



LEGAL PROTECTION FOR CREDITORS IN BANKRUPTCY PROCESSES REVIEWED FROM BANKRUPTCY LAW NO. 37 OF 2004

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Article Info	Abstract
Article History Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15 Keywords: <i>Legal protection, creditors, bankruptcy, concurrent creditors.</i>	Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) is a legal framework that regulates bankruptcy procedures in Indonesia, aimed at protecting creditors' rights in cases of debtor failure to fulfill their obligations. However, the existing protection is often inadequate, especially for concurrent creditors who do not have collateral for assets. The focus of this study is to evaluate the effectiveness of UUK-PKPU in protecting creditors, especially in conditions where the debtor's assets are insufficient. The methodology used is a normative legal approach with analysis of related documents and literature. The results of the study indicate that, although bankruptcy is regulated in detail, its implementation has not been effective in providing protection to concurrent creditors. Separatist creditors are given priority through execution rights, while concurrent creditors often lose the opportunity for debt recovery due to limited assets. The actions of debtors who hide assets have also not been dealt with firmly. The research recommendations include changes to the Criminal Code to increase sanctions for criminal acts of bankruptcy, development of credit insurance products, and strengthening the role of curators in auditing shareholders, which aim to create a fairer and more effective bankruptcy system.

I. INTRODUCTION

Bankruptcy in the context of Indonesian law is comprehensively regulated by Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU),(Lie et al. 2019)which aims to resolve financial problems between debtors who are unable to fulfill their debt payment obligations and creditors whose rights need to be protected. The bankruptcy process is expected to be a way out to secure creditors' rights through the sale of debtor assets to fulfill their debt obligations. However, the implementation of the UUK-PKPU often raises various questions related to justice and legal protection for creditors, especially concurrent creditors who do not have special collateral rights over the debtor's assets. These questions arise in the context when the debtor not only fails to fulfill payments, but also does not have sufficient assets to fulfill some or all of his debts. This condition creates significant legal uncertainty for creditors and requires further study regarding the effectiveness of the law in protecting creditors' rights.(Maryono, Afwa, and Nurhasanah 2022)

The main problem that underlies this research is the weak position of creditors in obtaining receivables settlement in the bankruptcy condition of debtors whose assets are

insufficient. Creditors are often in a disadvantageous position due to the weakness of the bankruptcy legal structure which has not maximally provided protection and legal certainty for the fulfillment of creditor rights.(Goddess 2019)In the Indonesian bankruptcy legal system, creditors are divided into two main categories, namely separatist creditors and concurrent creditors. Separatist creditors have special rights because their receivables are guaranteed by collateral, pledges, mortgages or other guarantees recognized by law, as regulated in Article 55 paragraph (1) of Law No. 37 of 2004. Which reads:

(1) While still paying attention to the provisions as referred to in Article 56, Article 57, and Article 58, every Creditor holding a pledge, fiduciary guarantee, security right, mortgage, or other collateral rights over property, may exercise his rights as if there had been no bankruptcy.

On the other hand, concurrent creditors do not have special collateral so they must share proportionally the remaining assets of the debtor after the separatist and preferred creditors are satisfied. This shows a very sharp inequality between separatist and concurrent creditors in

obtaining the right to settle their receivables.(Ismail 2022)

In the context of the division of debtor's assets, Article 1131 and Article 1132 of the Civil Code (KUH Perdata) are important references. Article 1131 of the Civil Code states that, "All the debtor's property, both movable and immovable, both existing and future, becomes a liability for all his individual obligations."

Meanwhile, Article 1132 of the Civil Code states, "The assets become joint collateral for all creditors; the proceeds from the sale of the assets are divided according to the ratio of each creditor's receivables, unless there are legitimate reasons for priority among the creditors." These two articles emphasize that all of the debtor's assets become collateral for the creditor, and the distribution of the proceeds from the sale is based on the principle of *pari passu pro rata parte*, which is a proportional distribution among creditors who do not have preferential rights. This principle, although it appears formally fair, in practice often fails to provide fair results for concurrent creditors when the available assets are insufficient to cover the entire debt. Concurrent creditors tend to be at greatest risk because there is no protection mechanism that specifically accommodates their needs in the legislation.

In addition, the provisions of Article 138 of Law No. 37 of 2004 state that, "The curator in carrying out his duties must prioritize the rights of separatist creditors in the event that there are debts secured by mortgages, pledges, mortgages, or other guarantees recognized by law." This means that separatist creditors have priority rights in receiving payment from the debtor's assets, which automatically places concurrent creditors in a less advantageous position. In practice, this causes the majority of concurrent creditors to often not receive any payment at all or only receive a very small portion of their receivables, especially if the debtor's assets are very limited.

The inability of debtors to pay off debts or the unavailability of adequate assets has major consequences for the creditor protection structure in Indonesia. In developed countries, there is a system that provides more rights to concurrent creditors through mechanisms such as creditor bailouts or certain insurance protection. In Indonesia, on the other hand, there is no effective protection instrument to provide guarantees against losses suffered by creditors when the bankruptcy process ends without debt

fulfillment. This imbalance indicates a gap that requires legal reform to provide justice and legal certainty for all creditors, including concurrent creditors, in bankruptcy situations.(Susanto, Hasnati, and Fahmi 2020)

This research is also relevant considering the impact caused by bankruptcy is not only related to the economic aspect, but also has serious legal implications for both debtors and creditors. In some cases, the debtor's actions that intentionally transfer or hide assets before or during the bankruptcy process can result in criminal consequences. Article 378 of the Criminal Code (KUHP) stipulates that: "Anyone who with the intention of benefiting himself or another person unlawfully embezzles or hides assets that are collateral for creditors, is threatened with imprisonment."

This study also touches on whether there is a sufficient legal basis to apply criminal sanctions to debtors who intentionally avoid their obligations without good faith, as well as how effective the law enforcement is. This aspect becomes increasingly important in dealing with the *modus operandi* of asset transfers carried out by debtors to avoid debt payments, known as fraudulent conveyance.

Through this research, it is expected that there will be a contribution to the development of bankruptcy law in Indonesia that does not only focus on administrative aspects, but also pays attention to the protection of creditor rights that are fairer and more certain. Policy recommendations are needed that clarify the limitations and authorities of the curator, increase the role of the court in supervising bankrupt assets, and develop legal instruments that provide more effective protection for concurrent creditors. This reform is very important to create a more balanced bankruptcy law system, where creditor rights can be optimally protected without ignoring the principle of justice for debtors.(Firm 2023)

Therefore, this study focuses on two main issues. First, how is the bankruptcy procedure regulated in Law No. 37 of 2004 in terms of debt repayment to creditors, and what is the legal position of creditors in payment priorities. Second, how is the legal protection for creditors in the bankruptcy process reviewed from Law No. 37 of 2004, especially when the debtor does not have sufficient assets to meet his obligations. Thus, this study aims to provide a solution based on strong legal certainty and comprehensive legal protection for creditors in the bankruptcy

process. It is hoped that the results of this study can encourage regulatory reform that not only protects creditors substantively, but also closes legal loopholes that can be exploited by debtors who act without good faith in the bankruptcy process.

II. RESEARCH METHODS

This research uses a doctrinal research method which focuses on normative legal analysis (Indra Utama Tanjung 2024) against relevant laws and regulations, especially Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. This method aims to understand and critique the concept of legal protection for creditors in the bankruptcy process through a descriptive-analytical approach to applicable legal norms. This doctrinal research involves a review of primary legal sources, such as laws, as well as secondary legal sources, such as legal literature, doctrines, and scientific journals that are relevant to the issue of protecting creditors' rights in the bankruptcy process. Through this doctrinal method, the research analyzes the legal substance that regulates the position of creditors in bankruptcy and the legal protection provided when the debtor is unable to pay off his obligations. Normative analysis of statutory provisions will focus on evaluating the effectiveness and fairness of applicable laws, as well as identifying the need for legal reform in order to provide certainty and optimal protection for creditors in the bankruptcy realm.

III. RESULTS AND DISCUSSION

A. Bankruptcy Procedures Regulated in Bankruptcy Law No. 37 of 2004 Regarding Settlement of Debts to Creditors

Bankruptcy and Suspension of Debt Payment Obligations Law Number 37 of 2004 (hereinafter referred to as UUK-PKPU) is the main legal framework governing bankruptcy procedures in Indonesia. UUK-PKPU aims to provide a fair debt settlement mechanism between debtors and creditors, especially in situations where the debtor is unable to fulfill his payment obligations. In the context of debt repayment to creditors, (DT Hartono 2016) The UUK-PKPU stipulates the procedures that must be followed, starting from filing a bankruptcy petition to the distribution of bankrupt assets to

creditors in accordance with the priorities determined by law.

The bankruptcy procedure begins with the submission of a bankruptcy application to the authorized Commercial Court. According to Article 2 paragraph (1) of the UUK-PKPU:

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

The main criteria that must be met to file a bankruptcy application are:

1. The debtor has two or more creditors.
2. The debtor does not pay in full at least one debt that is due and collectible.

Bankruptcy petition can be filed by the debtor himself or by one or more of his creditors. This shows that both the debtor and the creditor have legal standing to file a bankruptcy petition, with the aim of resolving debt problems through available legal mechanisms.

After the application is submitted, the court will examine the administrative completeness and substance of the application. Article 6 paragraph (3) of the UUK-PKPU states:

The court is obliged to summon the Debtor to attend the examination hearing which must be held no later than 20 days after the date the application is registered.

In the examination hearing, the court will assess whether the bankruptcy requirements have been met. If the court finds that the debtor is indeed unable to pay his debts that have matured and can be collected, then the court will declare the debtor bankrupt. Article 8 paragraph (4) of the UUK-PKPU states:

The decision on the bankruptcy application must be pronounced no later than 60 days after the date the application is registered.

The bankruptcy decision is immediate (uitvoerbaar bij voorraad), meaning it can be implemented even if there is an appeal or cassation. In the bankruptcy declaration decision, the court will appoint a curator and a supervising judge. In accordance with Article 15 paragraph (1) of the UUK-PKPU:

In a bankruptcy declaration decision, the Court appoints a Supervisory Judge from the relevant Court Judge and appoints a Curator who will manage and settle the bankrupt's assets.

- The curator is tasked with managing and settling the bankrupt's assets, including conducting an inventory of assets,

verifying receivables, and paying off debts to creditors.

- The Supervising Judge functions to supervise the implementation of the curator's duties to ensure that they comply with applicable legal provisions.

The curator is obliged to verify all receivables submitted by creditors. Article 100 paragraph (1) of the UUK-PKPU states:

Every creditor whose receivables are listed in the list prepared by the curator is deemed to have submitted a claim.

The curator must also conduct an inventory of the debtor's assets to determine the total assets that can be used to pay off the debt. Article 104 of the UUK-PKPU states:

The curator is obliged to make a list of bankrupt assets and a list of receivables, and prepare a report on the condition of the bankrupt assets.

This verification and inventory process aims to ensure that all debtor assets and liabilities are recorded accurately, so that the distribution of bankrupt assets to creditors can be carried out fairly and proportionally. After verification and inventory are complete, the curator will manage and settle the bankrupt assets. Article 185 paragraph (1) of the UUK-PKPU states:

The curator settles the bankrupt's assets by selling the bankrupt's assets, either privately or publicly.

The proceeds from the sale of the bankrupt estate will be used to pay debts to creditors in accordance with the priorities determined by law. The distribution of bankrupt estate is carried out based on the priority order of creditors as stipulated in the UUK-PKPU and other related laws and regulations. In general, the order of payment priorities is as follows:

1. Bankruptcy Costs - Before payment to creditors, the curator must first pay the bankruptcy costs. Article 189 paragraph (2) of the UUK-PKPU states:

Bankruptcy costs are paid in priority over payments to all creditors.

2. Separatist Creditors - Separatist creditors are creditors who have collateral rights over certain assets belonging to the debtor, such as pledges, security interests, fiduciaries or mortgages. Article 55 paragraph (1) of the UUK-PKPU states:

While still paying attention to the provisions as referred to in Article 56, Article 57, and Article 58, every Creditor holding a pledge, fiduciary guarantee, security right, mortgage, or other

collateral rights over property, may exercise his rights as if there had been no bankruptcy.

Separatist creditors have the right to enforce their collateral separately from the bankruptcy process. Preferred creditors are creditors who have a special right under the law to be paid first.(Priyatna, Zarzani, and Aspan 2022) Examples are the state for tax debts and employees for unpaid wages. Article 1139 and Article 1149 of the Civil Code regulate the privileges of preferred creditors. Concurrent creditors are creditors who do not have special guarantee rights or privileges. They receive payment from the remaining bankrupt assets after the separatist and preferred creditors are satisfied. Article 189 paragraph (3) of the UUK-PKPU states:

Distribution to concurrent creditors is carried out according to the balance of their respective receivables.

Distribution to concurrent creditors is carried out on a *pari passu pro rata parte* basis, that is, proportionally according to the amount of each receivable.(Aspan et al. 2023) After all bankrupt assets have been sold and the proceeds have been distributed to creditors in accordance with priority order, the curator will prepare a final report. Article 192 paragraph (1) of the UUK-PKPU states:

After the settlement is complete, the Curator is obliged to submit a final report to the Supervising Judge and Creditors.

This final report is then approved by the supervising judge, and the bankruptcy process is declared complete. Although the UUK-PKPU has regulated bankruptcy procedures comprehensively, there are several critical issues that need attention:

1. Lack of Protection for Concurrent Creditors - Concurrent creditors do not have adequate protection mechanisms in the UUK-PKPU. When the debtor's assets are insufficient, concurrent creditors often do not receive their debts repaid. This indicates the need for legal reform to improve protection for concurrent creditors.
2. Potential Abuse of Bankruptcy Process by Debtors - There is a possibility that debtors hide or transfer assets before the bankruptcy process to avoid paying debts. Although this action can be subject to criminal sanctions under Article 378 of the Criminal Code on fraud, law

enforcement against this practice is often less effective.

These issues show that although bankruptcy procedures have been regulated in detail in the UUK-PKPU, its implementation still faces significant challenges. Legal protection for creditors, especially concurrent creditors, needs to be improved through:

- Revision of the UUK-PKPU to clarify the rights and obligations of all parties and strengthen the protection mechanism for concurrent creditors.
- Increased supervision of the implementation of curator duties and law enforcement against debtors who act without good faith.
- Development of legal instruments such as credit insurance or creditor protection funds to reduce the risk of losses for concurrent creditors.

The bankruptcy procedure regulated in the UUK-PKPU aims to resolve debt problems fairly between debtors and creditors. However, in practice, there is an imbalance in legal protection between secured creditors and concurrent creditors. Secured creditors benefit from the right to execute collateral, while concurrent creditors often do not receive their debts paid off. These issues indicate the need for legal reform in the Indonesian bankruptcy system to improve justice and legal certainty for all creditors.(MF Daulay, Zarzani, and Aspan 2022) Thus, legal protection for creditors in bankruptcy proceedings can be realized more effectively, in accordance with the objectives of the UUK-PKPU and the principle of justice in law.

B. Legal Protection for Creditors in Bankruptcy Processes Reviewed from Bankruptcy Law No. 37 of 2004, Especially When the Debtor Does Not Have Sufficient Assets to Fulfil His Obligations

In the dynamics of the economy, bankruptcy is an inevitable phenomenon. When the debtor is unable to fulfill his obligations and the assets he owns are insufficient, the position of the creditor becomes very vulnerable. Although Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) is present as a legal umbrella, practice in the field shows that protection for creditors, especially concurrent creditors, is still far from optimal.(Tobing, Aspan, and Siregar 2024)

Legally, all of the debtor's assets should be used as collateral for the repayment of his debt.

Article 1131 of the Civil Code (KUHP data) states: "All of the debtor's assets, both movable and immovable, both existing and future, become collateral for all of his individual obligations." This principle is reinforced by Article 1132 of the Civil Code: "The assets become joint collateral for all of his creditors; the proceeds from the sale of the assets are divided according to the ratio of each creditor's receivables, unless there are legitimate reasons among the creditors for priority." Thus, legally, the creditor has the right to the debtor's assets for the repayment of the debt proportionally.

However, the reality is not always like that. Separatist creditors, namely those who have special collateral rights such as pledges, security rights, mortgages, or fiduciaries, are in a more advantageous position. Based on Article 55 paragraph (1) of the UUK-PKPU: "With due regard to the provisions as referred to in Article 56, Article 57, and Article 58, every creditor holding a pledge, fiduciary guarantee, security right, mortgage, or collateral right on other objects, can execute their rights as if there was no bankruptcy." They can execute collateral independently of the bankruptcy process, so that the assets are not included in the bankruptcy estate that is distributed to other creditors.(Fitrianto, Zarzani, and Simanjuntak 2021)

As a result, unsecured creditors—who have no special recourse—must receive the remainder of the proceeds from the sale of the debtor's assets after secured and preferred creditors (such as the government for taxes owed and employees for unpaid wages) are satisfied. In many cases, the remaining assets are insufficient to satisfy the debts owed to unsecured creditors, leaving them with significant losses.

The situation is further complicated when debtors intentionally hide or transfer their assets to avoid paying debts. Although such actions can be categorized as criminal acts, law enforcement is still weak. Article 398 of the Criminal Code (KUHP) states: "A debtor who is in a state of bankruptcy with the intention of benefiting himself or others, or to the detriment of his creditors, fraudulently embezzles part of his assets or acknowledges false debts, is threatened with a maximum imprisonment of seven years." However, this provision has not provided an adequate deterrent effect due to the lack of strict implementation.

Seeing these problems, strategic steps are needed to increase legal protection for creditors:

First, the amendment of the Criminal Code is urgent to clarify and increase sanctions against criminal acts of bankruptcy. By strengthening criminal provisions for debtors who intentionally hide or transfer assets, it is hoped that it can prevent actions that harm creditors. Increasing criminal threats and consistent law enforcement will provide a deterrent effect and ensure that debtors act in good faith.

Second, encouraging the financial industry to provide credit insurance products. Credit insurance serves as protection for creditors against the risk of default. With this insurance, creditors can claim compensation if the debtor is unable to fulfill their obligations. This not only protects the financial interests of creditors but also increases trust in business relationships. Regulations from the Financial Services Authority (OJK) can be a basis for encouraging the development of this insurance product, including providing incentives for insurance companies that provide it.

Third, strengthening the legal basis for curators to audit shareholders. Curators need to be given broader authority to conduct in-depth audits of the company's activities and its shareholders. This is important to identify any unfair profit-making practices or actions that intentionally bankrupt the company for personal gain. If there is evidence of misappropriation, shareholders and company managers can be subject to criminal sanctions in accordance with applicable laws. This regulation can be included in the revision of the UUK-PKPU to clarify the role and authority of curators. (B. Hartono 2014)

In addition to the above recommendations, increasing the professionalism and accountability of curators is also a key factor. Curators must carry out their duties with high integrity, transparency, and responsibility. Supervision by the supervising judge needs to be strengthened to ensure that curators do not abuse their authority. Certification and ongoing training for curators can be one of the efforts to improve their quality.

Equally important is increasing legal awareness among creditors. Education about the rights and obligations in the bankruptcy process, as well as the risks faced, will help creditors take preventive measures. For example, conducting stricter due diligence before providing credit and requesting adequate collateral. The development of an integrated information system on bankruptcy can also increase transparency. With better access to information, creditors can monitor the status of debtors and the bankruptcy

process in real time. This facilitates decision making and risk mitigation. (NA Daulay, Rafianti, and Fitrianto 2024)

In the long term, legal reform and implementation of these recommendations will increase confidence in the bankruptcy system in Indonesia. Better protection for creditors will encourage a healthy and sustainable business climate. The government, relevant authorities, the financial industry, and business actors need to collaborate to make this happen. In conclusion, although the UUK-PKPU has provided a legal framework for the bankruptcy process, legal protection for creditors, especially when the debtor does not have sufficient assets, still needs to be improved. Through regulatory amendments, strengthening law enforcement, developing credit insurance products, and increasing the role of curators, it is hoped that creditors' rights can be protected more effectively. These steps will lead the Indonesian bankruptcy system towards a fairer, more transparent, and more accountable direction.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the analysis of bankruptcy procedures regulated in Bankruptcy Law No. 37 of 2004 (UUK-PKPU), it can be concluded that the bankruptcy mechanism in Indonesia has a comprehensive legal framework for debt repayment to creditors. The process starts from filing a bankruptcy application, appointing a curator and supervisory judge, to the settlement and distribution of bankrupt assets in accordance with legal provisions. However, implementation in the field shows an imbalance in protection between secured creditors and concurrent creditors. Secured creditors obtain priority rights through collateral execution, while concurrent creditors often do not receive adequate repayment due to the debtor's limited assets. This indicates the need for a review of payment procedures and priorities to ensure fairness for all creditors.

Furthermore, regarding legal protection for creditors in the bankruptcy process, especially when the debtor does not have sufficient assets, the UUK-PKPU has not fully provided effective guarantees. Concurrent creditors are in a vulnerable position due to the absence of additional protection mechanisms and low payment priorities. To address this, legal reform is needed that includes amendments to the Criminal Code to increase sanctions for

bankruptcy crimes, encourage the financial industry to provide credit insurance as a mitigation of default risk, and strengthen the role of curators in auditing the activities of debtors and shareholders. Thus, legal protection for creditors can be significantly improved, creating a more fair, transparent, and accountable bankruptcy system in accordance with the objectives of national law.

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