



Legal Protection for Concurrent Creditors in Settling Bankrupt Debtors' Wealth

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ABSTRACT

*In Indonesia, the bankruptcy institution becomes a solution for the issue of debt and loans when a debtor no longer has the capability to repay their debt to creditors. Concurrent creditors who do not have collateral or special rights will have their debt repaid after the debt of separatist and preferential creditors has been fulfilled. This research employed the normative method **with case approach** which analyzed literary materials using the statute and conceptual approaches. It also applied the legal and case study approaches. Research results showed that legal protection for concurrent creditors in the settlement of bankrupt debtors' wealth is crucial, considering that the debt repayment for separatist and preferential creditors is prioritized compared to concurrent creditors. Thus, the debt owed to concurrent creditors may not be repaid if the assets of the bankrupt debtors are only enough to repay their debt to separatist and preferential creditors. This research is important considering that debtors often use bankruptcy mechanisms with the wrong intention of avoiding paying their debts. The institution goes bankrupt, so the debt is considered gone, even though this is actually due to the debtor's bad intentions.*

Keywords: Bankruptcy, Creditor, Concurrent, Indonesia.

1. Introduction

The bankruptcy law is one of the branches of legal studies which was specifically created to become one of the legal facilities to resolve debt between debtors and creditors through the bankruptcy institution. The bankruptcy institution offers a solution when debtors no longer have the capability to repay their debt to creditors, known as insolvency, i.e., a condition where an individual or a company no longer has the capability to repay debt or their financial obligations on time. This may be due to a lack of liquidity (the lack of cash to repay) or because the total debt owed to the creditor exceeds the debtor's assets. "The bankruptcy institution provides a solution to the related parties when debtors stop paying or no longer have the capability to pay. The bankruptcy institution prevents/avoids these two things which are both unjust actions that bring losses to all parties, namely preventing mass execution by debtors or creditors and preventing debtors from committing fraud" (Kadir, 2014).

In line with the development of the economy and trade sectors, there is an increase in problems related to debt in society (Sinaga & Sulisrudatin, 2016). The debt that occurs in society happens due to society's mindset to always take loans from banks to start businesses. Many newly-established businesses lack adequate research on the market's needs and the products are not developed according to the development of the era. As a consequence, both new and even old businesses are risked of experiencing bankruptcy as they can no longer compete with large companies which prioritize research and product development before launching their products to the market. One of the legal facilities required to resolve the issue of bankruptcy is a regulation on bankruptcy and the postponement of debt repayment obligations, which is called the Law on Bankruptcy. The Law on Bankruptcy that currently applies in Indonesia is Law No. 37 of 2004 on Bankruptcy and the Postponement of Debt Repayment, which was enacted as a response towards the 1998 monetary crisis in Indonesia which led to many cases of bad credit and bankrupt companies at that time (Hartono, 2016). This law substituted the previous law which was deemed ineffective and no longer relevant to the economic condition of that time.

Law No. 37 of 2004 has the main objective of providing legal certainty and protection for creditors and debtors as well as providing an efficient mechanism to resolve the issues of bankruptcy and the postponement of debt repayment. Adrian Sutedi stated that the Law on Bankruptcy must provide balanced protection for creditors and debtors, enforce justice, and pay attention to the interests of both parties, encompassing important aspects that are deemed crucial to manifest the resolution of debt-related issues in a fast, just, transparent, and effective manner (Irianto, 2015).

In the Law on Bankruptcy Law No. 37 of 2004, there are three types of creditors, namely separatist creditors, preferential creditors, and concurrent creditors. Separatist creditors are those who have collateral rights over certain assets (such as mortgages, liens, or other collateral). Preferential creditors are those who have special rights (such as employee wages, tax bills, and excise bills). Then, concurrent creditors are those who do not have collateral rights or special rights and have the same collection rights as other creditors.

Therefore the Law on Bankruptcy must provide a balanced protection for these three creditors, enforce justice, as well as pay attention to the interests of each creditor, encompassing the important aspects that are deemed crucial to create a quick, just, transparent, and effective resolution of debt issues (Saleh, 2024).

When debtors experience bankruptcy, these three creditors must have their debt paid by debtors but the Law on Bankruptcy regulates the priorities on debt repayment. This can be seen from the preferential creditors that hold special rights over workers' wages and taxes. Therefore, the repayment to preferential creditors must be prioritized due to their special rights. Meanwhile, separatist creditors (creditors that have collateral of goods such as liens or mortgages) obtain the highest priority due to the collateral rights that they have. Then, concurrent creditors who do not have collateral or special rights will have the debt owed to them repaid after the debt owed to preferent creditors and concurrent creditors have been repaid.

This leads to the need for further regulations on bankruptcy and the postponement of debt payment obligations to prevent a fight over the revocation of debtors' wealth if, at the same time, there are separatist creditors, preferent creditors, and concurrent creditors who ask for the debt owed to them to the debtors.

Concurrent creditors or creditors who do not have special rights and who do not hold collateral over the debtors' wealth have the following characteristics (Sidabutar, 2019):

1. Concurrent creditors do not have special characteristic. They compete with others to obtain the payment of auction proceeds; thus, their position is not prioritized in debt repayment;
2. Based on Article 1131 *jucto* Article 1132 of the Civil Code, concurrent creditors are not preferred in case of their loan repayment, unlike separatist and preferential creditors.
3. These creditors are not prioritized and/or they are not creditors that have priorly been promised. Thus, their loans are categorized into the *boedel* of bankruptcy after the creditor deems the debtor bankrupt;
4. The debt repayment awaits the leftovers of the repayment proceeds or the auction of bankrupt wealth after they are subtracted from the obligation to pay the debt owed to collateral holders or creditors with special rights according to the loans of each concurrent creditor in a proportional manner.

Based on the explanation above, it can be seen that concurrent creditors are creditors that do not have the right to be prioritized in obtaining debt repayment. Therefore, it can be said that they have a different position compared to separatist and preferential creditors. The legal protection concept of concurrent creditors does not only regard the fulfillment of their rights as creditors but also regards the certainty of repaying the debt owed to concurrent creditors.

In practice, the determination of bankruptcy leads to many juridical debates and problems. One of the causes is due to the existence of many unclear regulations, leaving room for various interpretations, and leading to legal uncertainty for justice seekers. Concerning legal protection for concurrent creditors, this type of creditors has a weak position according to the debt repayment priority stipulated in the Law on Bankruptcy and the Postponement of Debt Repayment. In this law, concurrent creditors become the last party to have their debt repaid by the curator. The arbitrary execution of bankrupt wealth by separatist creditors is generally prohibited as the execution process must follow the applicable stipulations in the bankruptcy law (Pratama, 2014). In settling bankruptcy wealth, curators must carry out their role of paying the debt owed to separatist creditors, preferential creditors, and concurrent

creditors in a just manner. The position of concurrent creditors that lack the rights over collateral of goods as well as having their debt repaid last after separatist and preferential creditors puts them in a highly disadvantaged position. Even worse, in cases where the total bankruptcy wealth that debtors own can only repay the debt owed to separatist and preferential creditors, there is no wealth left to repay the debt owed to concurrent creditors. This happens even though in handling and settling bankrupt wealth, the sales of all of the debtors' assets to repay their debt is carried out proportionally according to the creditor structure. Based on the description above, this research aims to analyze the legal protection for concurrent creditors in settling bankrupt debtors' wealth.

2. Method of Research

This paper employed the normative method **with case approach** to analyze literary materials through the statute and conceptual approaches. The data were sourced from primary legal materials, namely laws as well as binding decisions. Then, the analyzed secondary legal materials encompassed bills, expert opinions, research results, legal journals, **legal case** and online websites related to the object of this research (Nurhayati et al., 2021). Next, the tertiary legal materials included legal dictionaries and encyclopedia regarding this topic. The authors collected the legal materials using the techniques of analyzing, recording, quoting, and analyzing literary materials on this issue. The authors analyzed these legal materials using descriptive and interpretation techniques where the authors applied types of interpretations in legal studies. Then, the authors also employed the argumentation technique to analyze the statements from the researchers' thoughts and analyses.

3. Results and Discussion

3.1 Results

Legal protection must fulfill the following elements: (1) there must be protection from the government to its people or citizens, (2) there must be a guarantee of legal certainty from the government, (3) it regards citizen rights, and (4) there must be sanctions or punishments for the people who disobey it. These four elements are requirements that must absolutely be fulfilled so that legal protection may optimally be applied. Therefore, in relation to legal regulations or stipulations on bankruptcy and the postponement of debt repayment, especially concerning legal protection for concurrent creditors, it is known that these four elements have been fulfilled. However, according to the authors, there must be some improvements to improve these legal protection benefits and principles as described below (Firmansyah & Sekar, 2014):

1. There must be protection from the government to its people or citizens

The legal protection theory is one of the crucial theories that society, especially those in a weak position both economically and juridically, must understand. The legal protection theory is legal protection from the government to its people or citizens in the form of regulation formation to protect the rights of the people or citizens. These regulations are laws that people or citizens must carry out according to the formal stipulations that the government have made (Mantili & Dewi, 2021). Regarding bankruptcy, it has been regulated in Law No. 37 of 2004 on Bankruptcy and the Postponement of Debt Repayment. Meanwhile, the development of bankruptcy law started in the Dutch colonial era, where in the past, no one had the effectiveness in carrying out the bankruptcy process between the debtors and creditors due to a lack of regulatory stipulations which was at that time called the *Failisment Verordenning*, i.e, a Dutch term for bankruptcy laws that apply in Indonesia during the Dutch colonial era. Then, the application of the *Failisment Verordenning* was stopped due to the monetary crisis which hit Indonesia in 1998. This terrible monetary crisis not only destroyed the national monetary stability but also led to the bankruptcy of various national and multinational companies in Indonesia (Devi et al., 2022).

In responding to this condition, the Indonesian government issued the Government Regulation in Lieu of Law Number 1 of 1998 on Amendments to the Law on Bankruptcy. This regulation was then officially determined as law, i.e., Law No. 4 of 1998. In reality, the Government Regulation in Lieu of Law Number 1 of 1998 was not much different from *Failisment Verordenning* but there were some new norms in the newer version which significantly changed the concept of regulations on bankruptcy, including concerning the permitted period for resolving bankruptcy cases, private curators, as well as the formation of the Court of Trade.

The formation of the Court of Trade was the start of a new era in the bankruptcy case resolution system in Indonesia. This is as stated in the Government Regulation in Lieu of Law Number 1 of 1998 on the General

Consideration letter f which states, "Apart from having the role to fulfill the needs to resolve the debt and loan above, the Court of Trade was established to create a just, quick, transparent, and effective manner of dispute resolution through a special court in the general justice environment that was formed and tasked to handle, examine, and decide on various certain disputes in the trade sector, including in the bankruptcy and the postponement of debt repayment sector, which are also highly crucial in the establishment of business activities and the economic life in general". The Court of Trade's formation as aforementioned in the General Consideration above aimed to improve the weaknesses of the previously applicable system of bankruptcy case resolution, especially regarding the time period and the evidencing system (Maharani & Sari, 2021).

2. The guarantee of legal certainty from the government

The guarantee of legal certainty from the government must be able to make sure that the law may apply in a consistent, just, and predictable manner for all citizens. Legal certainty may also mean the things that may be determined by the law regarding concrete things. Legal certainty is a guarantee that the law may be enforced, that the rightful ones according to the law may obtain their rights and that the decisions may be determined. Legal certainty is a justiciable protection against arbitrary actions, which means that a person may obtain something that is hoped for under certain conditions (Halilah & Arif, 2021). The guarantee of legal certainty from the government in the legal protection for concurrent creditors has been regulated in the Law on Bankruptcy and the Postponement of Debt Repayment Article 189 clause 3 which says, "Concurrent creditors must be given the part that has been determined by the Supervisory Judge". This article states that concurrent creditors must also obtain part of the debt repayment by the curator. However, in its practice, debt repayment of concurrent creditors is difficult to carry out as they do not have a guarantee over debtors' wealth. Then, they are put in the last priority after the debt repayment to separatist and preferential creditors.

3. Legal protection must concern citizen rights

One of the rights of citizens is to obtain legal protection from the government. Thus, the government must carry out various efforts to guarantee that its citizens obtain legal protection, such as protecting their rights from the violation of rights as well as guaranteeing that its citizens may carry out their rights in a just and valid manner. It also includes the enforcement of the law according to applicable regulations. Concurrent creditors have the right to have their loans repaid by the debtor. In this case, the state has enacted regulations related to creditors' rights in the Law on Bankruptcy and the Postponement of Debt Repayment. This law has clearly regulated that there are three types of creditors in the settlement of bankruptcy wealth by curators, i.e., concurrent, separatist, and preferential creditors. According to this law, debtors must repay their debt to each three of these creditors through the statement of bankruptcy wealth by curators. However, the rights of concurrent creditors in having their loans repaid are hindered as these creditors do not have the right of collateral over debtors' wealth and assets (Diarsa et al., 2023).

4. The existence of sanctions or punishments for the violators

In a state, sanctions or punishments are instruments to carry out law protection. Their existence has the objective of guaranteeing that the state's ideals that are written in the legal norm or principle may be achieved. Therefore, sanctions have the role of a coercive tool or a guarantee so that every person complies with the legal norms. It can also be said that sanctions are legal consequences for people who violate legal norms.

In the Law on Bankruptcy, sanctions may also be imposed on preferential creditors if they issue fake invoices or those with a dishonest amount in a trial for a bankruptcy case. According to Article 400 clause 2 of the Criminal Code, such actions are "threatened with imprisonment with a maximum period of five years and six months, whoever decreases with fraud the rights of creditors during the verification process of credits in the case of *boedel* release, bankruptcy, or resolution. In claiming the existence of non-existent loans or increasing the amount of loans, it is threatened with imprisonment with a maximum period of five years and six months, whoever decreases with fraud the rights of creditors".

The above article clearly states that there are criminal sanctions in the form of imprisonment with a maximum period of five years and six months for creditors who deliver fake bills or increase the total invoice to the debtors. However, up to now, there have not been any sanctions for preferential creditors that may carry out an execution

of bankrupt wealth assets or their rights as if no bankruptcy occurred. This means that they are not bound to the bankruptcy process and may directly execute the bankruptcy assets/wealth that become collateral. The right to execute bankruptcy assets/wealth as if no bankruptcy occurred is regulated in Article 55 of the Law on Bankruptcy and the Postponement of Debt Repayment. Article 55 of this law becomes a legal power for preferential creditors to obtain their rights before other creditors without awaiting the auction process that curators carry out in settling bankrupt debtors' wealth (Hindrawan et al., 2023).

3.2 Discussion

1. Legal protection for concurrent creditors in the settlement of bankrupt debtors' wealth

Legal protection theory which states that the law aims to integrate and coordinate various interests in society because in an intersection of interests, the protection towards a certain interest may only be carried out by limiting the interests of other parties. Legal interest means taking care of human rights and interests; thus, the law has the highest authority to determine the human interest that must be protected and regulated. Legal protection must see various stages, meaning that it was born from a legal stipulation and various legal regulations that were given by society which in essence are an agreement in that society to regulate the behavioral relations between societal members as well as between individuals and the government that is deemed to represent society's interests (Kusmadi et al., 2023).

Data from 509 bankruptcy decisions during 2023-2024 shows that many concurrent creditors other than the state are not protected. The only concurrent creditor protected is the state, meaning that if a bankrupt company has tax liabilities, those taxes will be prioritized for payment. Other creditors are prioritized after taxes, salaries, or employee obligations, and then banks. This means they do not receive any priority protection because after deducting these liabilities, concurrent creditors almost always receive nothing

When linking the legal protection for concurrent creditors, according to the authors, it can be concluded that regulations or in this case Law No. 37 of 2004 on Bankruptcy and the Postponement of Debt Repayment must protect the rights of all creditors, including concurrent creditors, to have their debt repaid by debtors in the settlement of bankrupt wealth.

Concurrent creditors are a type of creditors that are categorized as having the most or the least amount of bills compared to other creditors (Saputra, 2020). Concurrent creditors do not have collateral rights over debtors' wealth. According to the *paritas creditorium* principle, separatist, preferential, and concurrent creditors have the same rights over all of the debtors' wealth and assets in case debtors experience bankruptcy. This principle is a form of legal protection guarantee for concurrent creditors on the fulfillment of their rights over debtors' bankruptcy wealth. In distributing bankrupt debtors' wealth to concurrent creditors, the *pari passu pro rate parte* principle is applied. It states that the division of debtors' wealth that has been deemed bankrupt must proportionally be carried out according to the amount of the bill of each creditor. This is also related to Article 1132 of the Civil Code which states that if the wealth of bankrupt debtors cannot fulfill all debt repayment to creditors, the wealth of the bankrupt debtors is divided into three creditors (separatist, preferential, and concurrent creditors) with a balanced proportion based on the loan from each creditor. This *pari passu pro rate parte* principle aims to determine an equal categorization of the amount of bankrupt debtors' wealth to the creditors. The *pari passu pro rate parte* principle cannot be separated from the *paritas creditorium* principle and the *structured creditor's* principle (the principle which classifies and groups various creditors according to their positions and classes) as these three principles complete one another in the bankruptcy law and are implemented simultaneously.

The existence of the *pari passu pro rate parte* principle and the *paritas creditorium* principle that is regulated in Article 1132 of the Civil Code emphasize that the aim of the regulation on bankruptcy over the categorization of debtors' wealth to the creditors by carrying out a general revocation of all of debtors' assets and wealth will be divided according to proportional rights. This means that all creditors have the same rights over debtors' assets unless there are valid reasons to prioritize and emphasize a certain creditor. In practice, concurrent creditors must obtain their rights in the debt repayment in the settlement of bankrupt wealth by creditors, even though concurrent creditors must wait until after the repayment of debt to other creditors with a higher position (Sirait et al., 2023).

An issue that often occurs in bankruptcy cases is the limited amount of bankruptcy assets/wealth that debtors have to repay all their debt. They may have a great amount of debt that is often not according to the amount of wealth that they have. In this case, according to the Law on Bankruptcy and the Postponement of Debt

Repayment, separatist creditors must be prioritized in having their loans repaid as they have collateral rights over debtors' wealth/assets. After that, the debt to preferential creditors is paid. Lastly, concurrent creditors become the last category of creditors to have their loans repaid, as the division of creditors' positions for debt repayment applies the *structured creditors* principle. This principle clearly states that debt repayment must prioritize creditors with collateral (preferential creditors) to firstly have their debt repaid. Even, according to Article 55 of Law No. 37 of 2004 on Bankruptcy and the Postponement of Debt Repayment, it is stated that preferential creditors may execute bankrupt debtors' assets as if no bankruptcy occurred. This may lead to the condition where the rights of concurrent creditors are partly or even fully unfulfilled as the wealth of the bankrupt debtors can only repay the debt to preferential and separatist creditors (Christiani, 2021).

The Law on Bankruptcy has the objective of giving protection over creditors' rights so that debtors may fulfill their obligations, especially in this case regarding the obligations to concurrent creditors. However, different creditors (i.e., concurrent, preferential, and separatist creditors) have different positions as stipulated in Law No. 37 of 2004 on Bankruptcy and the Postponement of Debt Repayment. Thus, the authors suggest that there is still a lack of legal protection and a void of legal certainty on the fulfillment of debt to creditors, especially regarding concurrent creditors. The authors argue that Law No. 37 of 2004 must also protect the rights of concurrent creditors that are often left unfulfilled due to priority rights to have the debt owed to preferential and separatist creditors paid beforehand.

So far, the disadvantage that concurrent creditors in Indonesia often experience in the sector of bankruptcy law is the issue of legal uncertainty, even though legal certainty is crucial to obtaining the same rights as other creditors. Legal certainty is one of the factors that highly supports the economic growth of a country. Therefore, the bankruptcy law must play a role in giving legal certainty to concurrent creditors and the government also has the obligation to become responsible for improving the Bankruptcy Law by responding and giving feedback to concurrent creditors' opinions and desires. Thus, it is hoped that in the future, the Bankruptcy Law may provide legal protection and certainty for all creditors (Aprita et al., 2019).

2. There needs to be new regulations that may give legal protection for concurrent creditors to make the Bankruptcy Law more dynamic

Inflexibility in the Bankruptcy Law is certainly shown when creditors try to obtain a repayment for the debt owed to them with all means without seeing the rights of other creditors. In the settlement of bankrupt wealth, the authors have explained the position and priority of creditors in the distribution of bankrupt wealth. Separatist creditors have the right to execute their rights before other creditors. Preferential creditors must obtain repayment of the debt owed to them. They also have special rights based on the law, such as case fees or labor wages as stipulated in Articles 1139 and 1149 of the Civil Code. Preferential creditors have a higher priority for the repayment of the debt owed to them compared to concurrent creditors although they are still positioned under separatist creditors which have collateral rights for assets.

To make sure that the debt owed to these three creditors is paid, they may file for a demand of debt repayment through the bankruptcy statement proposal. This procedure is a challenge for concurrent creditors as they must compete with separatist and preferential creditors to have their loans repaid because if the assets or wealth of the bankrupt debtor are not enough to repay all debt to these three debtors, the concurrent creditors are put in the last position compared to other creditors in terms of the priority to have their loans repaid. In this case, many concurrent creditors must accept a small amount of debt repayment or not obtain any debt repayment at all. It is impossible for concurrent creditors to collect debt from debtors if all bankrupt wealth/assets are only enough to repay the debt from separatist and preferential creditors (Afilia Dinda Dhiya Ulhaq, 2023).

Bankruptcy Law is responsive by trying to resolve the lack of legal protection for concurrent creditors. However, after the issuing of Law No. 37 of 2004 on Bankruptcy and the Postponement of Debt Repayment, the authors see that many concurrent creditors only obtain a very small debt repayment portion or even not at all. This problem happens because concurrent creditors do not have collateral rights on goods, unlike separatist creditors. They also do not have special rights to have their debt repaid according to the law such as for the payment labor wage or case fees, unlike preferential creditors. Such a condition happens even though all these three creditors equally have debt that debtors must repay. Based on the description above, it is known that the government must make new regulations on bankruptcy that must produce legal protection for concurrent creditors to improve economic development (Aprita, 2022).

4. Conclusion

The four elements of legal protection are the right steps of legal protection for concurrent creditors. The influence of the bankruptcy law that can protect concurrent, separatist, and preferential creditors will impact the development of the national economy. The development of a dynamic law must follow economic development, where no creditor must feel that the application of Law No. 37 of 2004 on Bankruptcy and the Postponement of Debt Repayment only provides justice for certain creditor groups as this law must guarantee the debt repayment of the three creditors. The authors' practical conclusions are as follows:

The Law on Bankruptcy must provide greater legal protection for concurrent creditors in the settlement of bankrupt debtors' wealth as according to the authors, the current Law on Bankruptcy still cannot guarantee the repayment of loans from concurrent creditors. This is because the institution of the Law on Bankruptcy adopts the *structured creditors* concept that classifies and groups various creditors according to their positions and classes. The Bankruptcy Law must be able to guarantee the debt repayment of all creditors and guarantee the application of the *pari passu pro rate parte* principle so that all concurrent creditors obtain their rights. This is because other creditors are prioritized after taxes, salaries, or employee obligations, and then banks. This means they do not receive any priority protection because after deducting these liabilities, concurrent creditors almost always receive nothing

The government must make new regulations that may provide legal protection for concurrent creditors to make the regulations on bankruptcy become more dynamic. This is so that concurrent creditors no longer obtain a small amount of debt repayment or even not obtain any debt repayment at all from bankrupt debtors after repaying the debt to separatist and preferential creditors that are prioritized as they have collateral rights for goods or special rights based on the law.

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