

The Legal Protection for Concurrent Creditors in the Context of Enforcing Bankruptcy Cases

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Article	Abstract.
Keywords: Bankruptcy; Concurrent; Creditors; Protection.	<i>This study aims to find out and find out about the form of legal protection regulations given to concurrent creditors. This study uses a normative juridical approach. Basically, Act No. 37 of 2004 has provided legal protection to concurrent creditors against actions by bankrupt debtors, separatist creditors, curators and supervisory judges, namely: (a) legal protection for creditors concurrent against the bankrupt debtor: confiscation of collateral (Article 10), immediate decision [Article 8 paragraph (7) and Article 16]], silence [Article 24, Article 25, Article 27, Article 34, Article 40 paragraph (1), and Article 97), Actio pauliana (Article 30 and Article 41 - Article 47), forced corporal (Article 93 - Article 96), sealing of bankruptcy assets (Article 99), objections to requests for rehabilitation (Articles 218 and Article 220), and supervision of debtor communications (Article 105); legal protection for concurrent creditors against separatist creditors.</i>
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1. Introduction

Today's people's lives continue to develop, this development is the increasing number of business entities (companies) with the legal status of PT (Limited Liability Company). In achieving these goals, of course, the company must have a very good business strategy.¹ However, the large number of PTs can also cause problems where in carrying out their business it can cause losses to other parties, namely creditors.

Loans provided by creditors can include, among other things, credit from banks,

¹ Muhammad Syahri Ramadhan, Yunial Laily, and Irsan, Analisis Hukum Perjanjian Kerja Sama Investasi Antara Persekutuan Komanditer Dan Investor Asing Menurut Hukum Investasi di Indonesia, *Jurnal Lex Librum* Vol 5, no.1 (2018), p.771–780

credit from companies other than banks, or loans from individuals (personal) based on a credit agreement, or an agreement to borrow money that must be repaid at a time agreed between the creditor and debtor. Banking transparency then becomes a new phenomenon in the banking world recently in Indonesia. A general awareness that is understood by banking business actors and customers is that the rules regarding the principle of prudence are very vague and the solution must be translated broadly.²

During the process of applying for the loan, the debtor must have good faith and must be able to convince the creditor that the debtor will be able to repay the loan. Without trust from the creditor to the debtor, the creditor will not provide the credit or loan.³ Bankruptcy law has a very important role in the traffic of business activities. As a law that functions to guarantee protection for every aspect of life and every legal relationship, then bankruptcy law plays a role in providing guarantees for the certainty of debt settlement disputes between business actors by regulating the protection of the interests of each party.⁴

The legal relationship between creditors and debtors occurs when both parties sign a loan agreement. By signing the loan agreement, both parties have agreed to the contents and intent of the agreement, and thus the principle of binding force applies, namely that the parties are bound to the agreement not solely limited to what was agreed, but also to other elements as long as required by custom and decency and morals, so that moral, decency and custom principles bind the parties. In consensual agreements, the Civil Code (*KUHPerdata*) stipulates that as soon as an agreement is reached, an agreement is born, which at the same time issues an agreement between the parties who have agreed and promised.⁵

Article 32 of Act No. 40 of 2007 concerning Limited Liability Companies, if it runs and develops its business, it has debts from two or more creditors and if it is no longer able to pay its debts to creditors it can be declared bankrupt. The choice for the bankruptcy of a company is an alternative to settling debts through bankruptcy legal institutions in a fast, fair, open and effective manner. Based on the understanding of bankruptcy, if it is proven that the board of directors has a responsibility or joint

² Muhammad Hatta Pratama, Implementasi Perlindungan Hukum Bagi Kreditor Dalam Pemberian Kredit Modal Kerja Tanpa Agunan (Studi Di Danamon Simpan Pinjam Unit Turen), *Arena Hukum*, Vol 7, No1, April 2014, p.34.

³ Sutan Remy Sjahdeini, *Hukum Kepailitan, Memahami Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan*, Edisi 3, Jakarta, 2009, p. 3.

⁴ Lambok Marisi Jakobus Sidabutar, Hukum Kepailitan dalam Eksekusi Harta Benda Korporasi sebagai Pembayaran Uang Pengganti, *Jurnal Antikorupsi INTEGRITAS*, Vol 5 No (2) 2019, p.75-86

⁵ Kartini Muljadi dan Gunawan Widjaja, *Hak Tanggungan, Seri Hukum Harta Kekayaan*, Kencana Prenada Media Group, Jakarta, 2008, p. 22.

responsibility for the bankrupt company due to irregularities committed. Therefore, all directors are responsible to the company they lead with any negligence committed to providing legal consequences for the board of directors. Moreover, they used the directors' assets to cover up loans, including a tax debt issued with a tax assessment letter.⁶

Considering that the settlement of debts through civil courts requires a long time, the government issued Government Regulation in Lieu of Law (Perpu) Number 1 of 1998 concerning Amendments to the 1905 Bankruptcy Law. This Perpu was later ratified to become Act No. 4 of 1998. 1998 and later changed to Act No. 37 of 2004. The purpose of bankruptcy law is the purpose of the existence of regulations regarding bankruptcy and postponement of debt payment obligations, namely 1) to avoid seizure of the Debtor's assets if at the same time there are several Creditors who collect their receivables from debtor; 2) to prevent Creditors holding material collateral rights from claiming their rights by selling the Debtor's property without regard to the interests of the Debtor or other Creditors; and 3) to prevent any fraud committed by one of the Creditors or the Debtor himself.⁷

Bankruptcy law has a very strategic position in the national business law system however, the applicable bankruptcy law in Indonesia still contains many weaknesses, therefore substantively the bankruptcy law needs to be updated again so that it can be in line with the times and can provide more legal protection for the parties involved in the bankruptcy process primarily provide legal protection for debtors and creditors.⁸

Based on the description above, it can be briefly stated that the purpose of bankruptcy is the distribution of the debtor's wealth to all creditors with due regard to their respective rights. Bankruptcy law provides a mechanism in which creditors can jointly determine whether the debtor's company or assets should continue as a going concern or not and can force minority creditors to take part in a scheme due to a voting procedure. In the Explanation of Act No. 37 of 2004 explains the reasons related to the need for bankruptcy arrangements and postponement of debt payment obligations.⁹

If a company goes bankrupt, the concurrent creditors will suffer the most. Act No.

⁶ Nuki, The Board of Directorsof a Bankrupt Company's Civil Liability for Obtained Taxes, *Cepalo*, Volume 5 Number 2, July-December 2021, p.131-140

⁷ Imanuel Rahmani, Perlindungan Hukum Kepada Pembeli Dalam Kepailitan Pengembang (*Developer*) Rumah Susun, *Jurnal Hukum Bisnis Bonum Commune*, Vol I, No 1 August 2018, p.73-88

⁸ Muhammad Ridduwan dan Fitriah, Kedudukan Hukum Kepailitan Dalam Sistem Hukum Bisnis Nasional, *Solusi*, Vol 20 No 3 2022, p.328-340

⁹ Act No. 37 of 2004 Concerning Bankruptcy and Suspension of Obligations for Payment of Debt.

37 of 2004 was born to provide legal protection for Debtors and Creditors. Legal protection for debtors and creditors can be seen from the requirements, procedural process, evidence, settlement, and settlement.¹⁰ Because they do not have collateral rights from debtors or limited liability companies that are bankrupt, so that in the settlement of bankrupt assets, concurrent creditors often do not or do not receive fulfillment of their receivables payments.

When a company's debt matures, it won't have enough cash to pay its present liabilities, so it'll have to wait a while to use other assets, such as collecting receivables, selling securities, or selling inventories or other assets.¹¹ The common thing that happens in bankruptcy cases is that when the bankruptcy assets are settled, there is no legal protection for concurrent creditors that they will be guaranteed the fulfillment of their receivables. In a bankruptcy case decision, declares that the company is bankrupt and appoints a supervisory judge and curator. However, there are two ways that can be done to get protection for concurrent creditors, namely: First, by way of Suspension of Debt Payment Obligations (PKPU), in which the debtor is given the opportunity within 270 days to pay off all of his debts, including to concurrent creditors, but if within that time the debtor does not pay all of his debts, then the debtor is declared bankrupt. Second, default where the creditor is given the opportunity to file a lawsuit for default to the local District Court.

This study aims to find out and find out about the form of legal protection regulations given to concurrent creditors in bankruptcy cases so as to create justice.

2. Research Methods

The approach method used in this legal research uses a normative juridical approach, Normative legal research methods can be interpreted as legal research at the level of norms, rules, principles, theories, philosophies, and legal rules in order to find solutions or answers to problems, whether in the form of legal vacuum, conflict of norms, or blurring of norms.¹² This research is armed with the methodological research of social sciences that is to be forced into the heart of jurisprudence. Virtually, the jurisprudence derives from values or norms. It can tragically be asserted that some Indonesian jurists have recently overridden the

¹⁰ Theresia Anita Christiani, Legal Analysis of Bankruptcy in The Perspective Of Legal Purposes, *Jurnal Pembaharuan Hukum*, Volume 8, Number 1, April 2021, p.73-85

¹¹ Risal Rinofah, Ratih Kusumawardhani, Virginia Athadhita Maha Putri, Factors Affecting Potential Company Bankruptcy During the Covid-19 Pandemic, *Jurnal Keuangan dan Perbankan* Volume 26, Issue 1 January 2022, p.208 - 228

¹² Yati Nuryati, Ifrani, M.Yasir Said, Metodologi Normatif dan Empiris Dalam Perspektif Ilmu Hukum, *Jurnal Penegakan Hukum Indonesia*, Volume 2, Issue 1, February 2021, p.1-20

normative legal research.¹³

3. Results and Discussion

3.1. Legal protection for concurrent creditors in the context of enforcing bankruptcy cases

In carrying out business activities, it is difficult to avoid the possibility of the emergence of risks that can affect business actors. The consequence is that if there is a risk that befalls the business world, it will have implications for delays in fulfilling obligations. Whereas a business to be included in the sense that a company must keep books of account, namely the calculation of profits and losses, the source of law and the scope of this company law are contained in the Civil Code (*KUHPerdata*) and the Commercial Code (*KUHD*).¹⁴

To overcome this condition, the right step to resolve bad loans, both for the benefit of creditors and debtors, is to provide benefits for both parties. There are many steps that can be taken to overcome this problem, one of which is to apply for bankruptcy. The bankruptcy of the company certainly makes investors and creditors feel worried about the state of the company. Therefore the actual risk of corporate bankruptcy can be seen and measured through the financial statements issued by the company.¹⁵

Bankruptcy is one way out to resolve debt disputes between debtors and creditors. Bankruptcy is a process in which a debtor who has financial difficulties paying his debts is declared bankrupt by a court, in this case a commercial court, because the debtor cannot pay his debts. However, before being declared bankrupt by the commercial court, the debtor can make peace efforts by submitting a Postponement of Debt Payment Obligations (PKPU).¹⁶

The rules that provide legal protection as a form of embodiment of justice are contained in Act No. 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Debt Payment, State Gazette of the Republic of Indonesia of 2004

¹³ Danang Hardianto, Reorientation Towards the Nature Of Jurisprudence In Legal Research, *Mimbar Hukum* Volume 26, No. 2, June 2014, p.340-353

¹⁴ Rizha Claudilla Putri, Partnership Legal Form in Indonesia and Its Comparasion in Malaysia, *Cepalo*, Vol 4 No 1, January-June 2020, p.15-28

¹⁵ Rieska Maharani, Tyasha Ayu Melynda Sari, Tourism Industry Bankruptcy Analysis of Impact Covid-19 Pandemic, *International Journal of Economics, Business and Accounting Research (IJEBAR)*, Vol-5, Issue-4, 2021, p.339-350

¹⁶ Rai Mantili, Putu Eka Trisna Dewi, Penundaan Kewajiban Pembayaran Utang (PKPU) Terkait Penyelesaian Utang Piutang Dalam Kepailitan, *Aktual Justice*, Vol.6, No.1 June 2021, p.1

Number 131, Supplement to State Gazette Number 4443. In the event that a debtor does not pay his debts in full voluntarily, the creditor will sue the debtor in a civil manner to the competent District Court, and all of the debtor's assets will become the source of repayment of his debt to the creditor. In the event that the debtor has many creditors, and the debtor's assets are not sufficient to pay off all creditors, then the creditors will compete in every way to get their bills paid off first. Creditors who came later can no longer pay because the debtor's assets have been used up. This is very unfair and detrimental. Based on these reasons, a bankruptcy institution emerged which regulates fair procedures regarding the payment of creditors' bills.¹⁷

The bankruptcy arises from debts that cannot be fulfilled by creditors.¹⁸ The idea arose to change the existing Law into Act No. 2004 Concerning Bankruptcy and Suspension of Debt Payment Obligations.¹⁹ The provisions of Article 1 point 2 of Act No. 37 of 2004 outlines that creditors are people who have receivables due to agreements or laws that can be collected before a court. In bankruptcy law, creditors are divided into three groups, namely: Separatist Creditors; Preferred Creditors; and Concurrent Creditors. Separatist creditors are creditors who can exercise their rights as if there was no bankruptcy. Including separatist creditors, for example, holders of pawns, holders of fiduciary guarantees, mortgages, mortgages, other material collateral.²⁰

Separatist creditors are the holders of material guarantee rights that authorize creditors to sell by auction the assets that are guaranteed to them in order to obtain repayment compared to other creditors. Basically, the separatist creditors consist of:²¹

- a. The pawn holder as regulated in the provisions of Article 1150 - Article 1160 Book III Chapter XX of the Civil Code which applies to movable objects. Basically, normatively towards pawn, the pawn giver (debtor) is obliged to relinquish control over an object that is pledged to the pawned recipient (creditor);

¹⁷ M. Hadi Shubhan, *Hukum Kepailitan : Prinsip, Norma, dan Praktik Di Peradilan*, Kencana Prenada Media Group, Jakarta, 2008, p. 28.

¹⁸ Sobandi, The Issue of the Commercial Court Limited Competency in Settling the Commercial Disputes, *Sriwijaya Law Review*, Vol. 3 Issue 1, January (2019), p.26-33

¹⁹ Didi Sukardi, The Legal Responsibility of Debtor to Payment Curators In Bankruptcy Situation, *Jurnal Pembaharuan Hukum*, Volume 8, Number 2, August 2021, p.142-156

²⁰ Ria Sintha Devi, Nanci Yosepin Simbolon, Lestari Victoria Sinaga and Muhammad Yasid, The Bankruptcy Legal Politics in Indonesia based on Justice Value, *Jurnal Akta*, Volume 9 No. 1, March 2022, p.67-78

²¹ Lilik Mulyadi, *Perkara Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU) Teori dan Praktik, Dilengkapi Putusan-Putusan Pengadilan Niaga*, Alumni, Bandung, 2010, p. 95 and 96.

- b. Holders of mortgages on registered ships with a gross volume of 20 (twenty) m³ or more. This aspect is registered at Port Master Office, with the registration of the ship as an Indonesian ship (Article 314 of the Criminal Code) and in practice airplanes are also registered as stipulated in the 1948 Geneva Convention concerning the Convention on the International Recognition and Rights in Aircrafts. Mortgages are regulated in the provisions of Article 1162-Article 1232 of the Civil Code. Basically, according to the provisions of Article 314 of the Criminal Code, ships are treated as immovable property so that collateral that can be placed on them is also only in the form of mortgages. As for ships that are not registered, they are considered as movable property against which the provisions of Article 1977 of the Civil Code apply to movable objects that are not in the form of interest or receivables that do not have to be paid to the carrier. The logical consequence is that a ship with a size of less than 20 (twenty) m³ of gross volume that is not registered can be mortgaged;
- c. Mortgage rights as stipulated in Act No. 4 of 1996 concerning guarantees for certain land rights and property which are considered attached and used jointly with the relevant land parcels;
- d. Fiduciary Guarantees as stipulated in Article 3 of Act No. 42 of 1999 concerning Fiduciary Guarantees which stipulates that fiduciary guarantees do not apply to mortgages relating to land and buildings, buildings on land belonging to other people which cannot be encumbered with mortgage rights, can become objects fiduciary guarantees, then mortgages on registered ships with a gross volume of 20 (twenty) m³ or more, mortgages on airplanes and mortgages.

Preferred creditors have receivables with special or privileged status as stipulated in Article 1139 and Article 1149 of the Civil Code. The provisions of Article 1131 of the Civil Code determine that all objects from a person become the responsibility of all his debts. The sale of these objects must be divided among the creditors according to the balance of the amount of the receivables, except if there is a temporary one among them who is given the right by law to collect payment in advance from other collectors (Article 1132 of the Civil Code). The provisions of Article 1133 of the Civil Code state that they are collectors who have rights arising from privileges, mortgages and mortgages, then the provisions of Article 1134 of the Civil Code determine that privilege is a special position of a collector who is granted by law based on the nature of the debt.²²

In principle, new privileges arise if the wealth confiscated is not enough to pay off all debts. Therefore, this position of privilege is lower than pledges, mortgages, fiduciary guarantees, unless the law stipulates otherwise, then concurrent creditors

²² *Ibid.*, p. 97 and 98.

have ordinary receivables (*bevoorrechte schulden*) that are not secured by pledges, fiduciary guarantees, mortgages or mortgages and payments are made in a balanced way. The basic conclusion, concurrent creditors are creditors who have *pari passu prorata parte* rights, the creditors get repayment together without prior rights, the amount of each receivable is calculated against the total receivables of the entire debtor's wealth.²³

The Supreme Court of the Republic of Indonesia outlines that the completeness of the requirements for filing a bankruptcy case at the Commercial Court from creditors includes:²⁴

- a. a stamped application letter addressed to the chairman of the Commercial Court;
- b. Advocate card;
- c. Evidence showing the existence of an agreement (sales agreement, debts, court decisions, commercial paper, invoices, receipts, and others);
- d. Special power of attorney;
- e. Company Registration Certificate (TDP)/Association/Foundation legalized (stamped) by the Trade Office no later than 1 (one) week before the application is registered;
- f. Details of unpaid debts;
- g. Translation in Indonesian by an official translator (sworn in), if it concerns a foreign language;
- h. Name and address of each creditor/debtor.

The bankruptcy institution which is a further arrangement of what is regulated in Article 1131 jo. Article 1132 of the Civil Code (BW) regarding the principle of "*creditorium parity*" and the principle of "*pari passu prorata parte*" which are the main principles of debt settlement from debtors to their creditors. Article 1131 BW states that: "All the assets of the debtor, both movable and immovable, both those that already exist and those that will exist in the future, are borne for all his individual engagements".²⁵

The principle of *creditorium parity* implies that all the debtor's assets, whether in the form of movable or immovable property or assets that are now owned by the debtor and goods that will later be owned by the debtor, are bound to the settlement of the debtor's obligations. In the event that the debtor has many creditors and the debtor's assets are not sufficient to pay off all creditors, then the

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Isis Ikhwanayah, Sonny Dewi Judiasih, dan Rani Suryani Pustikasari, *Hukum Kepailitan, Analisis Hukum Perselisihan & Hukum Keluarga Serta Harta Benda Perkawinan*, Cetakan Pertama, Keni Media, Bandung, 2012, p. 19.

creditors will compete in all ways, both halal and non-halal, to get their bills paid off first. Creditors who came later could not pay because the debtor's assets had run out.²⁶

The philosophy of the *creditorium parity* principle is that it is an injustice if the debtor owns property, while the debtor's debts to his creditors are not paid. The law provides a general guarantee that the debtor's assets by law serve as collateral for his debts even though the debtor's assets are not directly related to these debts. Thus, the *creditorium parity* principle departs from the phenomenon of injustice if the debtor still has assets, while the debtor's debts to creditors are not paid. Another meaning of the *creditorium parity* principle is that what is the general guarantee for the debtor's debts is only limited to his assets, not other aspects, such as personal status and other rights outside of assets, are not affected at all by the debtor's debts.²⁷

However, if the *creditorium parity* principle is applied in a literal manner, it will lead to injustice. The unfairness of the *creditorium parity* principle is to equalize the position of creditors, regardless of the condition of creditors, both creditors who have large and small receivables, both creditors who hold collateral and those who do not hold collateral. Therefore, the *creditorium parity* principle must be linked to the *pari passu prorata parte* principle. The principle of *pari passu prorata parte* means that the assets are joint guarantees for the creditors and the results must be distributed proportionally between them, except if there are creditors who according to law must take precedence in receiving payment of their bills.²⁸

This principle emphasizes the distribution of the debtor's assets to pay off his debts to creditors in a more equitable manner (*pond-pond gewijs*) and not in an equal manner. As stated in Article 1132 of the Civil Code which states: "These objects become joint guarantees for all people who owe them, the income from the sale of these objects is divided according to the balance, that is according to the size of each receivable, except when among the in debt, there are valid reasons to take precedence."²⁹

Business actors, in this case debtors, have begun to feel that paying off obligations on time will be difficult to fulfill. If something like this happens, several alternatives can be taken, namely holding peace or delaying payment out of court. This means

²⁶ Raden Rizki Agung Firmansyah, I Dewa Nyoman Sekar, Pengaturan dan Penerapan Prinsip *Paritas Creditorium* Dalam Hukum Kepailitan di Indonesia, *Kertha Semaya*, Vol. 02, No. 05, July 2014, p.1-5

²⁷ Isis Ikhwanasyah, Sonny Dewi Judiasih, dan Rani Suryani Pustikasari, *op.cit.*, p. 20.

²⁸ Kartini Muljadi, *Actio Pauliana dan Pokok-Pokok Tentang Pengadilan Niaga*, dalam Rudhy A. Lontoh, Denny Kailimang, dan Benny Ponto, *op.cit.*, p. 300.

²⁹ Isis Ikhwanasyah, Sonny Dewi Judiasih, dan Rani Suryani Pustikasari, *loc.cit.*, p. 20.

that the debtor concerned submits an application to the creditor directly. This kind of thing, in business practice, is often done by the debtor by submitting a moratorium to the creditor, meaning that the debtor asks to be temporarily stopped from making payments on his obligations and this is also an attempt by concurrent creditors to obtain their receivables.

3.2. Regulation of Legal Protection for Concurrent Creditors Against Bankrupt Debtors, Separatist Creditors, Curators and Supervisory Judges

Ethics in law enforcement, not just the police, prosecutors, judges or lawyers, is the central point. But it is the human being who becomes the police, prosecutor, judge that is the point of concern. In short, how do people "who are police", "who are prosecutors", "who are judges" and so on do what is right, good, and right in carrying out their respective duties. Talking about the typical ethics of the police, prosecutors, judges and so on, what is being discussed is their ethical obligations as human beings in carrying out their typical duties.³⁰

Law enforcement officials should not just simply quote the norms of the code of ethics in their organization, then assume that by doing so they automatically act ethically. Fair treatment is one of the ethical principles in law enforcement. It becomes an ethical principle in law enforcement not because it is quoted from the code of ethics. It becomes an ethical principle because it is a universally accepted principle,³¹ so here the judge and curator must be active in trying to resolve bankruptcy cases as well as possible without harming one of the parties, namely the debtor and creditor, which is indeed difficult to do.

Basically, Act No. 37 of 2004 has provided legal protection to concurrent creditors against bankrupt debtors, separatist creditors, curators and supervisory judges, namely:

1. Legal protection for concurrent creditors against bankrupt debtors;
 - a. Collateral confiscation (Article 10);
 - b. Immediate decision [Article 8 paragraph (7) and Article 16)];
 - c. Silence [Article 24, Article 25, Article 27, Article 34, Article 40 paragraph (1), and Article 97);

³⁰ *Ibid.*

³¹ *Ibid.*, p.28 and 29.

- d. Actio pauliana (Article 30 and Article 41 - Article 47);
 - e. Forced body (Article 93 - Article 96);
 - f. Bankruptcy property sealing (Article 99);
 - g. Objection to the request for rehabilitation (Article 218 and Article 220);
 - h. Supervision of debtor communications (Article 105).
2. Legal protection for concurrent creditors against separatist creditors;
 - a. Suspension of execution (Article 56);
 - b. Limitation of execution period and purchase of collateral objects (Article 59), and
 - c. Accountability for the sale of collateral objects [Article 60 paragraph (1) and paragraph (2)].
 3. Legal protection of concurrent creditors against curators.
 - a. Responsibilities of the curator [Article 72, Article 74 paragraph (1) and paragraph (2), Article 78 paragraph (2), Article 143 paragraph (1), and Article 202 paragraph (3)];
 - b. Replacement of curator (Article 71);
 - c. Objections to the actions of the curator (Article 77 and Article 193); and
 - d. Supervision of the inventory conducted by the curator (Article 100).
 4. Legal protection for concurrent creditors against supervisory judges.

There are provisions regarding appeals against the determination of the supervisory judge through the Commercial Court (Article 68).

Based on these articles, Act No. 37 of 2004 has provided legal protection for concurrent creditors to obtain fulfillment of their rights over the assets of debtors who have been declared bankrupt, there are only a few articles that contain weaknesses that must be deleted, replaced or revised.

Article 2 paragraph 1 of the Bankruptcy Law emphasizes the conditions for

bankruptcy, namely "the debtor has two or more creditors and the debtor does not pay at least one debt that is due and collectible". In Article 1 point 6 of the Bankruptcy Law, it is explained that the debt referred to in this law is "an obligation that is stated or can be stated in the amount of money in Indonesian currency or foreign currency, directly or which will arise in the future or contingencies, arising because of an agreement or law and must be fulfilled by the debtor and if it is not fulfilled it gives the right to the creditor to obtain fulfillment from the debtor's assets."³²

4. Conclusion

Basically, Act No. 37 of 2004 has provided legal protection to concurrent creditors against actions by bankrupt debtors, separatist creditors, curators and supervisory judges, namely: (a) legal protection for concurrent creditors against bankrupt debtors: confiscation bail (Article 10), immediate decision [Article 8 paragraph (7) and Article 16]), silence [Article 24, Article 25, Article 27, Article 34, Article 40 paragraph (1), and Article 97), *Actio pauliana* (Article 30 and Article 41 - Article 47), coercion (Article 93 - Article 96), sealing of bankruptcy assets (Article 99), objection to requests for rehabilitation (Article 218 and Article 220), and monitoring of debtor communications (Article 105); legal protection for concurrent creditors against separatist creditors, namely: suspension of execution (Article 56), limitations on the execution period and purchase of collateral (Article 59), and accountability for the proceeds from the sale of collateral objects [Article 60 paragraph (1) and paragraph (2)]; (c) the legal protection of concurrent creditors against the curator, namely: the responsibility of the curator [Article 72, Article 74 paragraph (1) and paragraph (2), Article 78 paragraph (2), Article 143 paragraph (1), and Article 202 paragraph (3)], replacement of the curator (Article 71), objections to the actions of the curator (Article 77 and Article 193), and supervision of the inventory conducted by the curator (Article 100); and (d) legal protection for concurrent creditors against supervisory judges, namely: provisions regarding an appeal against the supervisory judge's determination through the Commercial Court (Article 68). However, there are several juridical weaknesses in the article of the law, so it must be deleted, replaced or revised. With regard to legal protection for concurrent creditors in the context of the bankruptcy case law enforcement process based on Act No. 37 of 2004, this can be done by seeking reconciliation and postponement of debt payment obligations.

³² Hari Sutra Disemadi, Danial Gomes, Perlindungan Hukum Kreditur Konkuren Dalam Perspektif Hukum Kepailitan di Indonesia, *Jurnal Pendidikan Kewarganegaraan Undiksha*, Vol. 9 No. 1 (February, 2021), p.123-134

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