



## Separatist Creditors' Rights In Handling Bankruptcy Assets

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### ABSTRAK

Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU) melindungi hak kreditor, terutama kreditor separatis, mengendalikan penatausahaan dan penyelesaian harta pailit, serta menilai apakah kreditor separatis telah dilindungi dengan penatausahaan dan penyelesaian harta pailit. Penelitian hukum normatif adalah metodologi yang digunakan dalam penelitian ini. Penelitian ini bertujuan untuk melakukan analisis teoritis normatif terhadap konsep, peraturan, dan praktik hukum kepailitan Indonesia. Hasil penelitian menunjukkan bahwa kreditor dapat menerima pembagian harta yang adil ketika utang diselesaikan melalui lembaga kepailitan. Kreditor separatis dapat mengalami kerugian akibat tidak memenuhi persyaratan hukum agunan, khususnya yang terdapat dalam Pasal 59 UU No. Tahun 2004, Pasal 55 ayat (I), dan Pasal 56 ayat (1) dan (3), yang mengatur tentang penundaan eksekusi dan pembatasan jangka waktu eksekusi agunan. Kurator wajib mematuhi Undang-Undang No. 37 Tahun 2004 saat mengajukan daftar pembagian harta pailit ke Pengadilan, terutama ayat 1 Pasal 55 dan kaitannya dengan Hukum Jaminan, didukung oleh alasan-alasannya, untuk mendapat izin Hakim Pengawas, atau penetapan pengadilan, yang memiliki kemampuan untuk melindungi kreditor separatis dari hak-haknya yang dijamin oleh Undang-Undang.

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## ABSTRACT

*Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) protects the rights of creditors, particularly separatist creditors. It also regulates the administration and settlement of bankruptcy assets and determines whether or not the administration and settlement of bankruptcy assets has protected separatist creditors. Normative law research is the methodology used in this study. A normative theoretical examination of the principles, rules, and procedures governing Indonesian bankruptcy law is the goal of this research. The findings of the research indicate that creditors can receive a fair distribution of assets when debts are settled through insolvency institutions. Separatist creditors can suffer losses due to not meeting the legal requirements of collateral, especially those contained in Article 59 of Law No. 2004, Paragraph 1 of Article 55 and Paragraphs 1 and 3 of Article 56, which regulate the postponement of execution and restrictions on the period of execution of collateral. The curator must provide the list of bankruptcy assets to the court in accordance with Law No. 37 of 2004, especially paragraph 1 of Article 55 given its connection to the Law on Guarantees, backed up by the justifications for requesting the Supervisory Judge's approval or the court designation, which has the ability to protect separatist creditors from their rights guaranteed by the Law.*

### 1. Introduction

The inability of the debtor to pay their creditors results in bankruptcy. when the debtor's company goes into default, they usually experience financial difficulties, which results in their inability to make payments. Meanwhile, the Commercial Court can determine bankruptcy against debtors who have at least two creditors and lack the means and motivation to settle at least one mature, collectable debt. The bankrupt debtor loses control and management of the assets that make up the bankruptcy estate on the day the bankruptcy declaration decision is made.

Every asset owned by the debtor, both those acquired during bankruptcy and those that were in existence at the time of bankruptcy, are seized as a result of filing for bankruptcy. This is the so-called general confiscation.<sup>1</sup> The curator or BHP handles and settles the bankruptcy assets following the Commercial Court's ruling on the debtor's declaration of bankruptcy, monitored by a supervising judge appointed by the Commercial Court simultaneously.

The court determines that every asset of the bankruptcy debtor, including present and future, will be seized in the event of bankruptcy. The primary objective is to use the asset's sale revenues to pay off all of the bankrupt debtor's obligations proportionately (prorateparte) and in line with its credit level or rating.<sup>2</sup> Thus, one of the methods of resolving debts and receivables disputes is through bankruptcy. It is not the purpose of this institution to settle the debt of a creditor, but for all creditors' advantage. Once bankruptcy has been declared by the court, other creditors may jointly submit bills to the curator for their receivables. Furthermore, the assets of the bankruptcy will be divided among all of the

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<sup>1</sup> M Ihsan Kamil, "Confiscation of Assets Belonging to Foreigners in the Name of Bankruptcy Debtors (Nominees) by Curators," *UnizarLawRiview* 2, no. 1 (2019), file:///C:/Users/User/Downloads/116-1-329-1-10-20190702.pdf.

<sup>2</sup> Hasanal Mulkan and Serlika Aprita, "Criminal Liability of Curators Who Commit Unlawful Acts in Relation to the Principle of Independence Based on Law Number 37 of 2004," *UNES Journal of Swara Justisia* 7, no. 1 (2023): 264–76, <https://www.swarajustisia.unespandang.ac.id/index.php/UJSJ/article/download/326/257>.

creditors. This is in line with how debt disbursement is classified under bankruptcy law, as also indicated by Faillissementsverordening as the purpose of bankruptcy.<sup>3</sup>

The purpose of bankruptcy according to Faillissementsverordening is to protect rival creditors from losing their rights due to the enactment of the principle that guarantees the rights of the debtor (creditor) from the debtor's (debtor's) wealth. This goal is based on the definition of bankruptcy in the Memorie van Toelichting, which defines the legal seizure of all the debtor's assets for the benefit of all creditors as bankruptcy. This objective aligns with the tenets of Article 1131 of the Civil Code, it declares that: "Alle de roerende en onroerende goederen van den schttldenaar, zowel tegenwoordige als toekomstige, zijn voor deszelfs persoonlijke verbintenissen aansprakelijk."

The law was created to solidify the creditor's confidence that the debtor would pay.<sup>4</sup> In other words, the debtor's entire wealth will function as a guarantee for his debts to all creditors. Movable and immovable (fixed) objects are part of the debtor's wealth, both the goods existed at the time the debt and receivables agreement was held and new goods that will belong to the debtor after the debt and receivables agreement is held. Thus, all assets of the debtor, without exception, will be a general guarantee for the repayment of his debt, in line with Civil Code Article 1131. This applies regardless of whether it has been previously agreed or not. There is no need for a general guarantee agreement beforehand because these guarantees are general in nature and have been established by law.<sup>5</sup>

Based on the reasons mentioned above, it is very interesting to conduct further investigation because Law No. 37 of 2004 has provisions that are limited in regulation, but there are still provisions that are not applied in real life. As a result, the procedure stipulated in Law No. 37 of 2004 no longer applies to the settlement of the distribution of bankruptcy assets to creditors. This circumstance arises during the bankruptcy procedure. As a result, Law No. 37 of 2004 stipulates that the curator cannot immediately take over the assets owned by the bankrupt. In some cases, this situation can extend the bankruptcy process until the distribution of sales proceeds is completed.

## 2. Methods

This study uses normative law research methods. This approach was chosen since legal research is the process of identifying legal doctrines, norms, and principles in order to address legal issues. Therefore, the research method chosen to be used is normative law research related to the principles and rules contained in Indonesian bankruptcy law. The induced reasoning (case approach) and deduction methods utilized in this study allow for the development of deductive thinking, which in turn yields findings that may be used to the subsequent induction process, which are based on normative and evaluative elements.

The study of the legal literature is known as normative legal research and other sources of secondary data related to or related to the issue to be studied. For example, research on the rights of separatist creditors to manage bankruptcy assets is one example. A qualitative method is used to analyze the study's data. The process of analyzing data is comprehensive and in-depth. This method focuses on the depth of the data rather than the quantity. This

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<sup>3</sup> Syarifudin Makmur, "Bankruptcy Legal Certainty for Creditors and Debtors in the Commercial Court in Indonesia," *Mizan: Journal of Sharia Sciences, FAI Ibn Khaidun University (UIKA) Bogor* 4, no. 2 (2016): 337–68, file:///C:/Users/User/Downloads/187-355-1-PB.pdf.

<sup>4</sup> Gunawan Widjaja Ahmad Yani, *Business Law Series: Bankruptcy*, Cet. 4 (Jakarta: Raja Grafindo Persada, 2004); Munir Fuady, *Bankruptcy Law in Theory and Practice*, 6th (Bandung: PT. Citra Aditya Bakti, 2017).

<sup>5</sup> Munir Fuady, *Debt Guarantee Law* (Jakarta: Erlangga, 2013).

was done in response to a shift in perspective on the legal protection of separatist creditors' rights to manage bankruptcy assets.

### 3. Results and Discussion

#### 3.1. Bankruptcy Asset Management and Settlement Are Regulated by Law No. 37 of 2004

Distributing the debtor's assets among creditors is the curator's main goal in bankruptcy.<sup>6</sup> Bankruptcy is carried out to prevent creditors from seizing or executing separately the debtor's assets. Instead, joint forfeiture is used to ensure that each creditor receives their share of the debtor's wealth in accordance with their legal rights. Giving creditors access to the assets of an insolvent debtor is the goal of bankruptcy.<sup>7</sup> The curator is responsible for the debtor's asset disposition and settlement when they file for bankruptcy.

In the bankruptcy process, the curator is one of the most important participants. A number of articles in the Bankruptcy Law that clearly and strictly regulate the main positions and duties, authorities, the significance of curators' position in the bankruptcy process is demonstrated by their working practices. Curators must have the ability to identify what comes in.

The curator must be competent to decide what belongs in the bankruptcy estate and how it will be utilized to settle all of the bankruptcy debtor's obligations. Within the Creditor List Scheme, the curator must also ensure the number of creditors whose receivables can be repaid with bankruptcy assets, which eventually turn into money, and how the allocation complies with legal requirements. Based on the extent of their individual receivables, each creditor has an equal right to receive payments from the bankruptcy estate. In other words, creditor receivables payments are made based on the principle of credit zirn priority.

Creditors whose rights must take precedence based on legitimate reasons include holders of material guarantees (holders of liens, liens, mortgages, and fiduciary rights), as well as creditors with privileges or precedence rights attached to certain goods, accordance to Civil Code Article 1132.<sup>8</sup> With obligations from bankruptcy, the determination of creditors' rights to bankruptcy money becomes complicated, as specified in the Civil Code's Articles 1139 and 1149.

The Curator uses the list of divisions that have been authorized by the "Supervising Judge" to settle the bankruptcy estate. Furthermore, the curator will pay creditors according to the distribution list that the curator has created, with the "Supervisory Judge" giving his consent based on the results of the receivables matching meeting. The curator's payment of all creditors' receivables or the formal release of the closure distribution list will terminate the bankruptcy.

The supervising judge decides how much the curator can explain to creditors and debtors regarding the administration and/or resolution of assets in bankruptcy.<sup>9</sup> In a

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<sup>6</sup> Suyud Margono, "Analysis of Curatorial Criminal Law Liability for Violations in the Management and Settlement of Bankruptcy Assets," *Law Faculty of MPU Tantular University* 4, no. 1 (2021): 1–23, file:///C:/Users/User/Downloads/VOL+5++NO+1+2021+KE+1.pdf.

<sup>7</sup> Siti Mardiyati, "Civil Law Reform in the Context of Ease of Doing Business and Transnational Relations," *UNES Journal of Swara Justisia* 3, no. 1 (2023): 284–93, <https://pdfs.semanticscholar.org/2700/9ff818d0f18da9a695ec69414c371d69f2ff.pdf>.

<sup>8</sup> Ronald Saija et al., "Implications of the Ambiguity of Separatist and Curatorial Creditors in the Distribution of Bankruptcy Debtors According to a Philosophical Perspective," *Pattimura Legal Journal* 3, no. 2 (2024): 97–115, file:///C:/Users/User/Downloads/15556-Article Text-89941-1-10-20241110.pdf.

<sup>9</sup> Arumi Riezky Sari and Iwan Erar Joesoef, "Peran Kurator Dalam Penanganan Kepailitan: Studi Lambatnya Pelaksanaan Putusan Kepailitan," *National Conference on Law Studies: Legal Development Towards*

situation like this, the supervising judge should be responsible for supervising. Therefore, the supervising judge must receive a report from the curator every three months about the state of the bankruptcy estate and the curator's performance of their duties. A curator must always communicate with the supervising judge to consult or simply get advice because of the heavy responsibility to complete the bankruptcy asset filing and settlement process. This is done to achieve the goal of success and bankruptcy declaration, therefore the supervising judge and the curator must relate to each other as partners.

The supervising judge and the curator must understand each other's duties when carrying out their duties. For both of them, they can understand each other when to have contact.<sup>10</sup> It is very important to work together harmoniously, especially when you meet with creditors or debtors who do not support the bankruptcy settlement process quickly. Despite having a good relationship with the curator, the supervising judge is often reluctant to provide strong and direct support to the curator in carrying out his or her responsibilities, for example in pursuing difficult debtors. The supervising judge and curator must work together in handling cases, just like collegials. Indeed, in some cases, the curator must seek the approval of the supervising judge; This is sometimes mistaken for a subordinate relationship.

Bankruptcy law sets the priority order of creditors in paying debtors.<sup>11</sup> This is based on the position of each creditor. The type and characteristics of each creditor's receivables determine their position. The process of repaying curators' receivables will show the position of creditors at various stages. This includes the classification of creditors based on the type and characteristics of receivables, receivables matching meetings, and deferral of debt payments, until a receivable is shown to be a privilege that needs to be paid back first, then the separatist creditor with a higher position will get an advance from the preferred creditor with a lower position.<sup>12</sup> Concurrent creditors, also known as competitive creditors, receive compensation following a relaxation of their need to pay off their obligations to separatist and preferred creditors.

Law No. 37 of 2004 is being implemented, there are still various problems that cause the rights of creditors to not be fulfilled. For example, debtors with a bad reputation will try to hide their wealth by transferring their wealth to another party.<sup>13</sup> Law No. 37 of 2004 allows creditors to claim their rights against debtors through *actio pauliana* to protect the interests of those harmed by actions committed by debtors. In some situations, to their benefit, the creditor may declare the debtor's actions illegal, a legal doctrine known as *actio pauliana*.<sup>14</sup>

Creditors have the opportunity to claim their rights against the Debtor through *actio pauliana* carried out by the curator according to Law No. 37 of 2004. The Curator's duty as the person in charge of protecting and overseeing the bankruptcy estate for the benefit of all parties involved makes this an obvious conclusion. A year before bankruptcy occurs,

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A *Digital Society Era*, 2020, 978–79, <https://conference.upnvj.ac.id/index.php/ncols/article/download/1453/932>.

<sup>10</sup> Syamsudin M. Sinaga, *Indonesian Bankruptcy Law* (Jakarta: PT Tatanusa, 2012).

<sup>11</sup> Rahayu Hartini, *Bankruptcy Law*, Print: (Malang: University of Muhammadiyah Malang, 2020).

<sup>12</sup> Rachmadi Usman, *The Dimension of Bankruptcy Law in Indonesia* (Jakarta: PT Gramedia Pustaka Utama, 2004).

<sup>13</sup> Gunawan Widjaja Kartini Muljadi, *Guidelines for Handling Bankruptcy Cases*, Ed. rev.; (Jakarta: Raja Grafindo Persada, 2005).

<sup>14</sup> Yudho Taruno Muryanto Aji Suryanata, "Analysis of *Actio Pauliana* as a Form of Legal Protection for Bankruptcy Creditors (Study of Decision Number 06/Pdt.Sus.Miscellaneous Lawsuits AP/2020/PN. Niaga.Jkt.Pst. Jo. Number 27/Pdt-Sus PKPU/2015/PN. Niaga.Jkt.Pst.)," *Alliance: Journal of Law, Education and Social Humanities*, no. 2 (2024), file:///C:/Users/User/Downloads/ALIANSI+VOL+1+NO+2+MARCH+2024+HAL+63-72+(Revised)-1.pdf.

curators actively study the actions of bankruptcy debtors. Articles 41 to 49 of Law No. 37 of 2004 regulate *actio patriliana*, whereas it is governed by Civil Code Article 1341.<sup>15</sup>

*Actio Pauliana* is one of the ways that creditors get their rights, but in fact, when Law Number 37 of 2004 was enacted, it turned out that the provisions of *Actio Pauliana* were not able to fully protect the interests of creditors in several ways. The reasons are, among others, the discrepancy between Civil Code Article 1341 and Law Number 37 of 2004 Article 41.<sup>16</sup> In addition, curators face a number of challenges. These include limitations in the examination of *actio pauliana*'s lawsuit, the process of proof against *actio pauliana*'s application, who can file *actio pauliana*'s lawsuit, and obstacles in the completion of the application. Therefore, the legal protection provided to creditors is less extensive. Their position under bankruptcy law, which is established by the nature and attributes of their receivables, shows the order of priority of creditors.<sup>17</sup>

Basically, a bankruptcy ruling against the debtor, including his assets, might be considered to have the legal effect of allowing the bankruptcy to be implemented immediately. The assets acquired by the debtor during the bankruptcy are the same assets that are listed among the assets of the bankruptcy. In addition, the legally bankrupt debtor gives up the right to manage and own the bankrupt assets. In addition, the assets that are liquidated cannot be used to pay any form of arrangement the debtor signed after the bankruptcy decision. Paragraph 1 of Article 55 of Law No. 37 of 2004 declares, separatist creditors who hold security rights over material assets such as liens, mortgages, or others can continue to use their execution powers as though bankruptcy hadn't occurred.<sup>18</sup>

Separatist creditors who hold security rights over property, such as holders of liens, liens, or others, is able to use their execution rights as though bankruptcy had never occurred. Given that insolvent debtors' creditors are categorized according to their unique circumstances, this provision is an additional implementation of the structural principle of prorate. The establishment of a guarantee legal institution with the aim of giving preference to the guarantor in paying debtor debts is the main reason for this provision.<sup>19</sup> In bankruptcy, *mutatis mutandis* preference also applies, because bankruptcy is an additional implementation of Civil Code Articles 1131 and 1132.<sup>20</sup>

In a bankruptcy proceeding, the preference right of the guarantor holder is utilized in a different arrangement from the preference right of the separatist creditor. This special rule regulates the execution of collateral by the curator and the period of suspension (stay) after

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<sup>15</sup> UUNo37, "Undang-Undang Republik Indonesia Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Database Peraturan Bpk Ri*, 2004, 55, <https://peraturan.bpk.go.id/Home/Details/40784>.

<sup>16</sup> Wahyu Widiyaningrum and Iwan Erar Joesoef, "The Application of *Actio Pauliana*'s Principle of Bankruptcy and Its Legal Protection for Good-Faith Buyers," *Legal Reflections: Journal of Legal Sciences* 8, no. 1 (2024): 57–74, <https://doi.org/10.24246/jrh.2023.v8.i1.p57-74>.

<sup>17</sup> Imran Eka Saputra, "The Legal Position of Tax Preferred Creditors and Labor Preferred Creditors in the Bankruptcy Process," *Al-Ishlah: Legal Scientific Journal* 23, no. 2 (2020): 155–66, <https://doi.org/10.56087/aijih.v23i2.44>.

<sup>18</sup> Udin Silalahi, "Kedudukan Kreditor Separatis Atas Hak Jaminan Dalam Proses Kepailitan," *Masalah-Masalah Hukum* 49, no. 1 (2020): 35, <https://doi.org/10.14710/mmh.49.1.2020.35-47>.

<sup>19</sup> Muhammad Sabir and Rifka Tunnisa, "Fiduciary Guarantees in Banking Transactions (A Comparative Study of Positive Law and Islamic Law)," *Mazahibuna: Journal of Comparative Mazhab* 2, no. 1 (2020): 80–97, <file:///C:/Users/User/Downloads/14284-Article Text-37281-1-10-20200620.pdf>.

<sup>20</sup> R. Subekti, *Civil Code: Burgelijk Wetboek*, ed. R. Tjitrosudibio, Cet. 37 (Jakarta: Pradnya Paramita, 2006), <https://opac.perpusnas.go.id/DetailOpac.aspx?id=586814>.

the creditor holding the collateral is given two months to sell it himself.<sup>21</sup> Separatist creditors have a ninety-day grace period to execute the collateral they own, according to Law No. 37 of 2004's Article 56, paragraph (2). This right of grace is known as a right of grace. It is a quick selling strategy with quick prices to meet the needs of the creditor of the guarantee holder. However, during the 90-day suspension, curators have the opportunity to get the most favorable and most competitive price. This is due to the fact that the guarantor has a preference right over the collateral up to the value of its receivables to the creditor. Thus, if the collateral's liquidation value is greater than the creditor's receivables' worth, the remaining liquidation of the collateral will be returned to the creditor.

The role of separatist creditors under Law No. 37 of 2004 is less well-known when it comes to the administration and settlement of bankruptcy assets.<sup>22</sup> The reason for this is that separatist creditors can exercise their rights as if bankruptcy had never happened since they are protected under Law No. 37 of 2004's Article 55, paragraph (1). However, this clause is limited by Law Number 37 of 2004's Article 56, the right of other parties to assert claims to assets under the supervision of the curator or bankruptcy debtor, and the creditors' execution rights as stipulated in Law No. 37 of 2004's Article 55, paragraph (1), are suspended for ninety (90) days after the bankruptcy declaration judgment is issued. The bankruptcy declaration does not cause problems if the maturity has not yet occurred, in contrast to the prior clause. Nevertheless, if the debtor files for bankruptcy is decided at the same time as the maturity of the debt guaranteed by the separatist creditors, there will be problems. That would inevitably limit the separatist creditor's right to execute to receive immediate payment of his receivables.<sup>23</sup>

In addition, the provisions of bankruptcy hulum and guarantee provisions are not in line with Article 56 of Law No. 37 of 2004. Not only is there a substantial difference between the guarantee law and the bankruptcy law, but there is also a difference between Article 55 and Article 56 of Law No. 37 of 2004. As a result, this condition can lead to conflicts between separatist creditors and curators. This will make the position of separatist creditors as collateral creditors more difficult.

### **3.2. Implementation of Bankruptcy Asset Management and Settlement in Protecting Separatist Creditors**

It is hoped that the settlement through this bankruptcy institution will provide protection and ensure the implementation of the interests of interested parties creditors and debtors. However, separatist creditors may not feel it fully because the hope of debt settlement through a bankruptcy institution can guarantee the interests of all parties. This is because laws have been put in place that restrict separatist creditors' rights. Ultimately, it was considered that these regulations were less protective of separatist creditors.

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<sup>21</sup> Diponegoro L A W Journal, "Juridical Analysis of the Position of Individual Guarantor (Personal Guarantee) in the Bankruptcy of a Limited Liability Company," *Diponegoro Law Journal* 5 (2016): 1–17, [http://download.garuda.kemdikbud.go.id/article.php?article=1440388&val=4724&title=ANALISIS JURIDICAL POSITION OF THE POSITION OF INDIVIDUAL GUARANTOR IN THE BANKRUPTCY OF A LIMITED LIABILITY COMPANY](http://download.garuda.kemdikbud.go.id/article.php?article=1440388&val=4724&title=ANALISIS%20JURIDICAL%20POSITION%20OF%20THE%20POSITION%20OF%20INDIVIDUAL%20GUARANTOR%20IN%20THE%20BANKRUPTCY%20OF%20A%20LIMITED%20LIABILITY%20COMPANY).

<sup>22</sup> Muhammad Fadhli, Arrisman Arrisman, and Romainur Romainur, "The Position and Legal Protection of Separatist Creditors Against the Assets of Bankruptcy Debtors Based on Article 55 Paragraph (1) of the Bankruptcy Law and the Suspension of Debt Payment Obligations," *Journal of Law, Humanities and Politics* 4, no. 4 (2024): 590–600, <https://doi.org/10.38035/jihhp.v4i4.2008>.

<sup>23</sup> Sulaiman Syamsudin, Ma'ruf Hafidz, and Hamza Baharuddin, "Third-Party Legal Protection Against Material Collateral in Bankruptcy Assets," *Journal of Lex Generalis (JLS)* 2, no. 3 (2021): 1368–79, file:///C:/Users/User/Downloads/441-Article Text-1906-1-10-20210322.pdf.

There were a number of issues with the Distribution List that the curator presented in order to manage and settle bankruptcy assets, to the Supervisory Judge. The Supervisory Judge's judgment on the Distribution List ultimately led to its approval. If not agreed by both parties, the Chief Justice of the Commercial Court will select a panel of judges to decide their objection, which they might then submit to the court.<sup>24</sup> Apparently, in contravention of Law No. 37 of 2004's Article 55, paragraph (1), the Supervisory Judge and the Panel of Judges both made decisions that were out of compliance; the separatist creditors did not receive all the proceeds of the auction sale, but had to share with other creditors whose position was not separatist.

The creditors who take precedence in the bankruptcy process are the preferred creditors and separatist creditors.<sup>25</sup> Creditors who fall into the preemptive creditors file for bankruptcy to join other creditors in the "pain sharing" process, which is a matter of debate because of its unique position.

Law No. 37 of 2004 regulates provisions in a limited way. The process of distributing bankruptcy assets to creditors is different from that regulated by law. Curators still have to deal with workers as preferential creditors, taxes, and other concurrent creditors in practice in addition to separatist creditors. From the beginning of the labor bankruptcy process, people were divided into two groups: one supported bankruptcy and the other rejected it. This makes the situation more complicated.<sup>26</sup>

In the bankruptcy process, a state of bankruptcy can occur. In this case, Law No. 37 of 2004 stipulates that the curator cannot immediately take over the assets owned by the bankrupt. In some cases, this situation can extend the bankruptcy process until the distribution of sales proceeds is completed. Apart from this situation, the constant unrest among highly sensitive individuals who have lost their jobs makes life unpleasant for the general public, but sometimes they are also vulnerable to receiving false information, which can prolong the bankruptcy process.

Managing and settling bankruptcy assets in a manner that safeguards separatist creditors is the curator's responsibility. In responsibility of managing and settling bankruptcy assets is the curator. Law No. 37 of 2004 as a basis, a curator must sort out the authority he has to carry out his duties and authority:<sup>27</sup>

1. Authority that may be exercised without prior approval or notice from the debtor or any of the debtor's organs, even if such consent or notification is not required in circumstances outside the bankruptcy;
2. Authority can only be exercised with the approval of another party, namely the supervising judge. For example, a curator may grant liens, liens, or other security rights to the bankruptcy estate to obtain a loan from a third party.

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<sup>24</sup> Arihta Esther Tarigan and Syafrida Syafrida, "The Order of Creditors Prioritized in Receivables Repayment in Bankruptcy Cases," *SALAM: Journal of Social and Cultural Syar-I* 8, no. 2 (2021): 615–28, <https://doi.org/10.15408/sjsbs.v8i2.20363>.

<sup>25</sup> Nazhif Ali Murtadho, "Legal Protection of Preferred Creditors in the Settlement of Bankruptcy Proceedings," *Journal of Contemporary Law Studies* 2, no. 3 (2024): 207–26, <file:///C:/Users/User/Downloads/2.+2499+CE-1.pdf>.

<sup>26</sup> Anis Nur Nadhiroh, "Tanggung Jawab Kurator Terhadap Hak Pekerja," *Notaire* 2, no. 3 (2019): 297, <https://doi.org/10.20473/ntr.v2i3.16237>.

<sup>27</sup> Dewi Tuti Muryati, Dhian Septiandani, and Efy Yulistiyowati, "Pengaturan Tanggung Jawab Kurator Terhadap Pengurusan Dan Pembersihan Harta Pailit Dalam Kaitannya Dengan Hak Kreditor Separatis," *Jurnal Dinamika Sosial Budaya* 19, no. 1 (2017): 11, <https://doi.org/10.26623/jdsb.v19i1.682>.

The Manpower Law's Article 95 and Article 39 of Law No. 37 of 2004 limit separatist creditors' ability to execute their rights as if they had not filed for bankruptcy. As a result, regarding the administration and distribution of bankruptcy assets, separatist creditors are not afforded the same protections. In addition, the Supreme Court's ruling in Constitution No. 67/PW-XY20 13 determined that, if not correctly interpreted, Law No. 13 of 2003's Article 95, Paragraph 4 on Manpower (Republic of Indonesia Statute Book No. 39 of 2003, The 1945 Constitution of the Republic of Indonesia is in contradiction with Supplement to Statute Book of the Republic of Indonesia No. 4279: " Payments of other labor rights take precedence over all bills, including bills of state rights, auction offices, and public bodies established by the government, with the exception of bills of separatist creditors. Separatist creditors, auction offices, and bills of state rights are subordinated to the payment of labor workers' debts." Inevitably, a ruling that allows for the payment of worker wages to all creditors, including separatist creditors, will violate the rights of separatist creditors.<sup>28</sup>

#### 4. Conclusion

Managing and resolving bankruptcy assets is frequently hampered by the bankruptcy process's many roadblocks. These obstacles can create legal uncertainty because the decision to declare bankruptcy can be accelerated, which can lead to irregularities in the implementation of bankruptcy. The following are the things that make it difficult to handle and settle bankruptcy assets such that separatist creditors do not receive the distribution they are entitled to: The debtor has bad intentions, such as by embezzling bankruptcy assets when the curator records the debtor's assets. This indicates that the debtor has transferred the property to a new location with a retroactive date, so that by the time the curator records the property, it turns out that the debtor has nothing.

Lack of curatorial expertise in managing debtor assets declared bankrupt. This may be due to ordinary curators who don't know how to manage a business. While curators must have expertise in the legal field, they must also be able to manage the business, especially bookkeeping audits. Following adherence to Law No. 37 of 2004, specifically Article 55 paragraph (1) and its relationship to the Guarantee Law, the curator will present a list of bankruptcy distributions to the court. The Supervisory Judge (Court Decision), who has the authority to grant legal protection to separatist creditors in order to accomplish their legal rights, must give his or her consent for this to be carried out.

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