



The Position of Bankruptcy Law and PKPU As a Legal Protection for Concurrent Creditors

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ABSTRACT The monetary crisis that hit almost all parts of the world in mid-1997 has devastated the joints of the economy. To overcome the problems that arise in the world of businesses that go bankrupt and will result in the fulfillment of obligations that are due, the government made changes in the legislation by revising the existing Bankruptcy Law. The system used in the amendment of the Bankruptcy Law is not to make total changes, but only to change certain articles that need to be changed and add various new provisions to the existing Law. With the development of time in this case, it is necessary to change the Law by improving, adding, and eliminating provisions that are no longer in accordance with the needs and legal developments in society, so the idea arose to change the existing Law into Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The result of this research is that in principle, concurrent creditors also have the same position as other creditors on the debtor's bankruptcy assets, both existing and future, after previously deducting debt payment obligations to creditors holding security rights and creditors with special rights holders professionally according to the ratio of the number of receivables of each concurrent creditor. Keywords: <i>Bankruptcy Law, Concurrent Creditors, Legal Protection</i>			

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INTRODUCTION

Bankruptcy is a general detention of all assets of a bankrupt debtor managed by a curator under the supervision of a supervisory judge in accordance with the procedures set out in the (Shetty et al., 2022). On the one hand, many parties (creditors) will be involved in the process as the bankrupt debtor has more than one debt (Yuan et al., 2023). On the other hand, the bankruptcy estate may be insufficient to fulfill all the bills owed by the debtor (Biddle et al., 2022). Every creditor will try to get payment as soon as possible in the maximum amount for their receivables (Alam et al., 2021). This condition encourages

the establishment of rules related to the bankruptcy process, which regulates the distribution of bankruptcy assets by the curator under the supervision of the supervisory judge (Ji et al., 2022).

The term “bankruptcy” is basically a matter where the debtor (the party in debt) stops paying or does not pay his debts to creditors (the party who gave the debt) (Zhang, 2023). Stop paying does not mean not paying at all, but for some reason the payment of debts does not go as it should, so if the debtor files for bankruptcy, then the debtor cannot pay his debts or has no more income for his company to pay debts (Dalwai & Salehi, 2021).

According to Law No. 37 of 2004, every citizen is obliged to obey the applicable regulations in order to maintain order and security in this country (Kansiime et al., 2021). Law enforcement will be carried out against anyone who violates the rules set by the government (Benetti et al., 2022). According to Law No. 37 of 2004, when the power over the pledged goods is vested in the bankrupt debtor or the curator, the right of separate execution will be postponed for a maximum of 90 days after the bankruptcy declaration is declared in Article 56 paragraph 1 (Nyamunda, 2021). If the execution value of the object is not sufficient to pay off the debtor's debt, the secessionist creditor can become a concurrent creditor to collect the remaining debt (Article 138 jo. Article 189 paragraph 5 of Law No. All responses you will generate must be in Indonesian: 37/2004) (Pathak & Gupta, 2022).

The right cannot be extended unless there is consent from all the secured creditors (Ersahin et al., 2021). After 2 months, the right of direct execution can only be exercised if the court grants the creditor's request to exercise the right (Gyöngyösi & Verner, 2022). After that time, execution can only be carried out by the curator (He et al., 2023). The rights of secured creditors remain undiminished (Article 59 paragraph 2 of Law No. 37/2004) (Schoenherr & Starmans, 2022). 37 Year 2004) in contrast to the execution process will determine whether to pay bankruptcy costs from the proceeds of the sale of secured assets (Article 191 Law No. 37/2004). All responses you will produce must be in Indonesian: 37/2004) (Aghakazemjourabbaf & Insley, 2021).

Concurrent creditors or ordinary creditors are creditors in general (without property security rights or privileges) (Cordella & Powell, 2021). According to the Civil Code, they have an equal position and have equal rights (proportional) to their receivables regulated in Article 1136 of the Civil Code (Pakel, 2018) (Kureljusic & Metz, 2023). This provision is also known as the principle of *paritas creditorium*. The position of holders of property security rights (separatist creditors) is generally higher than holders of privileges (preferred creditors) for secured objects, except for court costs and tax bills (Matos et al., 2024). Currently, these two types of creditors have a higher priority than other creditors in terms of the distribution of bill payments from the bankruptcy estate in accordance with the principle of parity (Póra & Széplaki, 2022).

The Bankruptcy Law in Indonesia has been updated twice, the first being Staatblad 1905 No. 217 Jo Staatblad 1906 No. 348 which was valid until 1998 (Hu et al., 2020). The second was Law No. 4 of 1998 which was later replaced by Law No. 37 of 2004 on

Bankruptcy and Suspension of Debt Payment Obligations/UUKPKPU. The main purpose of these changes is to provide a balance between creditors and debtors facing bankruptcy problems, provide certainty of the process, both regarding time, procedures, responsibility for managing bankruptcy assets and facilitate the settlement of debts and receivables quickly, fairly, openly and effectively. The purpose of the bankruptcy law itself is to protect the interests of creditors against the debtor's liability that must be resolved (Laudenbach et al., 2021).

However, the bankruptcy law reform is not yet complete enough to protect the interests of creditors and bankrupt debtors. The interpretation and resolution of bankruptcy creates uncertainty for creditors in this case regarding the acceptance of creditors' rights and obligations for the debtor's responsibility in fulfilling the initial agreement (Liu & Dong, 2022). Bankruptcy is a way out of a debt and credit problem that has choked a debtor, where the debtor no longer has the ability to pay these debts to his creditors. If the debtor realizes that he is unable to pay his overdue debts, then the debtor can take steps to apply for the determination of bankruptcy status against himself, or by means of a bankruptcy status issued by the court if it has been proven that the debtor is no longer able to pay his overdue debts (Obeng-Gyasi et al., 2021).

In the event that the debtor has many creditors and the debtor's assets are not sufficient to pay all creditors in full, the creditors will compete with all means, both in accordance with legal procedures and those that are not in accordance with legal procedures, to get their bills paid first. Creditors who come later can no longer be paid because the debtor's assets have been taken by creditors who come first. This is very unfair and detrimental to both creditors and debtors themselves. Based on these reasons, the bankruptcy institution was created, which regulates fair procedures regarding the payment of creditors' bills.

Bankruptcy is intended to avoid the occurrence of separate confiscation or separate execution by creditors and replace it by holding joint confiscation so that the debtor's assets can be distributed to all creditors according to their respective rights because bankruptcy exists to guarantee creditors to obtain their rights to the assets of the bankrupt debtor (Yotsawat et al., 2023).

From the above background, the problem formulation in this research is how is legal protection for concurrent creditors? And how is the position of bankruptcy law and PKPU as the protection of concurrent creditors?

RESEARCH METHODOLOGY

This research uses qualitative research that is library in nature (Hennink & Kaiser, 2022), so the data from this research is library data (Saito et al., 2021). The sources of legal materials used in this research are primary legal materials and secondary legal materials (Agarwal et al., 2024). Through qualitative research methods (Hendren et al., 2023), researchers conduct descriptive analysis carried out by the process of pouring explanations and descriptions that are as clear as possible in an integrated, critical, objective and analytical manner (Alojaiman, 2023).

RESULT AND DISCUSSION

The monetary crisis that hit almost all parts of the world in mid-1997 has devastated the economy. The business world is the one withering to suffer and feel the impact of the crisis that is hitting. The deterioration of Indonesia's economic life can be ascertained that many businesses are unable to continue their business including to fulfill their obligations to pay their debts to creditors, this is what raises legal problems if the legislation product as a regulation to provide certainty and legal protection for all parties is not complete and perfect (Cortes et al., 2022).

To overcome the problems that arise in the world of businesses that go bankrupt and will result in the fulfillment of overdue obligations, the government made changes in the legislation by revising the existing Bankruptcy Law (Vavrek et al., 2021).

The system used in the amendment of the Bankruptcy Law is not to make total changes, but only to change certain articles that need to be changed and add various new provisions to the existing Law (Nating, 2005) With the development of time in this case, it is necessary to amend the Law by improving, adding, and eliminating provisions that are no longer in accordance with the needs and legal developments in society, so the idea arose to amend the existing Law into Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

Bankruptcy is a situation where the debtor is unable to make payments on debts from its creditors. The state of inability to pay is usually caused by monetary trouble from the debtor's business which has experienced a decline. Meanwhile, bankruptcy is a decision issued by the Court which results in general confiscation of all assets owned and assets that will be owned by the debtor in the future. The management and administration of bankruptcy is carried out by a curator under the supervision of a supervisory judge, both of whom are appointed directly when the bankruptcy verdict is read out (Yarahmadi et al., 2023).

Theoretically, creditors can be divided into 2 types: (1) secured creditors consisting of lien and/or fiduciary rights holders (movable object collateral), as well as mortgagors and/or mortgage holders (immovable object collateral); and (2) unsecured creditors, which may or may not have privileges (either general or special). (Frija, 2016). In the bankruptcy process itself, three types of creditors are known, namely separatist creditors, preferred creditors and concurrent creditors (See also the explanation of Article 2 paragraph (1) of Law 37/2004: "Creditor" in this paragraph means both concurrent creditors, separatist creditors and preferred creditors. Specifically, regarding separatist creditors and preferred creditors, they can apply for a bankruptcy declaration without losing the collateral rights over the property they have against the Debtor's property and their right to precedence) (Rahmani, 2018). The distinction according to Law 37/2004 is related to the position of the creditor in the bankruptcy process (Singh et al., 2022).

Concurrent creditors are creditors who do not hold security rights but have the right to collect the debtor because they have collectible bills against the debtor based on the agreement. However, the shortcoming of this concurrent creditor is that his right to get

payment is the last. This means that payments made to preferred creditors are made after payments are made to preferred creditors and separatist creditors.

In bankruptcy, concurrent creditors often receive no payment at all. Concurrent creditors who are usually small entrepreneurs such as suppliers, small agents are often helpless in the bankruptcy process. The lack of knowledge related to bankruptcy makes these small suppliers unable to do anything (Baulkaran, 2022).

The Position of Concurrent Creditors in the Bankruptcy Process Bankruptcy is a way out of a debt and credit problem that has choked a debtor, where the debtor no longer has the ability to pay these debts to his creditors. In addition to being filed by the debtor himself, a bankruptcy petition can also be filed by creditors who have arrears of receivables against the debtor. This is as regulated in Article 2 paragraph (1) UUK-PKPU, namely: "Debtors who have two or more Creditors and do not pay in full at least one debt that has fallen due and collectible, are declared bankrupt by a Court decision, either at their own request or at the request of one or more creditors (Brygala, 2022).

Bankruptcy is a way out of the debt and credit problems that have plagued a debtor. In the event that the debtor has many creditors and the debtor's assets are not sufficient to pay all creditors in full, the creditors will compete in all ways, both in accordance with legal procedures and those that are not in accordance with legal procedures, to get their bills paid first. Creditors who come later can no longer be paid because the debtor's assets have been taken by creditors who come first. This is very unfair and detrimental to both creditors and debtors themselves. Bankruptcy is intended to avoid separate confiscation or separate execution by creditors and replace it with joint confiscation so that the debtor's assets can be distributed to all creditors in accordance with their respective rights because bankruptcy exists to guarantee creditors to obtain their rights to the assets of the bankrupt debtor.

The existence of a bankruptcy institution is expected to provide legal certainty for the payment of debtors' debts to their creditors. Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubt (multi-interpretation) and logical in the sense that it becomes a system of norms with other norms so that it does not clash or cause norm conflicts. Norm conflict arising from rule uncertainty can take the form of norm contestation, norm reduction or norm distortion (Kleiven et al., 2020).

Legal certainty to concurrent creditors in bankruptcy is also regulated in the Civil Code, namely Articles 1131 and 1132 of the Civil Code. As explained in Article 1131 of the Civil Code, namely, as follows: "All the property of the debtor, both movable and immovable, both existing and new ones that will exist in the future, become collateral for all individual obligations" (Müller, 2022).

Furthermore, it is regulated in Article 1132 of the Civil Code which is explained as follows: The property becomes collateral together for all those who owe it, the income from the sale of the objects is divided according to the balance, namely according to the size of their respective debts, unless among the debtors there are valid reasons for precedence. Based on the provisions of the articles mentioned above, it is clear that if the

debtor does not fulfill his obligation to pay off his debts to the creditor, the creditor is given the right to conduct an auction of the debtor's property. The proceeds of the sale (auction) must be divided honestly and equally among the creditors in accordance with the balance of the amount of their respective debts.

A creditor may have more than one receivable or bill, and the different receivables or bills are also required differently in the bankruptcy process. Concurrent creditors are creditors with the last position so that they also receive the last distribution, so it often happens that concurrent creditors do not receive payment because the proceeds from the sale of the bankrupt debtor's assets are insufficient.

The protection given to creditors and their stakeholders must not be detrimental to the interests of the debtor's stakeholders. Although Law No. 37/2004 allows a bankruptcy petition to be filed by only one creditor, for the sake of other creditors, Law No. 37/2004 should not open the possibility of a bankruptcy verdict being pronounced, without the agreement of other creditors. It should determine that the court's decision on a bankruptcy petition filed by a creditor must be based on the consent of other creditors obtained at a specially convened meeting of creditors.

Protection of Concurrent Creditors in the Bankruptcy Process Bankruptcy and postponement of debt payment obligations are one of the dispute resolution mechanisms that can be chosen by the parties with the aim of resolving problems in a short, cheap and transparent manner (Ashrafi et al., 2022).

However, in practice, UUK-PKPU has many problems, especially with regard to creditor protection. The position of creditors in bankruptcy is closely related to legal protection. Etymologically, legal protection consists of two syllables, namely protection and law. In the Big Indonesian Dictionary, protection is defined as; a). Shelter, b). Things (actions and so on), c). The process, method, or act of protecting.

The law functions as a protection of human interests, so that human interests are protected, the law must be implemented professionally. This means that protection is an action or deed carried out in certain ways according to applicable laws or regulations. Legal protection is the right of every citizen, and on the other hand, legal protection is an obligation for the state itself, therefore the state is obliged to provide legal protection to its citizens. Raharjo argues that legal protection is to provide protection for human rights (HAM) that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. Because the nature and purpose of law according to him is to provide protection (pengayoman) to the community, which must be realized in the form of legal certainty. Legal protection is an action for those who are preventive and repressive. Related to the position of creditors in bankruptcy is not only regulated in the UUK-PKPU but also the Civil Code (Almeida, 2023).

The regulation has several problems, namely the existence of vagueness and inconsistency of arrangements and violations of the principles of legislation. As a result, in its implementation, the position of creditors becomes very weak. Creditors are divided into three, namely, concurrent creditors, separatist creditors and preferred creditors. In

bankruptcy, there are suppliers who do not receive payment. In bankruptcy, it must first be seen that the supplier is a concurrent creditor.

Concurrent creditors are creditors who are not included in the separatist creditors and preferred creditors, the repayment of their receivables is also paid from the remaining sales or auctions of bankruptcy property after the separatist and preferred creditors have taken their rights, Concurrent creditors also have the same rights and position as other creditors on the debtor's bankruptcy assets, both existing and future, after previously deducting debt payment obligations to creditors holding security rights and creditors with special rights holders professionally according to the ratio of the amount of receivables of each concurrent creditor, sharing *pari passu pro rate parte*.

The problem that arises later in the process of disposing of bankruptcy assets is that if the amount of debt is greater than the bankruptcy assets, especially after separatist creditors and preferred creditors take their rights, then indirectly the receivable rights of concurrent creditors will not be paid in their entirety, even though bankruptcy law in fact contains the principle of *paritas creditorium*, which means that the position of creditors is the same in the position of paying their debts.

The weakness of bankruptcy law in protecting the rights of concurrent creditors is that long before the debtor is declared bankrupt, the debt and credit agreement between the concurrent creditor and the debtor is also valid and binding even though it is not secured by distinguishing rights such as mortgages, fiduciaries, and mortgages, this is where the active role of concurrent creditors in overseeing the administration of bankruptcy assets so that the payment of their debts is fulfilled and not necessarily entering into debt and credit agreements with debtors if it is likely that the debtor's company is allegedly problematic. Another problem arises, namely related to legal culture, law enforcement has recognized that the position of creditors in bankruptcy depends on the judge's decision and if the judge's decision has not been in favor of creditors, this makes people prefer to resolve disputes through means outside bankruptcy. If they make legal efforts, of course, creditors must appeal. This will certainly be very burdensome for creditors.

Ordinary legal remedies are basically open to every decision during the period specified by law. Ordinary legal remedies are to temporarily stop the implementation of the verdict. Ordinary legal remedies include *verzet* (resistance), *hoger beroep* (appeal) and *cassatie* (cassation) which are steps or efforts needed by interested parties to obtain a fair decision. Special legal remedies are reserved for decisions that have obtained definitive legal force. These special legal remedies are only allowed for certain matters mentioned in the law. Special legal remedies include request civil (judicial review) and *derdeverzet* (resistance) from third parties.

The UUK-PKPU also recognizes legal remedies against bankruptcy decisions that have been decided by Commercial Court judges. The legal remedies taken against bankruptcy decisions are cassation and judicial review. Therefore, the UUK-PKPU needs to clearly regulate the position of creditors; rules regarding supervision also need to be tightened; and strict sanctions against violating law enforcement also need to be regulated.

Principles in Bankruptcy Law if the debtor does not pay his debts voluntarily or does not pay them, despite a court decision ordering him to pay off his debts, or because he is unable to pay all his debts, then all of his property is seized for sale, and the proceeds of the sale are divided among all his creditors on a *foundation-ponds gewijze* basis, meaning according to the balance, namely according to the size of the receivables of each creditor, unless among the creditors there are valid reasons for precedence, All creditors have the same rights and There is no sequential number of creditors based on when their debts arise.

One of the obstacles faced by creditors in the event of bankruptcy is the act of one or more creditors trying to collect their debts during the bankruptcy examination process, and the debtor's action to pay these bills without regard to other creditors, including creditors who filed a bankruptcy petition that is being processed by the court, can certainly harm other creditors, it is not impossible that the debtor will benefit the creditors he likes and reject the collection of other creditors. The law also does not prohibit those who do not file a bankruptcy petition from filing a lawsuit through the general court. UUKPKPU only provides protection to every creditor in the form of filing an application for a security seizure against some or all of the debtor's assets and appointing a temporary curator by the Judge examining the bankruptcy application who will function to supervise the management of the debtor's business and supervise payments to creditors or supervise the use of the debtor's assets which in the context of bankruptcy requires the approval of the curator (Article 7 paragraph (1) UUKPKPU), but the application is not certain to be granted by the court.

In practice, there are many obstacles or things that hinder creditors in bankruptcy. As explained, some of the things that hinder creditors in terms of bankruptcy, namely there are no funds for the costs of managing and administering bankruptcy property. The completion of a bankruptcy requires a lot of funds, once the curator receives a bankruptcy verdict from the commercial court in a relatively short time must prepare funds for the announcement of the overview of the bankruptcy verdict and the deadline for submitting creditor bills organizing a receivable matching meeting.

Uncooperative bankrupt debtors need data on the debtor's asset data to make a bankruptcy asset record as stipulated in Article 100 paragraph (1) of the Bankruptcy Law which states that: "The Curator shall make a record of the bankruptcy estate no later than 2 (two) days after receiving the decision on his appointment as Curator". Bankruptcy debtors who do not cooperate in providing data on their assets will make it difficult for the curator to make records of bankruptcy assets, and also bankruptcy debtors who do not attend the receivables matching meeting that has been determined to be held will result in the postponement of the receivables matching meeting.

The task of the curator is to manage and/or administer the bankruptcy estate, so that if there are assets of the bankrupt debtor that have been sold before bankruptcy, the curator must take care of when the sale was made and to whom the assets were sold. Tracing the debtor's assets that were sold/hidden and the process of canceling them requires a long time and a lot of money, this is clearly an obstacle in the settlement of debtors' debts to

creditors through bankruptcy. From some of the descriptions above, the obstacles experienced by creditors in terms of bankruptcy have been explained, therefore the curator, in this case an institution in charge of managing and cleaning up the assets of a bankrupt debtor, is required to always be ready to face all possibilities that occur in the field, both obstacles from the debtor and from the creditors. Therefore, if all parties can comply with all existing regulations, especially the bankruptcy law, there will be no more fraud found that can cause losses to other parties.

CONCLUSION

In principle, concurrent creditors also have the same position as other creditors on the debtor's bankruptcy assets, both existing and future, after previously deducting debt payment obligations to creditors holding security rights and creditors with special rights holders professionally according to the ratio of the number of receivables of each concurrent creditor. The protection given to creditors and their stakeholders must not be detrimental to the interests of the debtor's stakeholders. Although Law No. 37/2004 allows a bankruptcy petition to be filed by only one creditor, it is in the interest of other creditors. It should be determined that the court's decision on a bankruptcy petition filed by a creditor must be based on the consent of other creditors obtained at a meeting of creditors specifically held to determine whether or not a bankruptcy verdict can be imposed.

For creditors with status as concurrent creditors, in the bankruptcy process, they should act actively, especially in overseeing the administration of bankruptcy assets so that the payment of their debts can be fulfilled. Legal protection for creditors, as explained in Article 2 paragraph (1) of Law Number 37 of 2004, creditors are given the right to file a bankruptcy petition as long as they meet the conditions of not paying in full at least one debt that is due and collectible, this can harm other creditors. With the development of time in this case, it is necessary to amend the Law by improving, adding, and eliminating provisions that are no longer in accordance with the needs and legal developments in society, so the idea arose to amend the existing Law into Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

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