applicable here.

**Article 168 d**

Within eight days after the end of the meeting, if from the existing letters there is evidence that the examining magistrate has misunderstood such proposal is rejected or accepted, therefore, the Balai Harta Peninggalan and the creditors may request the District Court to state again whether such proposal is accepted or rejected (F. 168a etc.).

**Article 169**

1. Upon the request of one creditor or the Balai Harta Peninggalan, the examining magistrate may give an instruction for the termination of the continuation of such company . The comments with regard to this proposal shall be heard from the committee of the creditors, if such committee exists, and also from the Balai Harta Peninggalan if such request for the continuation of the company has not yet been carried out.
2. Moreover, the examining magistrate may hear the comments from each creditor and debtor.

**Article 170**

1. With due attention to the provision in Article 12 paragraph (1), the liquidator must begin the settlement and sale of the entire bankrupt estate without requiring the approval or assistance of debtors if:
  - a. the proposal to manage the debtor's company is not submitted within the period set forth in this Law, or the said proposal has been submitted but has been rejected; or
  - b. the management of the debtor's company is terminated.
2. Nevertheless, the concerned bankrupt debtor can be given the household goods which are designated by the examining magistrate (F. 19 etc.).
3. If the company continues, the goods which are not needed can be sold for the continuation of the company.

**Article 171**

1. The sale of the goods shall be public or upon the permission of the examining magistrate, the sale may also be carried out in private (F. 98).
2. Concerning all goods which are not immediately or cannot be completely settled, the Balai Harta Peninggalan shall take a decision in the manner which is ratified by the examining magistrate (F. 66).
3. With regard to the goods which may be subject to a retention right by the creditors, the Balai Harta Peninggalan shall return them to the bankruptcy estate for payment of the claims on debt, if this will be beneficial to the bankruptcy estate (F. 59, 231).

**Article 172**

For the sake of settlement of the bankruptcy estate, the Balai Harta Peninggalan may use the services of the bankrupt debtor, with compensation determined by the examining magistrate.

**Article 173**

1. (s.d.u. dg. S. 1927-216). After the bankruptcy estate has become insolvent, the examining magistrate may convene a meeting with the creditors at a date, time and place determined, to conduct a proper discussion on the manner to settle the bankruptcy estate and if necessary, to conduct a verification of claims on debt which are already filed after the end of the period determined as stipulated under Article 104 paragraph 1, which are not yet verified in accordance with Article 123. On the claims, the Balai Harta Peninggalan shall conduct actions in accordance with the provision in Articles 107 through 110. The Balai Harta Peninggalan shall summon the creditors in writing, stating the matters to be discussed at the meeting and at the same time reminding them of the provision in Article 110; also, the Balai Harta Peninggalan shall advertise the same summons in the newspapers as meant in Article 13.
2. The examining magistrate shall immediately determine the time period between the date of the summons and the date of the meeting, without including those days (F. 66, 75, 77 etc., 81, 123, 168, 181).

### **Article 174**

At any time, if in accordance with the opinion of the examining magistrate there are cash moneys available, therefore, he will order the distribution to the creditors whose claims on debt are already verified. (F. 66, 175 etc., 185 etc.).

### **Article 175**

1. (s.d.u. dg. S. 1924-522 jo. 524). The Balai Harta Peninggalan shall always be obliged to provide a payments list to be ratified by the examining magistrate. Such list shall contain evidence on the income and payments (including the salary of the Balai Harta Peninggalan), names of the creditors, amount of verification of each claim on debt, as well as the distribution of payments which shall be paid for each claim on debt.
2. All concurrent creditors shall be granted a percentage which is determined by the examining magistrate; all creditors who have a priority right, including those whose priority right is denied and for all creditors holding a pledge or mortgage [hypothec], as long as they have not yet accepted payment in accordance with the provision in Article 56, will be granted an amount pursuant to the profit made on the sale of goods upon which they have a priority right or a contract relationship. If the amount is less than all of their claim on debt, then for the shortage, if the goods having a priority right or a contractual relationship to them are unsold yet, for the total amount of their claim, the creditors shall be granted a percentage which is the same as the concurrent creditors.
3. The same matter shall be applied to the holder of a harvest security, as long as the claims are not yet paid, from the result of the harvest which had the contractual relationship to it (F. 66, 174, 176 etc., 179, 182, 187 etc.; Rv. 482, 547, 558, 576; S. 1886-57).

### **Article 176**

For the claims on debt which have been conditionally admitted, the list of distribution shall give the percentage of all of the amounts of such claims on debts (F. 119, 121, 126, 131 etc., 184).

### **Article 177**

All the general costs of the bankruptcy shall be borne in each part of the bankruptcy estate, except based on the provision in Article 56 if there was a private sale by the creditor holding the pledge, the creditor holding the mortgage [hypothec], or the creditor holding the harvest security (F. 175).

### **Article 178**

1. The list of distributions which is approved by the examining magistrate should be put for perusal in the court clerk's office, and the copy of such list shall be placed in the office of the Balai Harta Peninggalan, so it can be seen by the creditors within the period which is already determined by the examining magistrate at the moment such list is signed for ratification.
2. The determination of the document, as well as the time period mentioned above, upon the effort of the Balai Harta Peninggalan, shall be announced in the newspapers as meant in Article 13.

3. The time period for the public to see the document as mentioned above, will start from the day and date of the official news which contains such announcement (F. 16, 80, 103, 175 jo. 66).

#### **Article 179**

1. During the period mentioned above, any of the creditors may file a challenge with the court clerk about the distribution list by filing a letter which contains the objection including the reasons, and the court clerk will give a receipt therefor.
2. The objection letter is attached to the concerned distribution list (F. 147 etc., 175, 180 etc.)

#### **Article 180**

1. If there is a challenge, the examining magistrate, immediately after the period which allows the public to see the documents, will determine the date to examine the challenge before the public session. The examining magistrate's determination shall be deposited with clerk court and the copy thereof at the Balai Harta Peninggalan, so that it can be reviewed by anyone, free of charge. (RV.488, 554, 576). For this copy and the deposit of it no fees shall be charged. Besides that, the court clerk shall notify in writing regarding the depositing to the challengers and the Balai Harta Peninggalan in writing. The date for the examination shall not be stipulated later than fourteen days after the end of the period stated in Article 178.
2. On the stipulated date, in the public court session, a written report shall be rendered by the examining magistrate whereas the Balai Harta Peninggalan and any creditor may, by himself or his proxy, be permitted to give the reasons for the defense and challenge of the distribution list.
3. On the same date or as soon as possible, the District Court shall render the decision accompanied by the reasons therefor.

#### **Article 181**

1. (s.d.u.dg.S.1927-216) Also, creditors whose claims on debts are not verified, as well as the creditors whose claims on debts are verified in an amount that is lower according to his own report, shall be allowed to file a challenge provided that at least two days prior to the examination of the next challenge in the public court session, the claims on debt or part of the claims which are not verified are submitted to the Balai Harta Peninggalan, with a copy attached to the objection document as well as filing the verification of the claim on debts.
2. The verification will then be carried out in the manner provided in Article 115 and following before the public session which is intended for the above examination of the challenge and carried out prior to the commencement of this examination.
3. If the challenge has no other purpose other than filing a challenge to be verified as a creditor and this matter has not been filed by other parties, the costs of the challenge will be charged to the creditors who failed to do so. (F.104 dst., 123, 175, 179, 186).

### **Article 182**

1. With regard to the decision of the Court as intended in Article 180 paragraph (3), the liquidator or any creditor may file a petition for appeal to the Supreme Court.
2. Appeals to the Supreme Court against the Court decision referred to in paragraph (1) shall be executed in accordance with the provisions referred to in Article 8, Article 9 and Article 10.
3. For the purpose of the hearing of an petition for appeal, the Supreme Court may summon the liquidator or creditors.
4. Due to the elapse of the period as referred to Article 178, or if these had been a challenge and decision regarding such challenge having become legally binding, the distribution shall be enforceable by law.

### **Article 183**

1. (s.d.u.dg.S. 1927-216; S. 1933-U7 jo S. 1938-2) The examining magistrate shall order the removal of the mortgage's [hypothec] registration which burdens the goods (moveable goods) including the bankruptcy estate, immediately after the distribution list which explains the income from the goods' sale becomes valid and binding by law.
2. If a vessel is included in the bankruptcy which is sold by Balai Harta Peninggalan, Article 570 of the Rules of Civil Procedure is applicable to this sale. If there is a mortgage [hypothec] registration on such vessel, the examining magistrate shall order its removal (F.56 dst., 128, 175, 182; RV 557, 576).

### **Article 184**

1. The distribution which is ordered to the creditors that have been accepted conditionally shall not be granted as long as there has been no decision regarding his claims on debt. If finally he has no claim on debt or his claim is less than the one he accepted, then the money which was originally designed entirely or partly for him shall be a benefit to the other creditors.
2. The distribution intended for the claims on debts which priority rights are contested, as far as that distribution exceeds the percentage which shall be distributed to the concurrent creditors, may be reserved temporarily until there is a decision regarding that priority right. (F.115, 119, 121, 126, 131 dst. 175 dst., 189)

### **Article 185**

If any good subject to a certain priority right, mortgage [hypothec], pledge or harvest security has been sold to the priority creditor, mortgage [hypothec] creditor, creditor holding a pledge or creditor with a harvest security who have been granted a distribution pursuant to Article 147 concerning the end of Article 175, cannot be granted with a distribution until it is decreased by the amount of the percentage which was already accepted, (F.58, 128, 186). If there is a redistribution for those who have been determined in the order of the benefits toward the selling income of such goods

### **Article 186**

1. Creditors, because of their failure to appear for a verification after the distribution was made, shall be entitled to payment for the amounts which are taken first from the

remaining balance equal to the amount that has been accepted by other creditors which have been acknowledged.

2. If they have priority rights, they will lose such rights as long as the income from the goods' sale, pursuant to the distribution list, is intended for the other creditors which are prior to them. (F. 173 dst., 181, 185)

#### **Article 187**

After the end of the period to see the documents as mentioned in Article 178 or if the challenge is proposed after a decision is taken regarding that challenge, the Balai Harta Peninggalan shall immediately carry out the payments that have been stipulated. (F. 182. Jo. 82, 89)

#### **Article 188**

1. Immediately after the verified creditors are paid in full, or immediately after the last distribution list becomes legally binding, the bankruptcy will cease without prejudice to the provision in Article 189. Balai Harta Peninggalan will announce it in the newspapers, as mentioned in Article 13.
2. After one month has passed, Balai Harta Peninggalan shall render the explanation regarding the management which has been implemented by it to the examining magistrate. 3. Any books and letters found by Balai Harta Peninggalan in the bankruptcy estate shall be given to the bankrupt debtor after receiving proper receipt. (F.66, 84, 89, 157, 174, 182, 190 dst, 205 dst.)

#### **Article 189**

If, after the closing distribution is made, the distribution which was first reserved based on Article 184 is reapplicable to the bankruptcy estate, or if in fact there is still a bankruptcy estate which at the time of settlement was not yet known, upon the order from the District Court, Balai Harta Peninggalan will settle and carry out the distribution based on the previous distribution list. (F.4 dst., 19, 67, 71, 82, dst., 160, 162, 188, 190)

### **Section 8. Legal Status of the Bankrupt Debtor after the Expiration of the Settlement**

#### **Article 190**

In consideration of the laws toward the valid closing distribution list, any creditors may obtain their rights to carry out the decisions regarding their claims on debt against the bankruptcy debtor, as long as the claims on debts have not yet been paid. (F.182, 188, dst., 190 dst., 201)

#### **Article 191**

The acknowledgment of a claim on debt against a bankruptcy debtor pursuant to Article 117 paragraph (4) is legally binding as if the court decision which has legal enforcement; an excerpt from the minutes of verification of the claims on debt meeting which results in an applicable decision regarding stipulated claims on debts that have been acknowledged shall be a legal basis which can be used against the debtor. (F.117, 155)

### **Article 192**

The provision in the last article is not valid as long as the challenge by the debtor has been made against the claims on debt pursuant to Article 122. (F.117, 154)

### **Article 193**

1. At the time of the closing distribution regarding claims on debts, the bankrupt debtor may file at the District Court for the purpose that there will be no physical force regarding his debts prior to the bankruptcy declaration, if the bankrupt debtor can provide the reasons that he, even though acting in good faith, but beyond his fault, has fallen into a bankrupt situation, or he can provide other important reasons.
2. The application letter accompanied by the reasons therefor shall be deposited at the District Court clerk by the bankrupt debtor within the period which is stipulated in Article 178, for the purpose that such matter can be reviewed by the creditors while the bankruptcy debtor has to pay a certain amount of money for the procedures fee which is determined in the following articles.
3. At the same time as the depositing of such letter at the court clerk, a copy shall be posted by the bankrupt debtor to Balai Harta Peninggalan and any members of the Creditors Committee.

### **Article 194**

Immediately after the end of the period as mentioned in Article 178, or after the decision regarding the challenge, the creditors which have verified their credits, who are entitled to declare physical force against the bankrupt debtor, shall be summoned by Balai Harta Peninggalan to appear before the court session at the date stipulated by the examining magistrate by a registered letter stipulating the bankruptcy debtors' application letter has been deposited.

### **Article 195**

1. On the stipulated date, any information and proposals from the creditors who appear, who are entitled to carry out physical force against the bankrupt debtor, also from the Balai Harta Peninggalan and any members of the creditors committee, will be heard by the District Court that will grant the decision within at least eight days.
2. Regarding this decision there is no permission to file an appeal. The decision can be carried out based on the original document.

### **Article 196**

Regarding the decision of the District Court, the court clerk should notify in writing any creditors who are entitled to carry out physical force against the bankrupt debtor.

## **Section 9. Bankruptcy on the Inheritance**

### **Article 197**

(s, d, u, dg, S, 1927-216) The assets from the deceased shall be declared in bankruptcy if there are one or more creditors filing a petition and describing in brief that the

deceased was insolvent to pay his debts, or at the moment he died, his assets were not enough to pay his debts. (F.5, dst., 19, 22, 205)

#### **Article 198**

1. The petition shall be filed at the time of the debtor's death with the District Court which is authorized to grant a bankruptcy declaration.
2. Any information on the heirs regarding such matter shall be heard or they shall be summoned for such purposes accompanied by a letter from the court clerk which is carried out at the house of the deceased without describing the name of each heir since it is enough to render the means of identification, accompanied by an official registered letter by the court clerk.

#### **Article 199**

The bankruptcy declaration may cause a separation by law of the assets of the deceased from the assets of the heirs in the manner described in Civil Code Article 1107.

#### **Article 200**

The petition for a bankruptcy declaration may be requested during three months after the acceptance of the inheritance, or six months before the death of the debtor concerned.

#### **Article 201**

Section 6 of this title is not applicable to the bankruptcy of an inheritance; neither is Chapter 8, unless the inheritance is not accepted unconditionally. (F.134v, 190; BW.1031, 1044, 1048)

### **Section 10. Provisions of International Law**

#### **Article 202**

The creditors who, after the bankruptcy declaration, have taken out their claim on debt a whole or a part of the goods, respectively, for themselves from the goods owned by the bankrupt debtor who is declared bankrupt in Indonesia and such goods are located outside Indonesian state territory and not linked to them by priority right, are required to compensate the bankruptcy for what they took out with regard to such priority right. (F.19, 32; Rv.436)

#### **Article 203**

1. The creditor who has transferred his claims on debt against the bankruptcy in whole or in part to a third party in order to enable the third party either entirely or partially, individually or having priority over other parties, so the payment for those claims on debt can be taken for settlement from the goods of the bankrupt debtor located outside the Indonesian territory, shall compensate the bankruptcy estate for anything he has obtained in such manner.
2. Unless it can be proved otherwise, any transfer of claims on debt will be deemed to have been made for the purpose mentioned above if the matter is carried out pursuant to his knowledge that the bankruptcy declaration has been filed or will be filed. (Bw.1915v, 1921)

### **Article 204**

1. An obligation to compensate the bankruptcy estate shall also be applicable to any party who transfers his claims on debt or his debt either entirely or partially to a third party and such act causes the third party concerned to have a chance to calculate the claims on debts or debts outside Indonesia, which is prohibited by this provision.
2. Paragraph 2 of the previous Article is hereby applicable (52v.)

## **Section 11. Rehabilitation**

### **Article 205**

After the bankruptcy ceases, pursuant to Articles 156 and 188, and also in the case of Article 197, the bankrupt debtor or his heirs are entitled to file a petition for rehabilitation at the District Court which has examined the bankruptcy concerned. (F. 2v, 5, 134,168, 211)

### **Article 206**

The petition by the bankrupt debtor or his heirs concerning the above matters will not be admitted unless the request is accompanied by evidence stating that all acknowledged creditors have been paid for all their claims on debt. (F. 188)

### **Article 207**

Such petition must be published in the State Gazette and in newspapers appointed by the District Court. (F. 13, 15)

### **Article 208**

1. Within two months after the advertisement in the State Gazette, every acknowledged creditor shall be allowed to file a challenge against the petition to the court clerk by filing an objection letter accompanied by the reason therefor; the creditor concerned shall receive a receipt from the court clerk.
2. This challenge shall not be based on other reasons, except the petitioner has not duly complied with the provision in Article 206.

### **Article 209**

After the lapse of the above mentioned two months, the District Court will approve or reject the petition, regardless whether or not a challenge has been filed.

### **Article 210**

The decision of the District Court will not be open to an appeal or an appeal to a higher level. (F.82v)

### **Article 211**

The decision which allows the rehabilitation concerned shall be adopted before a public session, and be recorded in the register mentioned in Article 18.

## **Chapter II    The Moratorium on Debt Repayment**

### **Section 1.    Granting of Deferment of Payment and its Consequences**

#### **Article 212**

Debtors who are unable, or expect that they will be unable, to continue paying those debts which have matured and must be paid, may request a moratorium on the repayment of their debts, with the general intention of presenting a reconciliation proposal that includes an offer to pay all or part of their debts to unsecured creditors.

#### **Article 213**

1. The petition for a moratorium on debt repayment referred to in Article 212 must be filed by the debtor to the Court as referred to in Article 2, signed by both the debtor and his legal advisor, and accompanied by the list referred to in Article 93, and any other appropriate documentary evidence.
2. The reconciliation proposal referred to in Article 212 may be attached to the aforementioned petition.
3. The provisions referred to in Article 4 paragraph (1), paragraph (2), paragraph (3) and paragraph (4) and also Article 6 paragraph (5) shall apply mutatis mutandis as the procedure(s) for filing a petition for a moratorium on debt repayment referred to in paragraph (1).

#### **Article 214**

1. The petition and its attachments must be made available at the Office of the Clerk of the Court, so that they may be perused free of charge by the public, in particular by the parties concerned.
2. The court must immediately grant temporary moratorium on debt repayment and must appoint a Supervising Judge from among the Court Judges, and appoint 1 (one) or more trustees who, together with the debtor, shall manage the debtor's assets.
3. Immediately after the decision on the temporary moratorium on debt repayment is stipulated, the Court, via the trustee, must summon the debtor and known creditors by official registered letter or courier, to appear at the session which shall be held no later than the 45th (forty fifth) day after the decision on the provisional moratorium on debt repayment was stipulated.

#### **Article 215**

1. The trustee must immediately announce the decision on the provisional moratorium on debt repayment in the Official Gazette and in 1 (one) or more daily newspapers designated by the Supervising Judge, and such announcement must also contain an invitation to attend the session which shall be in the form of a judges' deliberation meeting, together with the date, venue and time of the said session, the name of the Supervising Judge and the name and address of the trustee.
2. If the reconciliation proposal is attached to the petition, such matter must be mentioned in the said announcement, and the announcement must be made no less than 21 (twenty one) days before the proposed date of the session.

### **Article 216**

The decision on the temporary moratorium on debt repayment shall be valid from the date such moratorium on debt repayments is pronounced and shall continue until the date the meeting intended in Article 215 is held.

### **Article 217**

1. On the day of the session, the Court must hear the debtor, Supervising Judge, trustee and creditors who are present or their representatives appointed by Power of Attorney, and each and every creditor shall be entitled to be present at such session, notwithstanding that those concerned have not received a summons thereto.
2. If the reconciliation proposal is attached to the petition for temporary moratorium on debt repayment as intended in Article 213, or it has been submitted by the debtor prior to the session, the vote regarding the reconciliation proposal may take place if the provisions in Article 252 have been fulfilled.
3. In the event that the provisions referred to in paragraph (2) have not been fulfilled, or if the unsecured creditors have not yet voted on the reconciliation proposal, then at the request of the debtor the creditors must decide to grant or refuse a permanent moratorium on debt repayment, with the intention of allowing the debtor, trustee and creditors to consider and agree upon reconciliation in a meeting or session which shall be held subsequently.
4. If the permanent moratorium on debt repayment referred to in paragraph (3) is approved, such moratorium and the extension thereof may not exceed 270 (two hundred and seventy) days from when the decision on the temporary moratorium on debt repayment is stipulated.
5. The granting of a permanent moratorium on debt repayment and the extension thereof shall be determined by the Court on the basis of the approval of more than 1/2 (one half) of the unsecured creditors whose rights are admitted or provisionally admitted present who represent at least 2/3 (two thirds) of all claims admitted or provisionally admitted of the unsecured creditors or their proxies present at such session, and any dispute which arises between the trustee and the creditors concerning the voting rights of the creditors must be decided by the Supervising Judge.
6. If the petition for declaration of bankruptcy and the petition for moratorium on debt repayment are heard at the same time, then the petition for moratorium on debt repayment must be decided first.

### **Article 217A**

1. If the temporary moratorium on debt repayment is terminated because the unsecured creditors do not agree to the granting of a permanent moratorium on debt repayment or an extension thereof has been granted but as of the end of the period referred to in Article 217 paragraph (4) an agreement has not been reached regarding the reconciliation proposal, then on the final day the trustee must inform the Court, which must declare the Debtor bankrupt no later than on the next day.
2. the trustee must announce matters referred to in paragraph (1) in the daily newspapers wherein the petition for moratorium on debt repayment was announced on the basis of Article 215.

**Article 217B**

1. The Court must appoint a Creditors' Committee if: a. the petition for the moratorium on debt repayment includes debts of a substantial amount or of a complex nature; or b. such appointment is desired by unsecured creditors representing at least 1/2 (one half) of all admitted claims.
2. In the implementation of its functions, the trustee must accept and consider the recommendations of the Creditors' Committee.

**Article 217C**

1. The Clerk of the Court must make a general list which includes, for each moratorium on debt repayment:
  - a. the date when the temporary moratorium on debt repayment is granted, and the date when the permanent moratorium on debt repayment is granted, as well as any extensions thereof;
  - b. The citation of the Court decision stipulating the moratorium on debt repayment, whether temporary or permanent in nature, and extensions thereof;
  - c. the name of the Supervising Judge and the trustee appointed;
  - d. a summary of the content of the reconciliation and the ratification of such reconciliation by the Court;
  - e. the conclusion of the reconciliation.
2. Further provisions regarding the form and content of the said general list shall be stipulated by the Supreme Court.
3. The Clerk of the Court must make the general list available for perusal by any individual free of charge.

**Article 217D**

1. If requested by the Trustee, the Supervising Judge may hear witnesses or order the hearing of experts to explain the circumstances surrounding the moratorium on debt repayment, and such witnesses shall be summoned in accordance with the provisions of the law of civil procedure.
2. In the event that witnesses do not appear or refuse to take the oath or give testimony, then the provisions of the law of civil procedure shall apply in respect of such matter.
3. Husbands/wives or former husbands/wives, their children and descendants, and the parents and grandparents of the debtor may exercise their rights to be exempted from the obligation to bear witness.

**Article 217E**

1. A trustee shall be appointed in the decision concerning the temporary moratorium on debt repayment as intended in Article 214.

2. The trustee appointed as intended in paragraph (1) must be independent and have no conflict of interest with the debtor or the creditors.
3. Those who may become trustees as intended in paragraph (1), shall be:
  - a. individuals or civil partnerships domiciled in Indonesia, who possess special expertise needed in respect of managing the debtor's assets;
  - b. registered with the Ministry of Justice;
4. The trustee shall be held personally responsible if any fault or negligence in the implementation of his management duties causes loss to the debtor's assets.
5. The amount of the expenses for the management of the debtor's assets shall also be included in the decision on the original moratorium on debt repayment, including the fees for the services of the trustee based on guidelines stipulated by the Ministry of Justice.

#### **Article 220**

1. The decision on the permanent deferment of payment may be carried out although there is a filing for an appeal application against it. (F. 2172, 221)
2. The decision shall be advertised in the manner described in Article 215.

#### **Article 222**

1. If more than one trustee is appointed, then in order to execute actions which are legal and binding, the trustees require the agreement of more than 1/2 (one half) of the trustees.
2. If there are the same number in favor as against, the action as intended in paragraph (1) must obtain the approval of the Supervising Judge.
3. The trustees appointed as intended in Article 214 paragraph (2) may be replaced or supplemented by the Supervising Judge at the request of unsecured creditors, and such request may only be submitted if it is based on the agreement of such creditors in a creditors' meeting by majority vote.

#### **Article 223**

1. In the decision granting the moratorium on debt repayment the Court may include any provisions deemed necessary for the interests of the creditors.
2. The Supervising Judge may conduct the matter intended in paragraph (1) at any time during the moratorium on debt repayment, on the basis of:
  - a. the initiative of the Supervising Judge;
  - b. the request of the trustee; or
  - c. the request of one or more creditors.

**Article 224**

1. If the moratorium on debt repayment has been granted, the Supervising Judge may appoint one or more experts to conduct an investigation and compile a report concerning the condition of the assets of the debtor within a specified period and extension thereof which shall be stipulated by the Supervising Judge.
2. The experts' report as intended in paragraph (1) must include an opinion accompanied by the full reasons thereof concerning the condition of the assets of the debtor and the documents surrendered by the debtor as well as the willingness or ability of the debtor to fulfill his obligations to the creditors, and such report must, to the extent possible, indicate the measures that must be taken in order to be able to meet the demands of the creditors.
3. The experts must make the report as intended in paragraph (2) available at the office of the Clerk of the Court so that it may be perused by the public free of charge, and no fee shall be charged for making such report available.
4. The provisions as intended in Article 222 shall also apply to the experts.

**Article 225**

1. The trustee must report on the condition of the debtor's assets every 3 (three) months, and such report must also be made available at the office of the Clerk of the Court as intended in Article 224 paragraph (3).
2. The reporting period as meant in paragraph (1) may be extended by the Supervising Judge.

**Article 226**

1. During the moratorium on debt repayment, the debtor may not, without the authority of the trustee, take any management actions or transfer the rights to any item that is part of his assets, and if the debtor violates this provision, the trustee shall be entitled to take any and all measures necessary to ensure that the debtor's assets are not depleted because of such actions of the debtor.
2. Those of the debtor's obligations undertaken without the authority of the trustee, and which arise after the commencement of the moratorium on debt repayment, may only be charged to the debtor's assets insofar as such matter benefits the debtor's assets.
3. Upon the authority of the trustee, the debtor may obtain loans from a third party only in respect of increasing the value of the debtor's assets.
4. If a collateral is required to obtain the loan as intended in paragraph (3), the debtor may encumber his assets by security right, pledge or collateral right on other property, provided such loan has the approval of the Supervising Judge.
5. The encumbrance of the bankrupt estate by security right, pledge or collateral right on other property as intended in paragraph (3) may only be executed on the part of the debtor's assets which have not yet been made a cash security.

**Article 227**

1. If the debtor is married and there is any community property, then the debtor's assets shall include any assets and encumbrances of such community property. (Bw. 119, 155, 164, etc.)
2. Articles 60 and 61 shall be applicable accordingly.

**Article 228**

1. During the moratorium on debt repayment, the debtor may not be forced to pay his debts as intended in Article 231, and any acts of execution that have been commenced in order to obtain the settlement of debts, must be postponed.
2. Unless an earlier date is stipulated by the Court at the request of the trustee, all confiscations of goods already applied shall terminate upon the determination of the permanent moratorium on debt repayment, or after the approval of the reconciliation has become final, and at the request of the trustee or the Supervising Judge, the Chairman of the Court must, if necessary, stipulate the removal of the confiscation applied upon goods included in the debtor's assets.
3. The provisions as intended in paragraph (1) and paragraph (2) shall also apply in respect of execution and confiscation which have already commenced on goods which are not encumbered as collateral even though such execution and confiscation are related to the creditors' claims and are secured by security right, pledge or collateral right on other property or by rights which must be privileged in connection with certain assets based on the Law.

**Article 229**

1. The deferment of payment shall not cease a case which has been commenced for examination or hinder the filing of a new case.
2. However, the examining magistrate may postpone the decision of the matter on lawsuits that solely regard any claim for payment of a claim on debt which has been acknowledged by the debtor itself, but in which the creditor has no interest in obtaining a decision to carry out his rights against any third parties after the acknowledgment is recorded, until after the end of the deferment of payment.
3. The debtor may not become a plaintiff nor defendant in any case which deals with the rights and obligations on its assets, without the assistance of the trustees. (F. 226, 228, 230, etc.)

**Article 230**

1. With due attention to the provisions of Article 231A, a moratorium on debt repayments shall not apply in respect of:
  - a. claims guaranteed by pledge, security rights, collateral right on other property, or privileged claims in respect of certain goods belonging to the debtor;
  - b. claims for payment for maintenance, supervision or training that must be paid, and the Supervising Judge must determine the amount of such claims collected prior to the moratorium on debt repayment which do not constitute claims with the right to be prioritized.

2. In the event that assets which are made as collateral by pledge, security rights and collateral rights to other assets are insufficient to secure claims, then the creditors secured by such collateral shall acquire rights as unsecured creditors, including the right to vote while the moratorium on debt repayment is in effect.

#### **Article 231**

Payment of all other debts existing prior to the commencement of this deferment of payment may, for as long as this deferment, shall not be carried out other than be based on pro rata of the claims on debt of all creditors, without prejudice to Article 171 paragraph 3. (F. 216, 221, 228)

#### **Article 231A**

The provision intended in Article 56A shall apply mutatis mutandis in respect of the exercise of creditors' rights as intended in Article 56 paragraph (1) and privileged creditors, with the provision that the postponement shall apply while the moratorium on debt repayment is in effect.

#### **Article 232**

1. Whoever has any debts or claims on debts against the debtor based on the assets of the debtor may have a calculation on his debt and claim on debt for its management if the debts or the claims on debt existed prior to the commencement of the deferment of payment. (F. 216, 233; Bw. 1425, etc.)
2. The claims against the debtor will, if necessary, be settled based on the provisions stipulated in Articles 258 and 259.

#### **Article 233**

1. Anyone who has taken over a debt or a claim on debt from the assets prior to the commencement of the deferment of payment cannot request such a calculation if he has not acted in good faith when he took over. (F. 53, 203, 232)
2. There will be no calculation on debts and claims on debt the take-over of which occurred after the deferment of the payment.
3. Articles 54 and 55 shall be applicable.

#### **Article 234**

1. In the event that when the decision to impose a moratorium on debt repayment is stipulated there is a mutual agreement which has yet to be, or has only partly been fulfilled, then the party with whom the debtor enters into the agreement may request the trustee to provide assurance of the continued implementation of the agreement concerned within a period of time agreed on by the trustee and such party.
2. If no agreement is reached concerning the period referred to in paragraph (1), the Supervising Judge shall stipulate such period.
3. If within the period referred to in paragraph (1) and paragraph (2) the trustee does not respond, or is not prepared to continue the implementation of such agreement, the agreement shall be terminated and the party referred to in paragraph (1) may claim for compensation as an unsecured creditor.

4. If the trustee declares his readiness, the trustee shall furnish a guarantee of his readiness to implement the said agreement.
5. The provisions referred to in paragraph (1), paragraph (2), and paragraph (3) shall not apply in respect of agreements requiring the debtor to execute the agreed actions independently.

#### **Article 235**

If, in the case as meant in the previous article, there is an agreement to deliver traded goods which are traded in the exchange market by stipulating a fixed period, and such delivery will be carried out prior to a certain time or within a determined period, while such period or such time expires after the deferment of payment, then the agreement should be canceled by the granting of the temporary deferment of payment and the opponent is entitled to file a claim for compensation pursuant to Article 231. If, pursuant to the cancellation of the agreement, the assets suffer losses, the opponent is required to compensate for that. (F. 37, 216; Bw. 1266, etc.)

#### **Article 236**

1. Immediately after the commencement of the deferment of payment, the debtor leasing certain goods in accordance with the provisions of Article 226 may terminate such lease for a temporary period provided the notice to cease the lease is carried out shortly prior to the expiration of the agreements by local custom. The time of the notice should also consider the period pursuant to the agreement or by the local custom, which means a grace period of three months will be sufficient. If the lease payment has been fully paid up then the lease cannot cease until the date for which the payment has been made.
2. From the commencement of the deferment of payment, the lease payment shall become a debt of the assets. (F. 38, 216, 234; Bw. 1266, etc., 1548, 1550, etc., 1571, 1585, etc., 1588; Levensv. 58; Ord. Levensv. 92)

#### **Article 237**

1. Immediately after the commencement of the moratorium on debt repayment, the debtor shall be entitled to dismiss his employees, paying heed to the provisions of Article 226 and the period which has been agreed or is required by the prevailing laws and regulations, with the understanding that such employment may nevertheless be terminated by notification of such termination of employment in accordance with the provisions of the prevailing labor laws and regulations.
2. When the moratorium on debt repayments comes into effect, any salaries and other expenses arising from such employment shall become debts of the debtor's assets.

#### **Article 238**

1. Any payment to the debtor which has been granted a temporary deferment of payment that has not been informed or announced to fulfill any contract entered prior to the deferment of payment to the debtor, will release the person who paid from the assets as long as he can prove he has no knowledge that there is a temporary deferment of payment.
2. Payment, as meant in the previous paragraph, that is carried out after the announcement regarding the temporary deferment of payment shall not release the

assets, unless the person doing so can prove that the preliminary granting of the deferment of payment through legal notification could not yet have become known at his domicile; the matter should not hinder the right of the trustees to prove that the announcement can be known by him.

3. Any payment to the debtor for any reason shall release the person who did so against the assets, insofar as the payment will give a benefit to the assets. (F. 46, 2142, 215, 226, Bw. 1385, etc., 1387; Levensv. 58; Ord. Levensv. 92)

#### **Article 239**

Deferment of payment shall not be applicable for the benefit of co-debtors and guarantors. (F. 155, Bw. 1280, 1283, 1820, etc., 1831, 1833; Levensv. 564; Ord. Levensv. 814)

#### **Article 240**

1. After the moratorium on debt repayment has been granted, such moratorium may be terminated, whether at the request of the Supervising Judge, or at the request of the trustee or one or more creditors, or upon the initiative of the Court itself, in the event that:
  - a. during the period of the moratorium on debt repayment the debtor acts in bad faith in the management of his assets;
  - b. the debtor attempts to harm the creditors;
  - c. the debtor violates the provisions of Article 226 paragraph (1);
  - d. the debtor fails to conduct those actions which are required of him by the Court when the moratorium on debt repayment is granted, or subsequently, or fails to conduct such actions required by the trustee in the interests of the debtor's assets;
  - e. during the period of the moratorium on debt repayment, the condition of the debtor's assets makes the continuation of the moratorium on debt repayments unfeasible; or
  - f. the debtor, due to the circumstances, cannot be expected to fulfill his obligations to creditors on time;
2. In the situation referred to in paragraph (1) letter a and letter e, the trustee must file a petition for the termination of the moratorium on debt repayment.
3. The petitioner, the Debtor and Trustee must be properly heard or summoned, and such summons shall be issued by the Clerk of the Court on the date stipulated by the Court.
4. The Court's decision must contain the reasons underlying the said decision.
5. If the moratorium on debt repayment is terminated on the basis of the provisions in this Article, the Debtor must be declared bankrupt in the same decision.
6. The hearing of a petition for the termination of the moratorium on debt repayment as referred to in paragraph (1) must be concluded within a period of 10 (ten) days from

the filing of such petition and the Court's decision must be rendered within a period of 10 (ten) days from the conclusion of the hearing.

#### **Article 241**

The provisions referred to in Article 8, Article 9, Article 10 and Article 11 shall apply *mutatis mutandis* in respect of decisions for the conclusion of a moratorium on debt repayment.

#### **Article 242**

As soon as a decision on the revocation of the deferment of payment has legal enforcement, it will be advertised in the manner stipulated in Article 215.

#### **Article 243**

1. If the Court considers that the session for the petition for the termination of a moratorium on debt repayment cannot be concluded before the date on which the creditors are to be heard as stipulated in Article 214 paragraph (3), the Court must order that the creditors be notified in writing that they cannot be heard on such date.
2. If the Court considers that the session for the petition for the termination of a moratorium on debt repayment cannot be concluded before the date on which the creditors are to be heard as stipulated in Article 214 paragraph (3), the Court must order that the creditors be notified in writing that they cannot be heard on such date.

#### **Article 244**

1. The debtor at any time is entitled to request the District Court to revoke the deferment of payment on the grounds that the circumstances of the assets will enable him to make more payments. The information of the trustees and the creditors, in case of the granting of a permanent deferment of payment, shall be heard or properly summoned.
2. The summons shall be made through official registered letter by the court clerk shortly before the date determined by the district court. (F.240, 269, 279)

#### **Article 245**

1. During the deferment of payment it is prohibited to file a declaration of bankruptcy.
2. If, pursuant to one of the provisions of this title, a bankruptcy is declared, Article 13 will be applicable. If, pursuant to that provision, the bankruptcy is canceled, then Articles 12 and 14 will be applicable. (F.217(5), 2404, 274v).

#### **Article 246**

1. If bankruptcy is declared in accordance with the provisions of this chapter, or within 2 (two) months of the conclusion of a moratorium on debt repayment, the following provisions shall apply:
  - a. the period mentioned in Article 42 and Article 44 must be counted from the point when the moratorium on debt repayment comes into effect;

- b. the liquidator shall have the authority given to the trustee in accordance with Article 226 paragraph (1);
  - c. legal actions conducted by debtors, after being granted the authority of the trustee to conduct the same, must be considered as legal actions conducted by the liquidator, and debts of the debtor's assets which are incurred while the moratorium on debt repayment is in effect shall constitute debts of the bankrupt estate;
  - d. Obligations of the Debtor which arise during the moratorium on debt repayment without the authority of the Trustee may not be charged to the debtor's assets, unless such matter benefits the debtor's assets.
2. If a petition for a moratorium on debt repayment is filed within a period of 2 (two) months of the conclusion of the previous moratorium on debt repayment, then the provisions in paragraph (1) shall also apply to the following moratorium.

#### **Article 247**

1. The provisions as meant in Article 69 shall apply mutatis mutandis in respect of the fee for the services of the trustee.
2. The fee for the services of the experts appointed on the basis of Article 224 shall be determined by the trustee.

#### **Article 248**

The provisions of international law in the Articles 202 through 204 will be applicable to the deferment of payment.

### **Section 2. Reconciliation**

#### **Article 249**

The debtor at the time he files a petition for deferment of payment, or after that, is entitled to offer a reconciliation to those having claims on debts and to those whose payments were deferred. (F.134v, 213, 230, 250v; S.37-545 art. 1v.13v)

#### **Article 250**

1. If the reconciliation proposal is not proposed to the Clerk of the Court as intended in Article 213, then such plan must be proposed prior to the date of the session referred to in Article 215 or a later date, with due attention the provisions intended in Article 217 paragraph (4).
2. The reconciliation proposal must be made available at the office of the clerk of the court to be examined by any individual free of charge, and submitted to the Supervising Judge, and trustee and any experts, as soon as possible after the such proposal is available.

**Article 251**

The draft reconciliation will be void by law, if, before the decision of the deferment of payment become legally enforceable, there is a decision containing the termination of the deferment of payments. (F.221, 240, 244)

**Article 252**

1. If the reconciliation proposal has been submitted to the Clerk of the Court, The Court must determine:
  - a. the last day on which the claims subject to the moratorium on debt repayment must be submitted to the trustee;
  - b. the date and the time the reconciliation proposal put forward shall be discussed and decided upon in a deliberation meeting of the judges.
2. There must be at least 14 (fourteen) days between the date mentioned in paragraph (1) letter a and letter b.

**Article 253**

1. The trustee must announce the determination of the period referred to in Article 252 paragraph (1) together with the inclusion of the reconciliation proposal, unless such matter has already been announced in accordance with Article 215.
2. The trustee must also inform all known creditors in writing by registered letter or via courier, and such announcement must mention the provisions in Article 254 paragraph (2).
3. Creditors may attend in person or be represented by a proxy based on a written Power of Attorney.
4. The trustee may require that the debtor provides him with a deposit in an amount stipulated by trustee to cover the costs of the such announcement and notification.

**Article 254**

1. Claims must be filed with the trustee by submitting a claim document or other written evidence that states the nature and amount of the claim accompanied by supporting evidence or copies of such evidence.
2. Claims not subject to a moratorium on debt repayment may not be filed with the trustee as referred to in paragraph (1), and if such claims have already been filed, then the moratorium shall also apply to such claims, and all privilege rights, retention rights, pledge, security rights or collateral right to other property shall be nullified.
3. The provision regarding the nullification of every special right, retention right, pledge, Security Right or collateral right to other property referred to in paragraph (2) shall not apply if such claim is withdrawn before voting begins.
4. In respect of claims submitted to the trustee as referred to in paragraph (1), creditors may request a receipt from the trustee.

**Article 255**

Any calculation which has been submitted should be compared by the trustees with the record and report provided by the debtor. If there is an objection against the admission of any claim on debt, there should be a discussion with the creditor, and the trustees are entitled to request from the concerned creditor any missing documents that have not been accepted and request to be shown any record and the original evidence. (F.107, 222)

**Article 256**

The trustees shall provide a list containing the claims on debt, mentioning the names and domiciles of the creditors, the amount and description of each claim on debt, including the explanation therefor, as well as the information on whether the claims on debt are acknowledged or contested. (F.108, 222, 254, 260, 263).

**Article 257**

1. A claim on debt bearing interest will be added to the list with the addition of interest up to the commencement of the deferment of payment. (F.216).
2. The Articles 125, 129 through 131 and 132 paragraphs 1 and 2, will be applicable.

**Article 258**

1. A claim with deferment conditions may be included in the list referred to in Article 256 for the prevailing value at the time the moratorium on debt repayments commences.
2. If the trustee and creditors do not reach agreement regarding the determination of the value of such claim, the claim must be accepted conditionally to be determined by the Supervising Judge.

**Article 259**

1. Collectible claims on debt which are uncertain or which give an allowance for periodic installments, shall be entered into the list for their value at the commencement of the deferment of payment.
2. All new claims on debt which will be collectible within one year after the commencement of the deferment of payment shall be treated as if they may be collectible at that date. All new claims on debt which will be collectible after one year as of the commencement of the deferment of payment should be entered onto the list with the time counted from that date.
3. At the calculation on the above matter, the sole considerations are the time and manner of installment, the chance of profit, if any, and in case the claim on debt is bearing interest, the rate of interest which has been agreed. (F.127; Bw.1268, 1271, 1765, 1772, 1774)

**Article 260**

1. The trustees have to deposit at the District Court clerk's office a copy of the list as meant in Article 256, to be available for free perusal by any one during the seven days prior to the meeting as meant in Article 252.
2. The deposit is free of charge.

**Article 261**

1. With due attention to the provisions regarding the period for the moratorium on debt repayment as referred to in Article 217 paragraph (4), at the request of the Trustee or by virtue of his office, the Supervising Judge may postpone the discussion and the vote concerning such reconciliation proposal.
2. In the event of a postponement of the discussion and vote as referred to in paragraph (1), the provisions of Article 253 shall apply.

**Article 262**

1. At the meeting, either the trustees or the experts, if any, have to provide a written report regarding the offered reconciliation. Article 140 will be applicable.
2. Claims on debt that are submitted to the trustee after the period mentioned in Article 252 (1), but at the latest two days before the date of the meeting, have to be entered onto the list upon a request therefor made at the meeting, if neither the trustees nor any of the creditors present objections thereto.
3. Claims on debt filed thereafter should not be entered onto the list.
4. The provisions in paragraph 2 above should not be applicable if the creditor was prevented from reporting earlier because of the remoteness of his domicile.
5. In case of an objection as stipulated in paragraph 2 above or if there is a dispute regarding the existence of the impediment as stipulated in paragraph 4, the District Court will decide the matter after having consulted with the meeting.

**Article 263**

1. At the meeting, the trustees are entitled to withdraw any acknowledgment or denial which they have made. (F.222, 256)
2. Either the bankruptcy debtor or any creditor present at the meeting is allowed to contest claims on debt that were acknowledged either wholly or partly by the trustees.
3. Objections or acknowledgments made during the meeting will be recorded on the above mentioned list. (F.115, 122)

**Article 264**

The Supervising Judge must determine whether and to what extent those creditors whose claims are contested may take part in the vote.

**Article 265**

1. The reconciliation proposal may be accepted if it is approved by more than 1/2 (one half) of the unsecured creditors whose rights have been admitted or provisionally admitted who are present at the judges' deliberation meeting referred to in Article 252 including the creditors referred to in Article 264, who together represent no less than 2/3 (two thirds) of all the admitted or provisionally admitted claims of the unsecured creditors or their proxies who are present at such meeting.

2. The provisions in Article 142 and Article 143 shall also apply in the vote on the acceptance of the reconciliation proposal referred to in paragraph (1).

#### **Article 266**

1. The minutes of the judges' deliberation meeting must state the contents of the reconciliation proposal, the names of creditors who are present and are entitled to vote, notes regarding the votes cast by creditors, and the result of the vote and notes concerning any other incidents at the meeting.
2. The list of Creditors made by the trustee which has been supplemented or amended in the meeting must be signed by the Supervising Judge and Clerk of the Court and must be attached to the minutes of the meeting concerned.
3. A copy of the minutes of the meeting referred to in paragraph (1), must be made available at the office of the clerk of the court for 8 (eight) working days in order to be examined free of charge by the public.

#### **Article 267**

1. Debtors and creditors who voted in support of the reconciliation proposal may, within 8 (eight) working days of the date of the vote at the meeting, request that the Court correct the minutes of the meeting if, on the basis of the documents available, it appears that the Supervising Judge has mistakenly considered the reconciliation to have been rejected.
2. The request referred to in paragraph (1) must be filed with the Court.
3. If the Court corrects the minutes, the Court must, within the same decision, stipulate the date for the ratification of the reconciliation, which must be executed between 8 (eight) and 14 (fourteen) working days after the decision of the Court correcting such minutes is rendered.
4. The trustee must inform the creditors in writing of the Court decision referred to in paragraph (3), and such decision shall render the declaration of bankruptcy based on Article 274 paragraph (1) null and void by law.

#### **Article 268**

1. If the reconciliation proposal is accepted, the Supervising Judge must submit a written report to the Court on the date stipulated for the purposes of the ratification of the reconciliation, and on such stipulated date the trustee and creditors may submit the reasons which caused them to accept or reject such reconciliation proposal.
2. The provision in Article 148 paragraph (2) shall apply in respect of the implementation of the provision in paragraph (1).
3. The Court shall stipulate the date of the session for the ratification of the reconciliation which must take place no later than 14 (fourteen) days after the reconciliation proposal is approved by the creditors.

### **Article 269**

1. The Court must render a decision concerning the ratification of the reconciliation together with the reasons therefor at the session referred to in Article 268 paragraph (3).
2. The Court may only refuse to undertake the ratification of the reconciliation if:
  - a. the debtor's assets, including goods in respect of which there are retention rights, far exceed the amount agreed in the reconciliation;
  - b. the implementation of the reconciliation is not sufficiently guaranteed;
  - c. the reconciliation was reached as a result of fraud, or collusion with one or more creditors, or due to the use of other dishonest means, regardless of whether the Debtor or other parties cooperated to achieve such ends;
  - d. the fees for services and costs expended by the experts and the trustee have not yet been paid, or no guarantee of their payment has been given.
3. If the Court refuses to ratify the reconciliation, the Court must, in the same decision, declare the debtor bankrupt, and such decision must be announced as referred to in Article 215.
4. The provisions referred to in Article 8, Article 9, Article 10 and Article 11 shall apply mutatis mutandis in respect of a rejection of the ratification of the reconciliation as referred to in paragraph (3).

### **Article 270**

The ratified reconciliation shall be applicable to all creditors to whom the deferment of payment applies. (F.152, 230, 254)

### **Article 271**

A decision ratifying the reconciliation which has legal enforcement with regard to the minutes stipulated in Article 256 regarding the claims on debt that have not been contest by the bankrupt debtor becomes a legal basis which can be carried out against the bankrupt debtor and against parties binding themselves as guarantors in the reconciliation. (F.154; Rv.435v)

### **Article 273**

The moratorium on debt repayments shall end immediately the decision on the ratification becomes final, and the trustee must announce such termination in a daily newspaper as referred to in Article 215.

### **Article 274**

If the reconciliation proposal is rejected, the Supervising Judge must immediately notify the Court of such rejection by delivering to the Court a copy of the reconciliation proposal, together with the minutes of the meeting referred to in Article 266, and in such matters, the Court must declare the debtor bankrupt no later than 1 (one) day after the Court receives the notification of the rejection of the Supervising Judge.

**Article 275**

If the Court has declared the Debtor bankrupt, the provisions concerning bankruptcy as intended in Chapter I shall apply in respect of such determination of bankruptcy, with the exception of Article 8, Article 9, Article 10 and Article 11.

**Article 276**

1. With regard to the nullification of the reconciliation, Articles 160 and 161 will be applicable. (F.279)
2. When the District Court makes the decision deciding the nullification of the reconciliation, the debtor will be declared bankrupt. (Bw.1266v; F.269, 274, 277)

**Article 277**

A reconciliation cannot be offered in a bankruptcy decided by virtue of Articles 269, 274 of 276.

**Section 3. Closing Provisions****Article 278**

Except as determined otherwise, and without prejudice to the application for a higher appeal, for the interest of law as a result of the provisions in this title, there is no appeal against the decisions of the judge. (F.124, 222, 223v, 225, 243, 247, 252, 261, 264)

**Article 279**

Petitions filed on the basis of Article 223, Article 240, Article 241, Article 244, Article 267, Article 269, Article 275 and Article 276 must be signed by a legal advisor licensed to practice who acts on the basis of a Power of Attorney, unless filed by the Trustee.

**Chapter III The Commercial Court****Article 280**

1. A petition for the declaration of bankruptcy and a moratorium on debt repayment as intended in Chapter I and Chapter II, shall be heard and decided by the Commercial Court, which is in the domain of the General Judiciary.
2. The Commercial Court referred to in paragraph (1), in addition to hearing and deciding on petitions for the declaration of bankruptcy and a moratorium on debt repayment, shall also have the authority to hear and decide other cases in the filed of commerce, the stipulation of which shall be made by a Government Regulation.

**Article 281**

1. For the first time under this Law, a Commercial Court shall be established at the Central Jakarta District Court.

2. The establishment of Commercial Courts other than those intended in paragraph (1), shall be implemented in stages by Presidential Decree, with due attention to needs and the readiness of the necessary resources.
3. Until the Commercial Courts referred to in paragraph (2) are established, all cases that come within the scope of the authority of such Commercial Courts shall be heard and decided by the Commercial Courts as intended in paragraph (1).
4. The establishment of the Commercial Court as intended in paragraph (1) shall be implemented no more than 120 (one hundred and twenty) days from such time as this Government Regulation in Lieu of Law comes into effect.

#### **Article 282**

1. The Commercial Court shall hear and decide upon cases at the first level by a council of judges.
2. In cases relating to other cases in the field of commerce, as referred to in Article 280 paragraph (2), the Chairman of the Supreme Court may stipulate the type and value of cases which shall be heard and decided by a single judge at the first level.
3. In performing his duties, the Commercial Court Judge shall be assisted by a Clerk of the Court or by a Substitute Clerk of the Court and a Bailiff.

#### **Article 283**

1. A Commercial Court Judge shall be appointed on the basis of a Decision of the Chairman of the Supreme Court.
2. The conditions for appointment as a Judge as intended in paragraph (1), shall be:
  - a. having experience as a judge within the General Judiciary;
  - b. having dedication and mastering the knowledge of the issues within the scope of authority of the Commercial Court;
  - c. having authority, being honest, just and not guilty of any misconduct; and
  - d. having successfully completed a special training program as a Commercial Court Judge.
3. With due attention to the conditions referred to in paragraph (2) letter b, letter c and letter d, by Presidential Decree at the proposal of the Chairman of the Supreme Court, an individual whose expertise is as an ad hoc judge may also be appointed to the Commercial Court at the first level.

#### **Article 284**

1. Unless otherwise stipulated by Law, the prevailing law of civil procedures shall also be applied in respect of the Commercial Court.
2. In respect of Commercial Court decisions at the first level that are related to petitions for a declaration of bankruptcy and a moratorium on debt repayment, appeals may only be filed with the Supreme Court.

**Article 285**

The hearing of a petition for appeal shall be conducted by a council of judges from the Supreme Court which is formed specifically to hear and decide cases within the scope of authority of the Commercial Court.

**Article 286**

1. In respect of decisions of the Commercial Court that have already become final, a judicial review may be filed with the Supreme Court .
2. A petition for judicial review may be made, if:
  - a. there is important new written evidence which, if known at the previous session, would have resulted in a different ruling; or
  - b. The Commercial Court concerned has committed a serious error in the application of the law.

**Article 287**

1. A petition for Judicial Review on the grounds intended in Article 286 paragraph (2) letter a shall be filed within a period of no more than 180 (one hundred and eighty) days from the date on which the decision in respect of which a judicial review is petitioned becomes final.
2. A petition for judicial review on the grounds intended in Article 286 paragraph (2) letter b shall be filed within a period of no more than 30 (thirty) days from the date the decision in respect of which a judicial review is petitioned becomes final.
3. A petition for judicial review shall be filed with the Clerk of the Court.
4. The Clerk of the Court shall register a petition for judicial review on the date on which the petition is filed, and furnish the applicant with a written receipt signed by the Clerk of the Court with the same date as the date of registration of the petition.
5. The Clerk of the Court shall deliver the petition for judicial review to the Clerk of the Supreme Court within a period of 1x24 hours from the date on which the petition is registered.

**Article 288**

1. The party filing the petition for judicial review must submit to the Clerk of the Court supporting evidence which forms the basis for filing such petition for, and to the other party, a copy of the petition for judicial review accompanied by the relevant supporting evidence, on the date the petition is registered as intended in Article 287 paragraph (4).
2. Without prejudice to the provision referred to in paragraph (1), the Clerk of the Court shall submit a copy of the petition for judicial review accompanied by the supporting evidence, to the other party within a period of no more than 2x24 hours from the date such petition is registered.
3. The other party may submit a response to the petition for judicial review that is filed, within a period of 10 (ten) days from the date such petition is registered.

4. The Clerk of the Court must submit such response to the Clerk of the Supreme Court within a period of no more than 12 (twelve) hours from the date the petition is registered.

**Article 289**

1. The Supreme Court shall immediately hear and render a decision on the petition for judicial review within no more than 30 (thirty) days counting from the date the petition is received by the Clerk of the Supreme Court.
2. The decision on the petition for judicial review must be pronounced in a public session.
3. Within no more than 32 (thirty-two) days from the date the petition is received by the Clerk of the Supreme Court, the Supreme Court must submit to the parties a copy of the decision on the judicial review which shall contain in full the legal considerations underlying such decision.