
**PROPORTIONALITIES OF JUDGE'S DECISIONS ON THE POSITION OF
CONCURRENT CREDITORS AS AN EFFORT TO ENFORCEMENT OF LEGAL
CERTAINTY OF THE PARTIES IN BANKRUPTCY DISPUTES**

Satino¹, Muhammad Fauzan²

^{1,2}Faculty of law, Universitas Pembangunan Nasional “Veteran” Jakarta, Indonesia

2110611053@mahasiswa.upnvj.ac.id

ABSTRACT; *Bankruptcy which is a condition in which the debtor is unable to make payments on his debts to creditors. In the dispute process, there is a sequence of creditor levels which will affect the settlement of creditor receivables, namely preferential, separatist and concurrent creditors. Concurrent creditors who are at the last level make their position very vulnerable to not getting their receivables repaid. This requires further research in this regard. This study uses a normative legal method which will analyze legal sources and legal literature related to the topics discussed. This research will discuss 1) what is the position of concurrent creditors in bankruptcy disputes and 2) how is the proportionality of the judge's decision on the position of concurrent creditors in bankruptcy disputes as an effort to enforce the legal certainty of the parties? The results of this study indicate that the position of concurrent creditors in bankruptcy disputes is that creditors are the most recent in paying off their receivables. Then the proportionality of the judge's decision on concurrent creditors is given to the supervisory judge as the party who has the authority to distribute the proceeds from the sale of the bankrupt debtor's assets. Concurrent creditors will receive results based on Article 189 Paragraph (3) Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Suspension Obligations.*

Keywords: Bankruptcy, Concurrent Creditors, Judge's Decision.

INTRODUCTION

Along with the development of an increasingly modern era, people are required to have a lifestyle that is in order to be able to meet their daily needs which continue to increase at this time. Starting from basic needs, complementary needs, and other needs. Not just to meet individual needs, but also for companies that have needs that need attention in order to improve the quality of the company itself. In meeting this need, it is not uncommon to involve several parties to meet these needs, one of which is a money-borrowing transaction which then creates debts. The lending and borrowing activities themselves are aimed at fulfilling needs or facilitating a business and can be carried out between communities as well as between financial institutions and other social institutions. Therefore, lending and borrowing money is an alternative that is very much needed by the community, this is also a supporter of economic development and becomes a connecting bridge in improving their standard of living.

The concept of a rule of law requires legal certainty for its citizens.¹ In addition, the enforcement of legal certainty has a close relationship with the enforcement of citizens' human rights because it relates to the fulfillment of people's rights to obtain certainty in the law itself. This is in line with FJ Stahl's statement in compiling the characteristics of a *rechtstaat* law state, namely: 1) protection and enforcement of human rights; 2) there is a separation of powers; 3) government based on law; and 4) the existence of administrative justice.² This provision exists until now so that a system is created within the state and fulfillment of human rights in society as well. In addition, the

¹ Nettu Endrawati, “Perlindungan Hukum Terhadap Pekerja Anak di Sektor Informal (Studi Kasus Di Kota Kediri)”, *Jurnal Dinamika Hukum* 12, no. 2 (2012), 273. **Lihat juga** Sita Agustina, “Analisis Tentang Pengaturan Oleh Pemerintah Dalam Sistem Pemerintahan Negara Hukum Indonesia”, *Jurnal Cakrawala Hukum* 5, no. 2 (2014), 171.

² Zaherman Armandz Muabezi, “Negara Berdasarkan Hukum (*Rechtsstaats*) Bukan Kekuasaan (*Machtsstaat*) Rule of Law And Not Power State,” *Jurnal Hukum dan Peradilan* 6, no. 3 (2017): 426. **See also** M. Muslih, “Negara Hukum Indonesia dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)”, *Legalitas* 4, no. 1 (2017): 132.

bankruptcy mechanism also accompanies the fulfillment of the human rights of creditors whose money is used or borrowed by the debtor. With this mechanism in place, debtors who are negligent to 2 or more creditors can be subject to coercive action according to procedures regulated by law.

In the theory of legal objectives presented by Gustav Radbruch stated that there are 3 (three) priorities in its realization, namely: 1) Legal Justice; 2) Legal Benefits; and 3) Legal Certainty.¹ According to radbruch, the priority above allows the legal system to avoid internal disputes. Therefore, the three priorities are also relative, can change according to needs. At one time, justice was highlighted and urged the use and certainty of law in the border areas. In the event of a bankruptcy dispute, this allows for legal uncertainty between the parties. Especially with the different positions of creditors, this becomes even more visible.

The party that borrows is referred to as the debtor. Debtors usually borrow from other parties known as creditors. The creditor will lend a certain amount of money to the debtor by binding themselves above the agreement. When this debtor breaks his promise and the debtor has debts with 2 other creditors, the debtor can be filed with the commercial court for bankruptcy. In addition, the position of concurrent creditors is also worrying that they are not positionally strong in a bankruptcy dispute. This makes their legal position uncertain so that further research is needed regarding their legal position in a bankruptcy dispute. Based on the background above, the formulation of the problems to be discussed are: 1) what is the position of concurrent creditors in bankruptcy disputes, and 2) What is the proportionality of the judge's decision on the position of concurrent creditors in bankruptcy disputes as an effort to enforce the legal certainty of the parties?

PROBLEM

1. How is the position of concurrent creditors in bankruptcy disputes?
2. How is the proportionality of the judge's decision on the position of concurrent creditors in bankruptcy disputes as an effort to enforce the legal certainty of the parties?

RESEARCH METHODS

The type of research that will be used in this study is normative juridical research. Juridical law research is library law research which is carried out by examining library materials or mere secondary data.³ This research was conducted in order to obtain materials in the form of theories, concepts, legal principles and legal regulations related to the subject matter.⁴ In research with the type of normative law, it basically shows an existing provision. This approach is carried out so that researchers get information from various aspects to find the issues to be answered. Therefore, the approach in this study is the statutory approach, which is research on legal products.⁵ This statutory approach is taken to examine all laws and regulations related to the research being the topic of discussion. This approach will open up opportunities for researchers to study whether there is consistency or suitability between one law and another.⁶

DISCUSSION

Position of Concurrent Creditors in Bankruptcy Disputes

Bankruptcy which is a condition in which the debtor is unable to make payments on his debts to creditors.⁷ The condition of not being able to pay is usually caused by difficulties in the financial condition of the debtor's business which has experienced setbacks. A bankruptcy decision is a court decision resulting in a general confiscation of all the assets of the bankrupt debtor, both

³ Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tujuan Singkat*, (Jakarta: RajaGrafindo, 2003), hlm. 13.

⁴ *Ibid*, hlm. 14.

⁵ Balder Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Bandung: Mandar Maju, 2008), hlm. 92.

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2010), hlm. 93.

⁷ Muhammad Ackbar, "Pertanggungjawaban Debitor pailit Terhadap Utang yang Belum Terlunasi Dalam perkara Kepailitan", *Kertha Semaya* Vol. 3 No. 1, (2015), hlm. 1. <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/37818>.

existing and those that will exist in the future.⁸ Based on Article 2 of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt, bankruptcy is "a general confiscation of all the assets of a bankrupt debtor whose management and settlement are carried out by the curator under the supervision of the Supervisory Judge". A person (debtor) can be declared bankrupt if he meets the requirements as stipulated in Article 2 paragraph (1), namely: a. the debtor has two or more creditors; b. does not pay at least one debt that is due and collectible; and c. at his own request or at the request of one or more creditors.

An application for Suspension of Obligations for Payment of Debt (PKPU) is submitted to the Commercial Court if the debtor or one of the creditors predicts that he will not be able to pay his debts which are due and collectible.⁹ Meanwhile, parties that can apply for bankruptcy are: a. the debtor himself; b. one or more creditors; c. Attorney for public interest; d. Bank Indonesia; e. Capital Market Supervisory Agency; and f. Minister of Finance.¹⁰ The main purpose of bankruptcy is to distribute assets resulting from debtors' debts to creditors by the Curator. Bankruptcy is carried out to prevent separate confiscation or separate execution by creditors and replace it by holding a joint confiscation so that the debtor's wealth can be distributed to all creditors in accordance with their respective rights. Bankruptcy institution is basically an institution that provides a solution to the parties if the debtor stops paying, the bankruptcy institution basically has two functions at once, namely:¹¹ 1) Bankruptcy as an institution providing guarantees to creditors that the debtor will not commit fraud and remains responsible for all of his debts to all creditors; and 2) Bankruptcy as an institution that also provides protection to creditors against the possibility of mass execution by creditors.

So the existence of provisions regarding bankruptcy either as an institution or as a special legal remedy is a series of principles that adhere to the principles in accordance with the provisions stipulated in Articles 1131 and 1132 of the Civil Code. There are 2 parties in the bankruptcy process, namely the debtor and the creditor¹³. Based on Article 1 paragraph (2), creditors are people who have receivables due to agreements or laws that can be collected before a court. In the event of bankruptcy, the presence or existence of a creditor has an important function as stated in Article 2 paragraph (1), namely as a party that can submit a bankruptcy application to a debtor who does not fulfill his debt or obligation to transfer a certain amount of money at a specified time.

The division and grouping of creditors in general civil law is regulated in the Civil Code which divides creditors into 3 types, namely a) Preferred creditors born by agreement (Articles 1133, 1134 of the Civil Code); b) Preferred creditors born by law (Articles 1139, 1149 of the Civil Code); and c) Concurrent creditors (Articles 1131, 1132 of the Civil Code).¹² Meanwhile, the classification and grouping of creditors in bankruptcy law contains the principle of structured creditors, namely the principle that classifies and classifies various types of creditors according to their respective classes. The division of creditors in bankruptcy divides the types of creditors into 3 types, namely: a. Separatist creditors, namely holders of mortgages, pledges and other collateral; b. Preferred creditor, namely based on Article 1139 and Article 1149 of the Civil Code; c. Concurrent creditors or competing creditors.¹³

Creditors who have material guarantees (collateral rights), such as mortgage holders, mortgages, mortgages, fiduciaries, and others (Article 56 of Law Number 37 of 2004 concerning KPKPU) are

⁸ Arumi Riezky Sari dan Iwan Erar Joesoef, "Peran Kurator Dalam Penanganan Kepailitan: Studi Lambatnya Pelaksanaan Putusan Kepailitan", *National Conference on Law Studies (NCOLS)* Vol. 2, No. 1 (2020): 234.

⁹ Sulistiyono Catur Kurnia Putra dan Iwan Erar Joesoef, "Hak Mendahului Penerimaan Negara Bukan Pajak dalam Memperoleh Pelunasan Utang dalam Penundaan Kewajiban Pembayaran Utang PT Internux", *National Conference on Law Studies (NCOLS)* Vol. 2, No. 1 (2020): 220.

¹⁰ Mulyani Zulaeha, "Penyelesaian Sengketa Kepailitan Yang Memuat Klausula Arbitrase", *Jurnal Cita Hukum* Vol. 2, No. 1 (2010): 191.

¹¹ Arumi Riezky Sari dan Iwan Erar Joesoef, *Loc. cit.*

¹² Rai Mantili and Putu Eka Trisna Dewi, "Perlindungan Kreditor Konkuren Dalam Hukum Kepailitan," *Akses Jurnal Penelitian dan Pengabdian Kepada Masyarakat* 12, no. 2 (2020): 98.

¹³ Metalia Puspitasari, "Eksekusi Objek Jaminan Fidusia Atas Debitor Yang Dinyatakan Pailit", *Skripsi Thesis Universitas Airlangga* (2014): 32. **See also** R.M. Taufik Husni, "Kedudukan Kreditor Hak Tanggungan Dalam Kepailitan," *Supremasi Hukum* 16, no. 2 (2020): 109 – 110.

referred to as separatist creditors. Creditors with guarantees that are not material guarantees (such as guarantees, including bank guarantees) are not separatist creditors. Thus what is meant by separatist creditor rights are rights obtained by law to the right holder, namely the creditor holding the guarantee right to continue to have the right to exercise his execution rights even if the debtor is declared bankrupt by a commercial court decision.¹⁴

Creditors who have privileges that have been determined by law so that their rights take precedence in bankruptcy are called preferred creditors. Such as the provisions in Article 1149 of the Civil Code (creditors whose bills are billed first against the proceeds from the sale of all the assets of the Bankrupt Debtor). and creditors contained in Article 1139 (creditors whose claims take precedence regarding proceeds from the sale of an entity). Creditors referred to in 2 (two) articles above must take precedence because they have special rights in bankruptcy disputes.¹⁵ Based on the rights owned, preferred creditors are divided into secured creditors and privileged creditors.¹⁶

Concurrent creditors are competing creditors, which means that concurrent creditors do not have any privileges so that their positions are equal to one another.¹⁷ These creditors compete with each other to obtain payment from the auction results, so that their position is not prioritized in settlement.¹⁸ These creditors are not included in separatist creditors and preferential creditors as stipulated in Article 1131 jo. Article 1132 of the Civil Code which explains that the creditor has no preference in paying off his receivables, because the concurrent creditor is a creditor who is not privileged and/or is not a creditor who was previously agreed upon. So that receivables from concurrent creditors are receivables that are included in the bankrupt bank if the debtor is declared bankrupt by his creditors. As well as the repayment must also wait for the results of the remaining settlement or auction of bankrupt assets and the remaining settlement must be distributed after previously deducting the obligation to pay receivables to creditors holding collateral rights and creditors with privileges proportionally according to the ratio of the amount of receivables of each of these concurrent creditors (share *pari passu pro rata parte*).¹⁹ So that the position of the concurrent creditor in bankruptcy procedural law is very worrying because it is in the last position of all existing creditors. This creates legal uncertainty for concurrent creditors when they will obtain their rights in the division or settlement of the bankrupt debtor's assets.

Proportionality of the Judge's Decision on the Position of Concurrent Creditors in Bankruptcy Disputes as an Effort to Enforce Legal Certainty of the Parties

Before that, it is necessary to know about the form of the judge's decision from the commercial court relating to bankruptcy disputes. A verdict is a statement by a judge that is pronounced in a trial that is open to the public, with the aim of ending the case before him.²⁰ According to Zairin Harahap, a judge's decision is a statement delivered by a judge, as a state official who is authorized by attribution for that, uttered in court and aims to end or resolve a case or dispute between the parties.²¹ Thus, a decision can be said to be a statement uttered by a judge in court and open to the public except for other cases regulated by law, with the aim of ending a case.

¹⁴ Yohanes Alexander Kenting and Hizkia Dapot Parulian, "Kedudukan Kreditor Separatis Terhadap Rencana Perdamaian Dalam Proses Penundaan Kewajiban Pembayaran Utang," *ALETHEA Jurnal Ilmu Hukum* 5, no. 2 (2022): 95 – 96.

¹⁵ Heri Subagyo and I Made Kanthika, "Perlindungan Hukum Kreditor Separatis Terhadap Jaminan Kebendaan Pihak Ketiga dalam Perkara Kepailitan (Studi Kasus Perkara Kepailitan Nomor: 21/Pdt.Sus.Gugatan Lain-lain/2019 PN.Niaga.Sby., jo. Perkara Nomor 18/Pdt.Sus/PKPU/2018/PN.Sby)", *Journal Equitable* 8, no. 2(2023): 216 – 217. **See also** Falahdika Rakasatutya, Yulim, Hengki Andora, "Kedudukan Denda Keterlambatan Pelaksanaan Pekerjaan Konstruksi Dalam Kepailitan," *UNES Journal of Swara Justisia* 7, no. 1 (2023): 501.

¹⁶ Sutan Remy Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan* (Jakarta: Prenada Group, 2015), p. 13.

¹⁷ Man S. Sastrawidjaja, *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*. (Bandung: Alumni, 2014), hal.127.

¹⁸ Trisadini Prasastinah Usanti dan Leonora Bakarbesy, *Buku Referensi Hukum Perbankan Hukum Jaminan*. (Surabaya: Revka Petra Media, 2013), hal. 7.

¹⁹ Sutan Remy Sjahdeini, *Hukum Kepailitan*. (Jakarta: Grafiti, 2010), hal. 6-7.

²⁰ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*. (Yogyakarta: Liberty, 2021), p. 201.

²¹ Zairin Harahap, *Hukum Acara Peradilan Tata Usaha Negara*, (Jakarta: RajaGrafindo Persada, 2014) p. 162.

In the scattered doctrine, there are 3 (three) types of court decisions based on their nature, namely as follows:²² a) Declaratory decision is a decision that contains a statement or confirmation regarding a situation or legal position (relationship) between the litigants; b) Constitutief decisions are decisions that create or abolish certain legal relationships; and c) Condemnatoir decision is a decision which contains a sentence of punishment, namely a sentence which punishes or charges one or both parties to do or not to do a legal act.

The judge's decision regarding the bankruptcy dispute is contained in Article 2 Paragraph (1) jo. Article 8 Paragraph (4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt in which Article 2 Paragraph (1) explains that "*Debtors who have two or more creditors and do not pay off at least one debt that has matured and billable, declared bankrupt by a Court decision, either at his own request or at the request of one or more of his creditors.*" Then Article 8 Paragraph (4) which explains that "*The application for a declaration of bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as referred to in Article 2 paragraph (1) have been fulfilled.*" So that in this case, the decision of the bankruptcy dispute can grant the bankruptcy request. If interpreted *a contrario*, then the court may also reject the bankruptcy application if it does not meet the requirements referred to in Article 2 Paragraph (1) and Article 8 Paragraph (4) of Law Number 37 of 2004 concerning Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt.

When compared with the types of decisions above, the commercial court judge's decision on bankruptcy disputes has a constitutive nature. This is because the judge's decision to accept or reject the bankruptcy application is the creation of a new legal situation which changes the previous legal situation. Bankruptcy includes all of the debtor's assets at the time the decision statement was pronounced as well as everything that was obtained during the bankruptcy as stipulated in Article 21 of the Bankruptcy Law.²³ on the control and management of assets included in bankruptcy as of the date of said bankruptcy.²⁴

Then it goes to the matter of proportionality of the decisions that have been decided by the Panel of Judges of the commercial court. As is well known, the commercial court judge's decision is only constitutive, which means that the decision only changes the legal situation of the bankrupt debtor and does not have a condemnatory content as contained in a civil decision. Decisions in civil proceedings have a punitive content which, if requested by the disputing parties and the panel of judges, is permitted to punish the losing party if requested by the disputing parties first.²⁵ That can consist of giving, doing, and not doing. This is a logical consequence of the passive judge principle adopted in ordinary civil procedural law where the judge cannot punish the losing party *ex-officio*.

However, because arrangements regarding bankruptcy are regulated specifically in special laws as well, the principle of *lex specialis derogat legi generalis* applies, which principle explains that specific laws and regulations will override general laws and regulations.²⁶ So that in this case, settlement of bankruptcy disputes has been regulated in a special law which is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt and overrides the procedural provisions in the HIR and Rbg as *lex generalis* of civil procedural law in Indonesia.

²² Asnawi MN, 2014, *Hermeunika Putusan Hakim*, (Yogyakarta: UII Press, 2014), hlm. 13.

²³ Runarianu Rachmat & Suherman, "Perlindungan Hukum Terhadap Kreditor Pemegang Jaminan Fidusia Terhadap Harta Debitor Yang Dinyatakan Pailit", *Jurnal Hukum* Vol. 11 No. 1, hlm. 95.

²⁴ Yuhelson, *Hukum Kepailitan di Indonesia*, (Gorontalo: Ideas Publishing), hlm. 134.

²⁵ M. Yahya Harahap, *Ruang Lingkup Permasalahan Bidang Eksekusi Perdata*, (Jakarta: Sinar Grafika, 2009). **Lihat juga** Finallisa, Widhi Handoko & Mujiono Hafidh Prasetyo, "Pelaksanaan Putusan Yang Bersifat Condemnatoir dalam Perkara Pembagian Harta Bersama (Studi Kasus di Pengadilan Agama Kudus)", *Notarius* Vol. 13 No. 1, (2020), hlm. 360. <https://doi.org/10.14710/nts.v13i1.30468>.

²⁶ Munir Fuady, *Hukum Jaminan Utang*, (Jakarta: Erlangga, 2013) hlm. 96-97. **Lihat juga** Titie Syahnaz Natalia, "Akibat Hukum Kepailitan terhadap Kreditor Pemegang Hak Tanggungan dalam Eksekusi hak Tanggungan", *Jurnal Manajemen dan Bisnis Sriwijaya*, Vol. 16 No. 3, (2018) hlm. 159.

The proportionality of the judge's decision is carried out at the discretion of the supervisory judge as one of the parties that implements the decision apart from the curator and creditors. The curator has the authority to carry out settlements and list the distribution of each bankrupt debtor's assets to pay off his debt to creditors. However, the one who has the authority to approve it is the Supervisory Judge.²⁷ So that in this case the curator's authority is only to make a list and does not have the authority to make an approval, so that in this case, the list from the curator which has not been approved by the Supervisory Judge does not yet have legal force to be carried out. execution. The distribution list made by the Curator contains the following: a) details of receipts and expenditures including Curator's wages; b) Creditor's name; c) the matched amount of each receivable; and d) the portion that must be received to Creditors.

Concurrent creditors according to the creditor hierarchy have the lowest level. So that in this case the concurrent creditors are at a disadvantage because if all the assets of the bankrupt debtor are used up to become creditors' receivables, then the concurrent creditors have the opportunity to get nothing in a bankruptcy dispute. Even though legally standing, concurrent creditors have the right to apply for bankruptcy to the commercial court to be able to apply for bankruptcy of the debtor because they do not pay their credit to creditors. Legal Standing can be interpreted as a situation in which a person or group of people is declared or determined to fulfill the requirements and therefore has the right to file an application or lawsuit before a court.²⁸ Legal standing also means reasons that can be accepted by the applicant or plaintiff to be able to file a lawsuit or request to the competent court in accordance with their competence when there is a dispute or violation of law.²⁹

This has been regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations which is stated in Article 189 Paragraph (3) of the Bankruptcy Law which states that "Concurrent creditors must be given the portion determined by the Supervisory Judge." In that article it is emphasized that concurrent creditors must receive a share of the bankrupt debtor's assets as payment for creditors' receivables, although there is no regulation regarding the amount, both nominally and as a percentage. Even so, the part must be placed last in a bankruptcy dispute. Through his authority, the supervisory judge will determine the share that must be obtained by concurrent creditors. In addition, in practice the supervisory judge asks the curator to be able to accommodate the share of concurrent creditors in the range of 5% to 10% of the proceeds from the sale of assets/assets that will be distributed to creditors.³⁰

The relevance to the position of concurrent creditors is the placement of separatist creditors which are above the concurrent creditors and results in all assets guaranteed by the bankrupt debtor to separatist creditors must take precedence to become settlement of separatist creditors' receivables. Meanwhile, the position of concurrent creditors is when all sales of assets belonging to the bankrupt debtor have paid off the receivables of separatist and preferential creditors, then the remainder of the sale must be handed over to the concurrent creditors. Thus, when the rights of concurrent creditors are fulfilled, legal certainty between the parties is achieved as stated by Gustav Radbruch in the theory of legal objectives. Moreover, the rights of concurrent creditors still exist even though they are not a priority in paying off their receivables. But that doesn't mean it's not recognized.

²⁷ See Article 189 Paragraph (1) Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt.

²⁸ Rahmah, I.F., Triningsih, A., Harumdani, A., & Kurniawan, N. (2011). Dasar Pertimbangan Yuridis Kedudukan Hukum (Legal Standing) Kesatuan Masyarakat Hukum Adat dalam Proses Pengujian Undang-Undang di Mahkamah Konstitusi. *Jurnal Konstitusi*, 8(5): 5 – 6. **Lihat juga** Mertokusumo, S. (1981). *Hukum Acara Perdata Indonesia cet. ke-3*. (Yogyakarta: Liberty, 1981), p. 23. **Lihat juga** Harjono. (2008). *Konstitusi sebagai Rumah Pemikiran Hukum Dr. Harjono, S.H., M.C.L Wakil Ketua MK*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, p. 176.

²⁹ Lee, E.T., & Ellis, J.M. (2012). The Standing Doctrine's Dirty Little Secret. *Northwestern University Law Review*, 107(1): 185. **Lihat juga**, Rosenkranz, N.Q. (2010). The Subjects of The Constitution. *Stanford Law Review*, 62(5): 1240.

³⁰ Haris Setiadi, "Adakah Aturan Besaran Harta Pailit bagi Kreditor Konkuren," *Hukum Online*, <https://www.hukumonline.com/klinik/a/adakah-aturan-besaran-harta-pailit-bagi-kreditor-konkuren-lt6283499e15a62>, Diakses pada tanggal 1 Desember 2022 Pukul 17.38.

CONCLUSION

In the event of bankruptcy, the presence of a creditor has an important function as stated in Article 2 paragraph (1), namely as a party that can apply for bankruptcy to a debtor who does not fulfill his obligation to transfer a certain amount of money at a certain time. In the Civil Code, the grouping of creditors is divided into 3, namely preferred creditors born by agreement, preferred creditors born by law, and concurrent creditors. Meanwhile, based on the structured creditors principle, creditors are divided into 3 types, namely separatist creditors, preferred creditors, and concurrent creditors.

Concurrent creditors are competing creditors, which means that concurrent creditors do not have privileges so that their positions are equal to each other, so they compete with each other to obtain payment for the auction results. So that receivables from concurrent creditors are receivables that are included in the bankrupt bank if the debtor is declared bankrupt by his creditors. As well as the repayment must also wait from the results of the remaining settlement or auction of bankrupt assets and the remaining settlement must be distributed after previously deducting the obligation to pay receivables to creditors holding collateral rights and creditors with special rights in proportion to the ratio of the amount of receivables. In the case of a judge's decision on a bankruptcy dispute, the application may be granted and may be rejected by the court if it does not meet the requirements referred to in Article 2 Paragraph (1) and Article 8 Paragraph (4) of Law Number 37 of 2004 concerning Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt. Then the proportionality of the judge's decision on the position of concurrent creditors in bankruptcy disputes as an effort to enforce legal certainty for the debtor loses his right to do something about the control and management of assets from the date of bankruptcy. whereas in this case, the concurrent creditor suffers a loss because if all the assets of the bankrupt debtor are used up to become the settlement of the creditor's receivables, then the concurrent creditor has the opportunity to get nothing in a bankruptcy dispute.

REFERENCES

- Ackbar, Muhammad. "Pertanggungjawaban Debitor pailit Terhadap Utang yang Belum Terlunasi Dalam perkara Kepailitan", *Kertha Semaya* 3, no. 1 (2015). <https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/37818>.
- Agustina, Sita. "Analisis Tentang Pengaturan Oleh Pemerintah Dalam Sistem Pemerintahan Negara Hukum Indonesia". *Jurnal Cakrawala Hukum* 5, no. 2 (2014).
- Asnawi MN. (2014). *Hermeunika Putusan Hakim*, (Yogyakarta: UII Press, 2014).
- Endrawati, Nettu. "Perlindungan Hukum Terhadap Pekerja Anak di Sektor Informal (Studi Kasus Di Kota Kediri)", *Jurnal Dinamika Hukum* 12, no. 2 (2012).
- Finallisa, Widhi Handoko and Mujiono Hafidh Prasetyo. "Pelaksanaan Putusan Yang Bersifat Condemnatoir dalam Perkara Pembagian Harta Bersama (Studi Kasus di Pengadilan Agama Kudus)", *Notarius* Vol. 13 No. 1, (2020), hlm. 360. <https://doi.org/10.14710/nts.v13i1.30468>.
- Fuady, Munir. *Hukum Jaminan Utang*, (Jakarta: Erlangga, 2013).
- Harahap, M. Yahya. *Ruang Lingkup Permasalahan Bidang Eksekusi Perdata*, (Jakarta: Sinar Grafika, 2009).
- Harahap, Zairin. *Hukum Acara Peradilan Tata Usaha Negara*, (Jakarta: RajaGrafindo Persada, 2014).
- Harjono. (2008). *Konstitusi sebagai Rumah Pemikiran Hukum Dr. Harjono, S.H., M.C.L Wakil Ketua MK*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, p. 176.
- Husni, R.M. Taufik. "Kedudukan Kreditur Hak Tanggungan Dalam Kepailitan," *Supremasi Hukum* 16, no. 2 (2020).

- Kenting, Yohanes Alexander and Hizkia Dapot Parulian. "Kedudukan Kreditor Separatis Terhadap Rencana Perdamaian Dalam Proses Penundaan Kewajiban Pembayaran Utang," *ALETHEA Jurnal Ilmu Hukum* 5, no. 2 (2022).
- Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt.
- Lee, E.T., & Ellis, J.M. (2012). The Standing Doctrine's Dirty Little Secret. *Northwestern University Law Review*, 107(1): 185.
- Mantili, Rai and Putu Eka Trisna Dewi, "Perlindungan Kreditor Konkuren Dalam Hukum Kepailitan," *Akses Jurnal Penelitian dan Pengabdian Kepada Masyarakat* 12, no. 2 (2020): 98.
- Marzuki, Peter Mahmud. *Penelitian Hukum*, (Jakarta: Kencana, 2010).
- Mertokusumo, S. *Hukum Acara Perdata Indonesia cet. ke-3*. (Yogyakarta: Liberty, 1981).
- Mertokusumo, Sudikno. *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty, 2021).
- Muabezi, Zaherman Armandz. "Negara Berdasarkan Hukum (*Rechtsstaats*) Bukan Kekuasaan (*Machtsstaat*) Rule of Law And Not Power State," *Jurnal Hukum dan Peradilan* 6, no. 3 (2017).
- Muslih, M. "Negara Hukum Indonesia dalam Perspektif Teori Hukum Gustav Radbruch (Tiga Nilai Dasar Hukum)". *Legalitas* 4, no. 1 (2017).
- Nasution, Balder Johan. *Metode Penelitian Ilmu Hukum* (Bandung: Mandar Maju, 2008).
- Natalia, Titie Syahnaz. "Akibat Hukum Kepailitan terhadap Kreditor Pemegang Hak Tanggungan dalam Eksekusi hak Tanggungan", *Jurnal Manajemen dan Bisnis Sriwijaya* 16, no. 3 (2018).
- Puspitasari, Metalia "Eksekusi Objek Jaminan Fidusia Atas Debitor Yang Dinyatakan Pailit", Skripsi Thesis Universitas Airlangga (2014): 32.
- Putra, Sulistiyono Catur Kurnia dan Iwan Erar Joesoef, "Hak Mendahului Penerimaan Negara Bukan Pajak dalam Memperoleh Pelunasan Utang dalam Penundaan Kewajiban Pembayaran Utang PT Internux", *National Conference on Law Studies (NCOLS)* 2, no. 1 (2020).
- Rachmat Runarianu and Suherman. "Perlindungan Hukum Terhadap Kreditor Pemegang Jaminan Fidusia Terhadap Harta Debitor Yang Dinyatakan Pailit". *Jurnal Hukum* Vol. 11 No. 1.
- Rahmah, I.F., Triningsih, A., Harumdani, A., & Kurniawan, N. (2011). Dasar Pertimbangan Yuridis Kedudukan Hukum (Legal Standing) Kesatuan Masyarakat Hukum Adat dalam Proses Pengujian Undang-Undang di Mahkamah Konstitusi. *Jurnal Konstitusi*, 8(5): 5 – 6.
- Rakasatutya, Falahdika, Yulim and Hengki Andora. "Kedudukan Denda Keterlambatan Pelaksanaan Pekerjaan Konstruksi Dalam Kepailitan." *UNES Journal of Swara Justisia* 7, no. 1 (2023).
- Rosenkranz, N.Q. (2010). The Subjects of The Constitution. *Stanford Law Review*, 62(5): 1240.
- Sari, Arumi Riezky dan Iwan Erar Joesoef. "Peran Kurator Dalam Penanganan Kepailitan: Studi Lambatnya Pelaksanaan Putusan Kepailitan", *National Conference on Law Studies (NCOLS)* Vol. 2, No. 1 (2020): 234.
- Sastrawidjaja, Man S. *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*. (Bandung: Alumni, 2014).
- Setiadi, Haris. "Adakah Aturan Besaran Harta Pailit bagi Kreditor Konkuren," *Hukum Online*, <https://www.hukumonline.com/klinik/a/adakah-aturan-besaran-harta-pailit-bagi-kreditor-konkuren-lt6283499e15a62>, Diakses pada tanggal 1 Desember 2022 Pukul 17.38.
- Sjahdeini, Sutan Remy. *Hukum Kepailitan*. (Jakarta: Grafiti, 2010).
- Soekanto Soerjono and Sri Mahmudji. *Penelitian Hukum Normatif, Suatu Tujuan Singkat* (Jakarta: RajaGrafindo, 2003).
- Subagyo, Heri and I Made Kanthika. "Perlindungan Hukum Kreditor Separatis Terhadap Jaminan Kebendaan Pihak Ketiga dalam Perkara Kepailitan (Studi Kasus Perkara Kepailitan Nomor: 21/Pdt.Sus.Gugatan Lain-lain/2019 PN.Niaga.Sby., jo. Perkara Nomor 18/Pdt.Sus/PKPU/2018/PN.Sby)." *Journal Equitable* 8, no. 2 (2023).
- Sutan Remy Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan* (Jakarta: Prenada Group, 2015), p. 13.

Usanti, Trisadini Prasastinah and Leonora Bakarbesy. *Buku Referensi Hukum Perbankan Hukum Jaminan*. (Surabaya: Revka Petra Media, 2013).

Yuhelson. *Hukum Kepailitan di Indonesia*, (Gorontalo: Ideas Publising).

Zulaeha, Mulyani. "Penyelesaian Sengketa Kepailitan Yang Memuat Klausula Arbitrase", *Jurnal Cita Hukum* 2, no. 1 (2010).