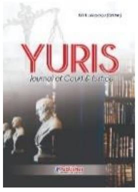

ISSN 2809-672X (Online)
YURIS: Journal of Court and Justice
https://journal.jfpublisher.com/index.php/jcj
Vol. 4 Issue 4 (2025)
doi.org/10.56943/jcj.v4i2.849

Legal Certainty of Creditors' Rights in the Bankruptcy of Condominium Units (Apartments)

(A Case Study of Decision No. 40/Pdt.Sus.PKPU/2023/PN Niaga.Sby and Decision No. 63/Pdt.Sus-Gugatan Lain-Lain/2023/PN Niaga.Sby)

Arlisah Sri Utami
Lisalica87@gmail.com
Research Division, Indonesian Advocates Association (PERADI)

*Corresponding Author: Arlisah Sri Utami
Email: Lisalica87@gmail.com

ABSTRACT

Global economic development has an influence on legal development, especially economic law. Bankruptcy can occur due to the rapid development of the economy and trade where various kinds of debt and receivables problems arise in society. The purpose of this study is to find out and understand the legal considerations of judges in decision number: 40/Pdt.Sus-PKPU/2023/PN. Niaga.Sby and number: 63/Pdt.Sus-LawsuitLainLain/2023/PN. Niaga.Sby. and to know and understand the legal certainty of creditors' rights to bankruptcy after the decision. This research method uses normative legal research. Approaches in normative (dogmatic) legal research include the statute approach or legislation-regulation approach, conceptual approach, historical approach and comparative approach. Legal protection of creditors from the object of the right of dependency from the attempt to confiscate the guarantee by a third party to hand over a guarantee for an agreement that has been agreed upon by the debtor which is the obligation of the bankrupt debtor from the bankruptcy property. If the creditor has paid in full for an object or service in dispute, the creditor receives legal protection to be removed from the bankruptcy estate according to the Supreme Court Circular Letter No. 4 of 2016.

Keywords: *Creditor Legal Protection, Bankruptcy Assets, Bankruptcy Debtor's Obligations*

INTRODUCTION

The development of the global economy has significantly influenced the evolution of legal systems, particularly in the field of economic law. To align with international economic dynamics, Indonesia has undertaken substantial reforms to its economic legal framework. One of the areas most affected by this reform is bankruptcy law.[1] Historically, Indonesia's bankruptcy regulations were inherited from the Dutch colonial administration and thus bear the characteristics of the Continental European legal system. However, contemporary Indonesian economic law increasingly reflects the influence of the Anglo-Saxon legal tradition, resulting in a hybrid system that continues to evolve in response to global economic integration.[2][3]

Bankruptcy typically arises as a consequence of rapid economic and commercial growth, which inevitably gives rise to various disputes concerning debt obligations within society. According to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), Article (1) paragraph (1) defines bankruptcy as *a general attachment over all assets of the bankrupt debtor, the management and settlement of which are conducted by a curator under the supervision of a supervisory judge, as stipulated in this Law*.[4]

The primary objectives of bankruptcy are to ensure equitable distribution of a debtor's assets among creditors, to prevent the debtor from undertaking actions detrimental to creditors' interests, and to provide legal protection for bona fide debtors by allowing them to obtain discharge from their debts.[5][6] Within the bankruptcy framework, the concept of debt is a crucial determinant. Without the existence of a debt, bankruptcy would lose its fundamental legal function as an instrument for the liquidation of a debtor's assets for the benefit of creditors.[7]

---

[1] Ronald Saija and Kadek Agus Sudiarawan, "Perlindungan Hukum Bagi Perusahaan Debitur Pailit Dalam Menghadapi Pandemi Covid 19," *Batulis Civil Law Review* 2, no. 1 (May 31, 2021): 66, https://fhukum.unpatti.ac.id/jurnal/ballrev/article/view/474.

[2] Monica Gloria, "Kepailitan Perseroan Perorangan Dalam Undang-Undang Cipta Kerja," *Jurnal Panorama Hukum* 6, no. 1 (September 14, 2021): 24–31, https://ejournal.unikama.ac.id/index.php/jph/article/view/5568.

[3] Muhammad Zilal Hamzah, Dulyono et al., "Deregulation Policy of Bankruptcy Regulation in Effort To Promote The Indonesian Ease of Doing Business," *International Journal of Academic Research in Business and Social Sciences* 13, no. 8 (August 11, 2023), https://hrmars.com/journals/papers/IJARBSS/v13-i8/18029.

[4] Republik Indonesia, *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*, 2004.

[5] Jessie M.W. Pool, "Rethinking the Goal of Bankruptcy Proceedings," *Erasmus Law Review* 16, no. 2 (December 2023): 114–123, https://www.boomportaal.nl/doi/10.5553/ELR.000247.

[6] Michelle J White, "Sovereigns in Distress: Do They Need Bankruptcy?," *Brookings Papers on Economic Activity* 2002, no. 1 (2002): 287–319, https://muse.jhu.edu/article/10372.

[7] Nyak Amini, Prof. Dr. Efik Yusdiansyah, and Dr. Dhody Ananta Rivandi, "Legal Protection of Disputed Land Deed Officials in the Bankruptcy Estate by the Curator in

Specifically, Article 1 point (6) of the Bankruptcy Law defines debt as an obligation expressed or capable of being expressed in a sum of money, whether presently due, contingent, or arising in the future, resulting from an agreement or statute, and which must be fulfilled by the debtor; failure to do so grants the creditor the right to obtain satisfaction from the debtor's assets.

In bankruptcy proceedings, the Suspension of Debt Payment Obligations (PKPU) serves as an alternative mechanism to avoid a declaration of bankruptcy.[8] PKPU allows the debtor temporary relief to restructure or rehabilitate their business operations, though it does not absolve the debtor from their financial obligations toward creditors. When a creditor or a party representing creditors, files for the debtor's bankruptcy, the debtor may simultaneously request a PKPU decision.[9] In accordance with Article 229 paragraph (3) of Law Number 37 of 2004, if a bankruptcy petition and a PKPU petition are submitted concurrently, the PKPU petition must be decided first. Conversely, if the debtor has already petitioned for bankruptcy against themselves, they may no longer request PKPU but only seek a composition agreement (accord) within the bankruptcy process.[10]

PKPU is closely associated with insolvency situations, referring to the debtor's inability to fulfill due and payable obligations. The mechanism is designed to offer a structured process for debt rescheduling or negotiation between debtors and creditors, aiming to prevent total liquidation where possible.[11]

Recently, the issue of real estate developers, particularly those engaged in apartment and housing projects, facing bankruptcy has become increasingly prevalent. Legally, Indonesian law does not recognize the term "bankrupt" (*bangkrut*) per se; rather, the applicable statuses are "in bankruptcy" (*dalam pailit*) or under PKPU. In essence, a developer may be declared bankrupt or placed under PKPU if they fail to settle two or more due and payable claims from creditors. [12]

Relation to the Principle of Justice," *Journal of Court and Justice* 3, no. 2 (June 14, 2024): 59–75, https://journal.jfpublisher.com/index.php/jcj/article/view/544.

[8] Agitha Putri Andany Hidayat Agitha and Anita Afriana, "Penundaan Pengesahan Perdamaian Dalam Penundaan Kewajiban Pembayaran Utang Oleh Hakim Dikaitkan Dengan Asas Kepastian Hukum," *Jurnal Poros Hukum Padjadjaran* 3, no. 1 (December 1, 2021): 19–36, https://jurnal.fh.unpad.ac.id/index.php/jphp/article/view/564.

[9] Widya Sari Amalia, Iswi Hariyani, and Bhim Prakoso, "Restrukturisasi Utang PT Garuda Indonesia, Tbk. Sebagai Upaya Penundaan Kewajiban Pembayaran Utang Kepada Kreditur," *MIMBAR YUSTITIA* 6, no. 2 (December 18, 2022): 108–117, http://e-jurnal.unisda.ac.id/index.php/mimbar/article/view/3658.

[10] Republik Indonesia, *Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*, 2004.

[11] Doni Budiono, "Analisis Pengaturan Hukum Acara Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *ADHAPER: Jurnal Hukum Acara Perdata* 4, no. 2 (May 1, 2019): 109, http://jhaper.org/index.php/JHAPER/article/view/81.

[12] Ayudinda Pilar Kharisma, "Kedudukan Hukum Kreditor Separatis Atas Jaminan Kebendaan Milik Guarantor Yang Telah Pailit Dalam Kepailitan Debitor Pailit," *Perspektif* 28, no. 2 (May 25, 2023): 73–82, https://jurnal-perspektif.org/index.php/perspektif/article/view/850.

However, in practice, bankruptcy proceedings involving developers often disadvantage consumers. In some cases, irresponsible developers have exploited bankruptcy or PKPU status as a means to evade their contractual obligations toward consumers, prioritizing the protection of certain creditors while neglecting others, particularly individual buyers. This misuse of bankruptcy provisions underscores the need for stronger regulatory safeguards and judicial oversight to ensure fairness and accountability in Indonesia's economic legal system.[13]

LITERATURE REVIEW

Conceptual Framework

Bankruptcy serves as a legal instrument originally intended to resolve problems arising in debt settlement, particularly after the enactment of Law No. 4 of 1998 concerning Bankruptcy. The bankruptcy law was expected to operate synergistically with Indonesia's broader economic recovery efforts during the financial crisis of that period. With the enforcement of this law, it was anticipated that legal protection and certainty would be strengthened, thereby fostering a more conducive investment climate, an essential factor in overcoming the turbulence of the global economic crisis.

However, in practice, during the five years following its implementation, the bankruptcy law's provisions proved to be limited in effectively resolving bankruptcy cases. Numerous articles within the law were regarded as weak and incapable of reflecting the principles of justice and legal fairness. This juridical phenomenon prompted the legislature to respond by replacing Law No. 4 of 1998 with the current Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU).

The revised legislation was intended to ensure that bankruptcy proceedings could become a fast, transparent, and effective legal mechanism for resolving debt disputes between creditors and debtors. Nevertheless, the law remains far from free of potential legal challenges. Among the persistent issues are questions concerning the role and authority of the curator (receiver or administrator) and the hierarchical position of creditors in bankruptcy distribution. These areas continue to be the focus of academic and judicial debate, as their interpretation significantly influences the fairness and efficiency of bankruptcy proceedings in Indonesia.

Theoretical Framework

Bankruptcy (pailit) refers to a legal condition in which a debtor is unable to meet payment obligations to creditors. Such inability often results from financial

---

[13] Viona Widjaja and R.M. Gatot P. Soemartono, "Implementasi UU Perlindungan Konsumen Dan UU Kepailitan Terhadap Konsumen Properti Pemegang PPJB," *Syntax Literate ; Jurnal Ilmiah Indonesia* 8, no. 10 (October 19, 2023): 5802–5818, https://jurnal.syntaxliterate.co.id/index.php/syntax-literate/article/view/13773.

distress or the deteriorating financial condition of the debtor's enterprise.[14] In contrast, *bankruptcy proceedings* are a judicial declaration that imposes a general attachment (sita umum) on all the assets of the bankrupt debtor, encompassing both existing and future assets.

According to Article 24 paragraph (1) of the Bankruptcy Law, once a bankruptcy declaration is issued, the debtor automatically loses the right to control and manage any property included in the bankruptcy estate (*harta pailit*). The administration and settlement of these assets are then carried out by a curator. As stipulated in Article 1 point (5), a curator is defined as *the Heritage Hall (Balai Harta Peninggalan) or an individual appointed by the court to manage and liquidate the bankrupt debtor's assets under the supervision of a supervisory judge*. This provision clearly indicates that the curator holds extensive authority and substantial responsibility in administering the bankruptcy process.[15]

In bankruptcy proceedings, several categories of creditors are recognized, each with distinct legal standings and rights to repayment. These creditor classifications include:[16]

1. Concurrent creditors (unsecured creditors), those without specific collateral rights over the debtor's assets.
2. Preferred creditors (secured creditors), those granted priority by law for certain claims or privileges.
3. Separatist creditors (secured by specific collateral), those who hold specific security rights, such as mortgages, fiduciary guarantees, or pledges, allowing them to execute their collateral independently of the general bankruptcy process.

This classification structure underpins the principle of creditor hierarchy, which determines the order of payment and distribution of the debtor's assets. The curator, therefore, must act with strict adherence to these legal priorities to ensure equitable treatment among creditors and uphold the principles of justice and transparency in bankruptcy proceedings.

RESEARCH METHODOLOGY

This study employs a normative legal research method. Normative legal research aims to identify and analyze legal norms, principles, and doctrines governing a particular issue. It focuses on examining and interpreting positive law provisions as stipulated in statutory regulations, judicial decisions, and authoritative legal writings. The research is intended to construct a coherent legal framework by

---

[14] Ayudinda Pilar Kharisma, "Kedudukan Hukum Kreditor Separatis Atas Jaminan Kebendaan Milik Guarantor Yang Telah Pailit Dalam Kepailitan Debitor Pailit."
[15] Republik Indonesia, *Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.
[16] Ibid.

evaluating the normative content of existing legal instruments, which subsequently serve as the foundation for drawing legal conclusions and recommendations. [17]

Legal research begins with a comprehensive examination of legal materials that form the foundation for legal decision-making in concrete cases. The approaches used in normative legal research allow the researcher to utilize insights from empirical legal studies and other social sciences for the purpose of legal analysis and explanation, without altering the inherently normative character of legal science.[18]

In this study, several approaches are adopted to analyze the legal issues comprehensively:

1. Statute approach: examining relevant statutory and regulatory provisions;
2. Conceptual approach: analyzing legal concepts and principles underlying the legal norms;
3. Analytical approach: interpreting and systematizing legal norms to assess their coherence and consistency;
4. Comparative approach: comparing legal doctrines or statutory regimes from other jurisdictions to enrich interpretation;
5. Historical approach: exploring the legislative history and development of bankruptcy law to understand its rationale;
6. Philosophical approach: analyzing the underlying philosophical and justice principles guiding bankruptcy regulation;
7. Case approach: examining relevant judicial decisions to interpret the application of law in practice.

The legal materials used in this normative legal study are classified into primary, secondary, and tertiary sources, each serving distinct but complementary roles in the legal analysis.

1. Primary Legal Materials

   Primary legal materials consist of binding legal instruments directly related to the research topic, including:

   a. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU);
   b. Law Number 8 of 1999 concerning Consumer Protection;
   c. The Indonesian Civil Procedure Code (HIR/RBg);
   d. Presidential Decree Number 97 of 1999.

[17] Cokorda Istri Sri Dharma Widyaningrum and I Nyoman Bagiastra, "Corporate Organs' Accountability In Case Of Sole Proprietorship Bankruptcy," *Journal of Court and Justice* 3, no. 3 (July 24, 2024): 1–10, https://journal.jfpublisher.com/index.php/jcj/article/view/584.
[18] Kristiawanto, *Memahami Penelitian Hukum Normatif* (Jakarta: Prenada, 2022).

2. Secondary Legal Materials

   Secondary legal materials comprise authoritative writings that interpret or explain primary sources. These include books on bankruptcy and consumer protection law, academic dissertations, theses, undergraduate research papers, and peer-reviewed legal journals relevant to the topic of study (Hadjon, 2015; Hernoko, 2021).
3. Tertiary Legal Materials

   Tertiary legal materials support both primary and secondary sources by providing clarification and contextual understanding. These include legal dictionaries, encyclopedias, and general reference works that assist in ensuring terminological precision and conceptual clarity.

RESULT AND DISCUSSION

How Is Bankruptcy Law Regulated in Indonesia?

The authentic definition of bankruptcy is provided in Article 1, point (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), which states: *"Bankruptcy constitutes a general attachment over all assets of a bankrupt debtor, the management and settlement of which are carried out by a curator under the supervision of a supervisory judge, as regulated in this Law."*

The institution of bankruptcy serves a crucial legal function as an embodiment of two fundamental provisions in the Indonesian Civil Code (KUH Perdata), namely Articles 1131 and 1132, which govern a debtor's responsibility for their debts. These articles stipulate that a debtor's entire property constitutes a joint guarantee for all creditors, to be distributed proportionally unless specific preferential rights (*hak preferensi*) apply. Accordingly, the core principle embedded in Articles 1131 and 1132 is that the law provides creditors with a legal right to claim repayment from a debtor's assets in accordance with the hierarchy of claims.[19]

The Bankruptcy and PKPU Law (UUKPKPU) elaborates further by grounding its regulatory framework on several fundamental principles (*asas-asas kepailitan*) designed to ensure balance, justice, and integrity in the resolution of debt disputes. These principles include:[20]

1. The Principle of Balance

   This law incorporates provisions reflecting the principle of balance by ensuring protection for both debtors and creditors. On one hand, it seeks to prevent abuse of the bankruptcy system by dishonest debtors; on

[19] Mahkamah Agung Republik Indonesia, *Kitab Undang-Undang Hukum Perdata (KUHP)*, 2024.

[20] Republik Indonesia, *Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*.

the other, it aims to safeguard debtors from bad-faith creditors who might misuse bankruptcy proceedings for coercive or opportunistic purposes.

2. The Principle of Business Continuity

   The law recognizes the importance of allowing the continuation of business operations for debtors with viable or prospective enterprises. This principle is intended to preserve economic value, employment, and productive capacity, rather than leading to unnecessary liquidation of potentially solvent businesses.

3. The Principle of Justice

   The provisions of bankruptcy law must ensure fairness for all parties involved. This principle aims to prevent arbitrary actions by aggressive creditors seeking to recover their claims at the expense of others. The equal treatment of creditors and protection of bona fide debtors embody the ethical and moral foundation of this principle.

4. The Principle of Integration

   This principle emphasizes that bankruptcy law represents an integrated system that unifies both substantive civil law and civil procedural law. The law thus forms a coherent part of Indonesia's national legal system, ensuring that procedural and material aspects operate harmoniously to maintain legal certainty and consistency.

The legal consequences of bankruptcy for a bankrupt debtor are regulated under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU). Bankruptcy has significant implications for the debtor, including the loss of control over assets, restrictions on legal actions, and the transfer of asset management to a court-appointed curator. These legal effects are intended to protect creditors' rights and ensure that the bankruptcy estate is properly managed to settle outstanding debts in accordance with the principles of justice and legal certainty.[21]

1. Loss of the Right to Control and Manage Assets

   A bankrupt debtor loses the legal right to possess, manage, and control their assets that form part of the bankruptcy estate. From the date of the bankruptcy judgment, all authority over the debtor's property is transferred to the curator appointed by the court. The curator assumes full responsibility for administering and liquidating the estate under judicial supervision to ensure an orderly settlement process.

2. Restrictions on Legal Acts

   After being declared bankrupt, the debtor may only perform legal acts that bring direct benefit or increase the value of the bankruptcy estate. Any transaction or legal act that could harm the estate can be annulled by the curator through the mechanism known as *Actio Pauliana*.

[21] Ibid.

This doctrine allows the revocation of transactions deemed fraudulent or detrimental to the collective interest of creditors.

3. Management of the Bankruptcy Estate

   Following the declaration of bankruptcy, the management and administration of the debtor's property are entirely transferred to the curator. The curator is responsible for recording, safeguarding, and distributing the assets to satisfy creditors' claims according to the statutory order of priority. In carrying out these duties, the curator acts as the legal representative of the bankrupt estate in all related proceedings.

4. Seizure and Claims over the Bankrupt Assets

   Once bankruptcy has been declared, any previous seizure (*sita*) of the debtor's property is automatically lifted. Thereafter, all claims and legal actions related to the bankrupt estate can only be pursued or defended by the curator acting on behalf of the debtor's estate. This ensures a unified and coordinated management process, preventing conflicting claims among creditors and maintaining procedural integrity.

5. Obligations Arising After the Declaration of Bankruptcy

   Any obligations or debts incurred after the bankruptcy declaration cannot be charged to the bankruptcy estate. This means that new debts arising post-declaration remain the personal responsibility of the debtor and do not diminish the assets available to existing creditors. Such a rule preserves the integrity of the bankruptcy estate and upholds the principle of equitable treatment among creditors.

The Legal Certainty of Creditors' Rights in Bankruptcy Following Decisions No. 40/Pdt.Sus-PKPU/2023/PN.Niaga.Sby and No. 63/Pdt.Sus-Gugatan Lain-Lain/2023/PN.Niaga.Sby

In the ruling on Bankruptcy Case No. 40/Pdt.Sus-PKPU/2023/PN.Niaga.Sby dated 6 July 2023, the court stated that during the PKPU (Suspension of Debt Payment Obligations) process, the debtor had requested an extension of the PKPU period for 90 days. Based on the Supervisory Judge's report dated 3 July 2023, the creditors did not approve the debtor's request for an extension. Consequently, the court declared that the PKPU of PT Mahkota Berlian Cemerlang had expired and, therefore, declared the company bankrupt (*pailit*) with all corresponding legal consequences. The Commercial Court in Surabaya also appointed a curator to manage and settle the bankruptcy estate in accordance with the prevailing bankruptcy law.

Regardless of the arguments submitted in the cassation petition, the case in question originated from a PKPU proceeding. Under Article 235 paragraph (1) and Article 293 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, no legal remedies are permitted against PKPU decisions. However, following Constitutional Court Decision No.

23/PUU/XXI/2021, a PKPU ruling may be subject to cassation if the petition is filed by a creditor and the settlement plan proposed by the debtor has been rejected by the creditors. In this particular case, although the PKPU petition was filed by a creditor, the decision pertained to the termination of the PKPU process, not the rejection of a settlement plan. Therefore, in accordance with the Constitutional Court's interpretation, the cassation petition in this case should be deemed inadmissible.

In Civil Miscellaneous Case No. 63/Pdt.Sus-Pailit-GLL/2023/PN.Niaga.Sby, the court ruled that creditors who had submitted their claims, whether late or unregistered, must be included in the *Daftar Piutang Tetap* (Permanent List of Claims/DPT). The court ordered the defendants to revise the DPT registered with the Surabaya Commercial Court as of 4 September 2023. Furthermore, the court classified the legal dispute involving PT Mahkota Berlian Cemerlang (in bankruptcy) as a private civil matter rather than a criminal one. Consequently, the court required the defendants to withdraw all police reports, lawsuits, and other legal remedies related to the bankruptcy process of PT Mahkota Berlian Cemerlang (in bankruptcy), particularly concerning Police Report No. LP/B/1127/X/2022/SPKT/POLRESTABES SURABAYA/POLDA JAWA TIMUR dated 3 October 2022. The defendants were ordered to submit evidence of withdrawal to the plaintiff within seven calendar days following the decision. This ruling created disparities among creditors, some benefited, while others suffered losses, and raised suspicions of procedural irregularities within the bankruptcy process itself.

Legal Certainty of Creditors' Rights

Bankruptcy law must ensure a balanced protection of both creditors and debtors. It serves to safeguard creditors' rights when debtors fail to fulfill their payment obligations, providing a legal avenue for creditors to claim recovery from the debtor's assets once bankruptcy is declared. Under Article 2(1) of the Bankruptcy and PKPU Law (Law No. 37 of 2004), both creditors and debtors may file a bankruptcy petition, and the Commercial Court must grant such a petition if the legal requirements are met, namely, that the debtor has at least two creditors and has failed to pay one due and payable debt. In this context, PT Mahkota Berlian Cemerlang acted as the bankrupt debtor, while CV Bangun Sai'jan Makmur served as the petitioning creditor.

The provision that a debtor in a PKPU process may later become a declared bankrupt debtor is a common practice in many jurisdictions. However, such a mechanism opens the possibility of manipulation for the debtor's own benefit. One form of potential manipulation is when the bankrupt debtor initiates an "Other Civil Claims" (*Gugatan Lain-Lain*), seeking advantages that disregard the legitimate rights of creditors. Such actions jeopardize creditors' legal certainty and undermine the fairness of the bankruptcy process. This situation occurred in the case between

CV Bangun Sai'jan Makmur (creditor) and PT Mahkota Berlian Cemerlang (debtor), where allegations arose regarding irregularities and engineered proceedings following the Bankruptcy Decision No. 40/Pdt.Sus-PKPU/2023/PN.Niaga.Sby dated 6 July 2023 and the rejection of PT Mahkota Berlian Cemerlang's cassation on 21 December 2023.

Without the knowledge of all registered creditors, whose deadline for submitting claims was 25 July 2023 and whose names were listed in the Permanent Claims List dated 4 September 2023, the bankrupt debtor filed "Other Civil Claims" Case No. 63/Pdt.Sus-Gugatan Lain-Lain/2023/PN.Niaga.Sby, which was decided on 5 February 2024. The lawsuit filed by PT Mahkota Berlian Cemerlang during its bankruptcy was unfounded and detrimental to the interests of the creditors, particularly the concurrent (unsecured) creditors already listed in the DPT.

In the lawsuit, PT Mahkota Berlian Cemerlang principally sought two outcomes: (1) to include creditors who submitted their claims late into the DPT, and (2) to resolve all matters through civil proceedings while withdrawing related police reports. The process of submitting and granting the "Other Civil Claims" appeared non-transparent, raising suspicions of procedural irregularities and possible abuse of the bankruptcy framework to favor the debtor's position over creditors' rights.

The decision on the *Other Civil Lawsuit* (Gugatan Lain-Lain, GLL) has caused significant harm to the creditors, including the complainant, who had previously registered their claims and were included in the Fixed Claims List (*Daftar Piutang Tetap*) on September 4, 2023. The inclusion of new creditors who submitted their claims late or failed to register them altogether alters the number of creditors recorded in the Fixed Claims List, which consequently reduces the proportion of payment that registered creditors, including the complainant, are entitled to receive. There are strong suspicions that the inclusion of these new creditors was a manipulation orchestrated by parties close to the bankrupt debtor, aimed at benefiting the debtor's own interests. In this context, the claims made in the *Other Civil Lawsuit* are inconsistent with legal principles, as explained below:

First, the *Other Civil Lawsuit* is formally defective because PT MBC lacks the legal standing to file such a claim. Furthermore, the creditors mentioned in the lawsuit were not included as parties, and the value or legal basis of their claims was not clearly specified.

Second, Article 27 in conjunction with Article 133 paragraph (2) of the Bankruptcy Law explicitly stipulates that any claims not registered, or registered after the prescribed deadline for any reason, shall be deemed inadmissible and cannot be verified.

Third, the *Other Civil Lawsuit* appears to have been filed with the intention of interfering with the ongoing criminal investigation initiated by the creditors' police report (*Laporan Polisi*). In fact, the GLL case and the police report fall under entirely different jurisdictions. Certain legal provisions were seemingly distorted to justify the GLL, resulting in the inclusion of creditors who were previously late or failed to register their claims into the Fixed Claims List. This decision, classified under a special civil jurisdiction, resembles a pretrial decision (*praperadilan*) or a *termination of investigation order* (SP3) within a criminal process, since it granted PT MBC's request for the defendant (curator) to withdraw the police report.

CONCLUSION

The legal certainty regarding creditors' rights in bankruptcy, as illustrated in the cases *Decision No. 40/Pdt.Sus.PKPU/2023/PN Niaga.Sby* and *Decision No. 63/Pdt.Sus-Gugatan Lain-lain/2023/PN.Niaga.Sby*, cannot yet be regarded as fair and equitable. This is due to the *Other Civil Lawsuit* decision, which has significantly harmed the rights of creditors in bankruptcy, particularly those related to ownership of property or residential units that have not yet been occupied by creditors who have fully paid for the property. Creditors who have completed full payment for properties that are already completed or who have taken occupancy of their apartments are granted legal protection to continue the ownership transfer process (*balik nama*) of the purchased property. However, they are still required to bear the entire tax burden and all associated costs arising from the sale and transfer process. Consequently, despite having fulfilled their payment obligations in full, creditors remain in a disadvantaged position, as the implementation of these rulings continues to place a disproportionate financial and legal burden upon them.

REFERENCES

Agitha, Agitha Putri Andany Hidayat, and Anita Afriana. "Penundaan Pengesahan Perdamaian Dalam Penundaan Kewajiban Pembayaran Utang Oleh Hakim Dikaitkan Dengan Asas Kepastian Hukum." *Jurnal Poros Hukum Padjadjaran* 3, no. 1 (December 1, 2021): 19–36. https://jurnal.fh.unpad.ac.id/index.php/jphp/article/view/564.

Amalia, Widya Sari, Iswi Hariyani, and Bhim Prakoso. "Restrukturisasi Utang PT Garuda Indonesia, Tbk. Sebagai Upaya Penundaan Kewajiban Pembayaran Utang Kepada Kreditur." *MIMBAR YUSTITIA* 6, no. 2 (December 18, 2022): 108–117. http://e-jurnal.unisda.ac.id/index.php/mimbar/article/view/3658.

Amini, Nyak, Prof. Dr. Efik Yusdiansyah, and Dr. Dhody Ananta Rivandi. "Legal Protection of Disputed Land Deed Officials in the Bankruptcy Estate by the Curator in Relation to the Principle of Justice." *Journal of Court and Justice* 3, no. 2 (June 14, 2024): 59–75. https://journal.jfpublisher.com/index.php/jcj/article/view/544.

Ayudinda Pilar Kharisma. "Kedudukan Hukum Kreditor Separatis Atas Jaminan Kebendaan Milik Guarantor Yang Telah Pailit Dalam Kepailitan Debitor Pailit." *Perspektif* 28, no. 2 (May 25, 2023): 73–82. https://jurnal-perspektif.org/index.php/perspektif/article/view/850.

Budiono, Doni. "Analisis Pengaturan Hukum Acara Kepailitan Dan Penundaan Kewajiban Pembayaran Utang." *ADHAPER: Jurnal Hukum Acara Perdata* 4, no. 2 (May 1, 2019): 109.

http://jhaper.org/index.php/JHAPER/article/view/81.

Gloria, Monica. "Kepailitan Perseroan Perorangan Dalam Undang-Undang Cipta Kerja." *Jurnal Panorama Hukum* 6, no. 1 (September 14, 2021): 24–31. https://ejournal.unikama.ac.id/index.php/jph/article/view/5568.

Kristiawanto. *Memahami Penelitian Hukum Normatif*. Jakarta: Prenada, 2022.

Mahkamah Agung Republik Indonesia. *Kitab Undang-Undang Hukum Perdata (KUHP)*, 2024.

Pool, Jessie M.W. "Rethinking the Goal of Bankruptcy Proceedings." *Erasmus Law Review* 16, no. 2 (December 2023): 114–123. https://www.boomportaal.nl/doi/10.5553/ELR.000247.

Republik Indonesia. *Undang-Undang (UU) Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*, 2004.

———. *Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*, 2004.

Saija, Ronald, and Kadek Agus Sudiarawan. "Perlindungan Hukum Bagi Perusahaan Debitur Pailit Dalam Menghadapi Pandemi Covid 19." *Batulis Civil Law Review* 2, no. 1 (May 31, 2021): 66. https://fhukum.unpatti.ac.id/jurnal/ballrev/article/view/474.

White, Michelle J. "Sovereigns in Distress: Do They Need Bankruptcy?" *Brookings Papers on Economic Activity* 2002, no. 1 (2002): 287–319. https://muse.jhu.edu/article/10372.

Widjaja, Viona, and R.M. Gatot P. Soemartono. "Implementasi UU Perlindungan Konsumen Dan UU Kepailitan Terhadap Konsumen Properti Pemegang PPJB." *Syntax Literate ; Jurnal Ilmiah Indonesia* 8, no. 10 (October 19, 2023): 5802–5818. https://jurnal.syntaxliterate.co.id/index.php/syntax-literate/article/view/13773.

Widyaningrum, Cokorda Istri Sri Dharma, and I Nyoman Bagiastra. "Corporate Organs' Accountability In Case Of Sole Proprietorship Bankruptcy." *Journal of Court and Justice* 3, no. 3 (July 24, 2024): 1–10. https://journal.jfpublisher.com/index.php/jcj/article/view/584.

Zilal Hamzah, Dulyono, Muhammad, Aidir Amin Daud, Eleonora Sofilda, Tengku Maaidah binti Tengku A Razak, and Ahmad Zaki Mohmad Amin. "Deregulation Policy of Bankruptcy Regulation in Effort To Promote The Indonesian Ease of Doing Business." *International Journal of Academic Research in Business and Social Sciences* 13, no. 8 (August 11, 2023). https://hrmars.com/journals/papers/IJARBSS/v13-i8/18029.