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LEGAL PROTECTION OF SEPARATIST CREDITORS IN THE MANAGEMENT AND SETTLEMENT OF BANKRUPTCY ASSETS

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Abstract
The legal protection provided by Law Number 37 of 2004 for secured creditors in the management and settlement of bankrupt assets is discussed in depth in this article. In essence, bankruptcy is a method of debt settlement by confiscating all of the debtor's assets and distributing them proportionally to the creditors in accordance with the principle of pari passu prorate parte in Articles 1131 and 1132 of the Civil Code. However, in reality, the position of secured cre ditors with material collateral such as mortgages, fiduciaries, pledges, or mortgages is not always protec ted in accordance with normative norms. Although secured creditors have the right to enforce their collateral as if bankruptcy had not occurred based on Article 55 paragraph (1) of the Bankruptcy Law, this provision is limited by Articles 56 and 59, which stipulate a 90-day suspe nsion of enforcement and a time limit for enforcement. These restrictions often cause separatist creditors not to obtain the full execution results because they have to share with preferred or conc urrent creditors in the distribution list compiled by the curator. This normative legal res earch reveals a conflict between bankruptcy law and property security legislation, especially when the application of bankruptcy rules really diminis hes the interests of secured creditors, who are robustly protected by civil law. The study's conclusions highlight the necessity of harmonizing regulations, bolstering supervisory judges' and curators' supervision procedures, and regularly using the lex specialis derogat legi generali principle to decide which norms are more important in conflict situations. Therefore, it is pos sible to safeguard secured creditors without compromising the goal of bankruptcy, which is to distribute debtor assets equitably among all creditors.

Keywords: Bankruptcy, Creditor Separatist

1. INTRODUCTION

Debtors who have at least two creditors and are unable (or unwilling) to pay at least one due, collectible liability, can file for bankruptcy, a legal condition decided by the Commercial Court.[1] From the date the bankruptcy declaration is pronounced, the bankruptcy debtor for the sake of law loses the right to control and manage his assets included in the bankruptcy property.[2]

As a legal consequence of the bankruptcy declaration debtor's assets existing at the time of bankruptcy and the assets acquired during bankruptcy are confiscated. This is what is called sita umurn (*public attachment*).[3] The management and settlement of bankruptcy assets is then carried out by one or more curators or Heritage Property Centers (BHP) who are under the supervision of a supervisory judge appointed simultaneously by the Commercial Court at the time of the bankruptcy declaration decision against the debtor.[4]

The purpose of bankruptcy according to *the Bankruptcy Regulation,* is to protect concurrent creditors to obtain their rights related to the application of the principle that guarantees the rights of the debtor (creditor) from the property of the debtor (debtor).[5] This purpose is deduced from the definition of bankruptcy in *the Memorie van Toelichting*, which states bankruptcy as a legal seizure of all the debtor's assets for the common benefit of his creditors.[6] The law enforces this

principle to strengthen the creditor s belief that the debtor will pay off his debts.[8] This means that all the debtor's assets will be collateral for his debts to all creditors. The debtor's wealth includes movable and immovable (fixed) objects, both the b enda already existed at the time the debt agreement was held and the new one will exist in the future which will belong to the debtor after the debt and receivables agreement is held. Thus, based on Article 1131 of the Civil Code, all of the debtor's assets without exception will be a general guarantee for the repayment of his debt, regardless of whether the previous ha1 has been promised or not. This guarantee is mum, born by law, so there is no need for a (general) guarantee agreement beforehand.

In addition, some debtors may have priority under Article 1132 of the Civil Code. These priority creditors are those who have rights arising from mortgages, mortgages, and special receivables, including collateral and fiduciary guarantees, as stated in Article 1133 of the Civil Code. Therefore, the type of collateral that creditors have determines their attitude towards the debtor's assets.[9]

In practice, there are many things related to the Distribution List proposed by the Curator to the Supervisory Judge. Furthermore, it was approved by the Determination of the Supervisory Judge on the Determination of the Distribution List. If the parties do not accept it, then they may file an objection to the Court which will be decided by the Panel of Judges appointed by the Chief Commercial Court. Furthermore, if the parties do not accept it, then the Reka can file a legal remedy for cassation. In the list of divisions, separatist creditors do not They get the full proceeds of the auction sale, but they still have to be shared with other creditors whose position is not separatist creditors.[10] This is is not in line with the provisions of this bankruptcy, and also is not in line with Articles 1131 and 1132 of the Civil Code, which Listed Principle *cliff Passu Prorate Part* and *Creditorium Parity*.[11]

The bankruptcy institution is an additional arrangement of the principle of *pari passu pro ate parte* and *creditorium parity* as stated in Article 1131 and Article 1132 of the Civil Code. Every action taken by a legal subject in the field of civil law, especially in the field of prop erti law, will always have an impact on its assets, as shown by the formulation of Article 1131 of the Civil Code. This includes actions that increase the amount of his assets (debit). Furthermore, Article 1132 of the Civil Code is a norm of the principle of *pari passu prorate parte* in the context of Article 1132 of the Civil Code, each party as the one who is entitled to the fulfillment of the obligation of the property of the obligor (debtor), in the following ways:

1. *Pari passu*, jointly obtaining repayment without ad a ya ng first;
2. *Prorata parte*, which is proportional calculated based on the amount of each receivable compared to their receivables as a whole, to the debtor's assets.[12]

In accordance with Article 188 of Law No. 37 of 2004, one of the ways to settle p ailit property is to sell it through auction by the Curator. If the Supervisory Judge determines a sufficient amount of money, the Curator is obliged to distribute the auction results to creditors whose receivables have been confirmed. In the framework of debt payment, the curator is obliged to compile a list of distributions to be approved by the Supervisory Judge. The distribution list must contain details of receipts and expenditures including the curator's wages, the name of the creditor, the matched amount of each receivable, and the share that must be received to the creditor. Concurrent creditors must be given a share determined by the Supervisory Judge. This means that all the debtor's assets will be

guarantee for its debts to all creditors of the debtor's wealth, which includes movable and immovable (fixed) objects.[13] The Gospel of Jesus Christ

The rights attached to the special and separatist creditors over the debtor's property in bankruptcy are determined as follows:

1. Creditors with rights of conscience wa according to Article 1139 and Article 1149 of the Civil Code without losing the rights granted to the Civil Code. There are them to hold the debtor's property as provided by law
2. Creditors with material collateral, in the form of pawns, mortgages, rights of harvest, dependents and fiduciary guarantees, without losing the matter to sell and obtain repayment in advance of the debtor's property, which is materially pledged and sold.[14] The Gospel of Jesus Christ

In addition, for both types of creditors, they have the right at all times:

1. Forward the application for a declaration of bankruptcy to the debtor who has not paid his debts or obligations in the form of the delivery of a certain amount of money at a predetermined time; and or
2. Could included as the second creditor in every application for a declaration of bankruptcy filed with a debtor who does not fulfill his debts or obligations in the form of the delivery of a certain amount of money at the specified time.[15]

In this case, there are still decisions or decisions that do not give the right to the secured creditor or all the proceeds of the bankruptcy auction on the secured debtor's assets, even though the auction proceeds are less than the claims of the creditors in question. This happens because other creditors who are not collateral creditors still need to share rights with the creditors.[16] The role of curators and supervising judges in the settlement of bankruptcy assets
It is very important, including in relation to the duty of the curator to make a list of divisions and the supervising judge gives approval to the list of divisions proposed by the curator.

2. RESEARCH METHODS

This research uses normative legal research. This approach was chosen considering that legal research is the process of identifying legal doctrines, norms, and principles for dealing with the legal problems faced. Therefore, normative legal research, which is related to the norms and principles of Indonesian bankruptcy law, was chosen as the research technique.[17]

The purpose of this study is to provide a theoretical-normative analysis of the norms and principles of bankruptcy law guidelines in Indonesia and the application of bankruptcy law in court. Laws, government regulations, and other laws and regulations, as well as the decisions of the Commercial Court and the Supreme Court's Panel of Commercial Judges, will be the subject of this study because laws are the main factors that form the basic idea of bankruptcy law within the framework of the Indonesian legal system. Therefore, the reasoning used in this study is industrial reasoning (case approach) as well as deduction (b ahwa as as obtained by induction can then be used to develop deductional thinking to produce conclusions that can be used for the next induction process),[18] which focuses on normative and evaluative aspects.

3. RESULTS AND DISCUSSION

The distribution of the debtor's assets by the trustee among the creditors is the main purpose of bankruptcy. In order to distribute the debtor's assets among all creditors in accordance with their respective rights, bankruptcy is designed to replace separate seizures or executions by creditors with joint seizures. The purpose of bankruptcy is to protect the creditors' rights over the assets of the bankruptcy debtor. After the debtor is declared bankrupt, the

curator packs and pays the bankruptcy assets. At the time of the debtor's bankruptcy declaration, the Judge of the Commercial Court appoints a supervisory judge to supervise the work of the curator during the packing and settlement of the bankruptcy property. As a result, the curator's authority to package and settle bankruptcy assets is limited. The supervising judge is always responsible for the curator. The duties of the supervisory judge (which is carried out by the curator) are to supervise the management and settlement of the bankruptcy estate.[19]

Based on Article 1132 of the Civil Code, certain creditors such as creditors who hold collateral (such as mortgages, mortgages, and fiduciaries) and creditors who have privileges or priority rights to certain goods must take precedence over their rights. Due bankruptcy property debts and the provisions of Articles 1139 and 119 of the Civil Code, it is difficult to determine the rights of creditors to the bankruptcy property funds.

The settlement of bankruptcy assets is carried out by the curator based on the list of distributions that have been approved by the "Supervisory Authority". Furthermore, the curator will make payments to the creditors in accordance with the distribution list that the curator has made based on the results of the receivables matching meeting and approved by the "Supervisory Judge". Once the trustee makes full payment of the creditor's debts or as soon as the list of distributions acquires permanent force, the bankruptcy ends.[21]

The order of priority of creditors who want to pay off debtors is determined by the liability. This is determined by the position of each creditor. The nature and type of receivables of each creditor determine their respective position. The curator's receivables settlement process considers the position of these creditors during the debt payment suspension stage, receivables verification meeting, and creditor classification stage, which is carried out based on the type and nature of receivables. Creditors the first division from the preferred creditor who is in a lower position, unless it is determined that a receivable is a privilege that must be repaid first, then the repayment of receivables takes precedence for the preferred creditor. Among creditors who have a sam level (concurrent creditors) obtain payments after previously deducting the obligation to pay receivables to separatist creditors and preferential creditors32

In the practice of enforcing Law No. 37 of 2004, there are still various problems that cause the rights of creditors to not be fulfilled, namely debtors who have bad faith will try to hide their assets by transferring their assets to other parties. In order to protect the interests of creditors who are harmed by legal acts committed by debtors, Law No. 37 of 2004 provides an effort for creditors to claim their rights to the debtor through *ac io paulliana*. *Actio Paulliana* is a right owned by creditors in certain circumstances that can invalidate the actions that have been done by the debtor that are detrimental to them.[22] Based on the above description, it can be concluded that the position of separatist creditors in Law No. 37 of 2004 has received less attention in the management and settlement of bankruptcy assets.

This is because even though Article 55 paragraph (1) of Law No. 37 of 2004 has provided protection for separatist creditors, namely in the event of bankruptcy, they can execute their rights as if there was no bankruptcy. However, this provision is limited by Article 56 paragraph (1) of Law No. 37 of 2004. This article stipulates that the right of execution of creditors as referred to in Article 55 paragraph (1) of Law No. 37 of 2004 and the right of third parties to claim their assets under the supervision of the bankruptcy debtor or trustee

are suspended for a period of a maximum period of 90 (ninety) days from the date of the judgment of the bankruptcyBankruptcy is declared. This provision is contrary to the previous provision, the bankruptcy declaration does not raise problems when the maturity itself has not been born. However, problems will arise when the debtor's alimony statement is decided at the same time as the maturity of the debt owed by the separatist creditor. This will obviously limit the right of execution of separatist creditors to get immediate repayment of their receivables.

Based on the principle of justice, namely corrective justice as stated by Aristotle, treatment that equalizes all separatist creditors without taking into account the proportion of the right to form collateral, even the factual circumstances of each creditor can actually create inequality. Justice in this context does not mean equal treatment of all parties, but provides treatment commensurate with the position and rights of each legal subject. When separatist creditors who legally have strong guarantees for a particular object are unable to exercise their rights simply because of time constraints, then substantive justice is not achieved.[23] They are clearly disadvantaged by the loss of the exclusive right to execute the object of the guarantee and must be subject to a curator who may not be as efficient as the creditor in realizing the value of the guarantee.[24]

With regard to the protection of property rights, this ruling should be criticized because it contradicts the principle that property rights should not be overridden by the bankruptcy process, which basically only regulates the relationship between the debtor and concurrent creditors. Bankruptcy should not eliminate or suspend the creditor's executory rights, except on a very strong basis, such as d emi in the public interest or in the event that there are indications of abuse of rights.[25]

The provisions of the execution deadline of the KPPPU Law, especially in Article 59, state that separatist creditors are only given an act of two months from the decision of the declaration of bankruptcy to execute their rights independently. After the deadline, the curator is obliged to take over the execution process and the proceeds of the sale are still intended for the separatist creditor , even if in the execution the creditor loses control of the execution process. This provision basically aims to maintain efficiency in the settlement of bankruptcy assets, but in practice it raises legal problems when it is associated with the principle of justice, especially justice in the sense of proportionality. According to Aristotle, justice is not always an idea of equal treatment for everyone, but must be based on proportionality, that is, giving each individual what he or she has to do based on different legal capacities and positions. In bankruptcy, the separatist creditor has rights derived from the material security attached to certain objects belonging to the debtor, which legally confers the right of preference (*droit de préférence*) and the right of following (*droit de suite*). Therefore, separatist creditors are a legal position that is in principle different from concurrent creditors who do not have material guarantees.

However, the two-month time limit in Article 59 of the Bankruptcy Law does not provide adequate room for differentiation for separatist creditors. This provision automatically equalizes all creditors, both separatists and concurrent creditors, after that time has passed. As a result, separatist creditors lose their exclusive right to execute on the object of the guarantee, and are forced to submit to a general settlement mechanism controlled by the curator. This then results in a disregard for the principle of proportionality, because creditors who have material rights are no longer treated according to their special legal status.

Seeing this as a matter of separatist creditors' rights to material collateral, it should still be respected and protected even though the debtor is in bankruptcy, because in essence bankruptcy does not necessarily negate the material rights of third parties over the debtor's property. [26]

Thus, it can be seen that the definition of execution in civil cases is an attempt by the creditor to realize his rights by force in the event that the debtor does not voluntarily fulfill his obligations which are not only the judge's decision, but also the implementation of the Grosse Deed as well as the implementation of the decision from the authorized institution or even the creditor directly.

When viewed based on the object, the execution can be divided into 6 (six) types, namely:

a. Execution of Judge's Decision
b. Execution of Guarantee Objects
c. Execution of something that interferes with rights and obligations.
d. Execution of the Statement of S ama.
e. Execution of Forced Letters.

If in the future the debtor defaults, then according to the provisions of Article 29 of Law No. 42 of 1999 concerning Fiduciary Guarantees, the execution of the object of Fiduciary Guarantee can be carried out in the following ways:

a. The implementation of the executory title as referred to in Article 15 (2) of Law No. 42 of 1999 concerning Fiduciary Guarantees by the Financing Authority;
b. The sale of objects that are the object of Fiduciary Guarantees under the power of the financing institution itself through a public auction in order to take the repayment of its receivables from the proceeds of the sale;
c. Under-handed sales are made based on the agreement of the lender and the financing institution if in this way the highest price can be obtained that benefits the parties.

The execution of the Fiduciary Guarantee the debtor is obliged to hand over the object that is the object of the Fiduciary Guarantee. If the debtor does not submit the fiduciary guarantee the time of execution, the creditor has the right to take the object that is the object of the fiduciary guarantee and if necessary ask for the assistance of the authorities. In the event that the object of the fiduciary guarantee consists of trading objects or securities that can be traded on the stock exchange, or the sale can be carried out in these places in accordance with the applicable regulations. Any promise to carry out the execution of the object of the Fiduciary Guarantee in a manner contrary to the provisions mentioned above is null and void and any promise gives authority to the consumer to possess the object that is the object of the Fiduciary Guarantee if the debtor is injured by the promise is null and void. In the event that the result of the execution exceeds the value of the entire remaining debt of the debtor, the creditor is obliged to return the excess to the debtor, but if the result of the execution is insufficient for the repayment of the debt, the debtor remains responsible for the outstanding debt.

The right of execution that takes precedence over *separatist* creditors is a provision in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which is perceived as a provision that limits the right of execution of *separatist creditors* so that it is considered less protective of their existence. This can be seen in the provisions of Article 56 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations,

which stipulates as follows:

(l) The right of execution of the creditor as intended in Article 55 paragraph (1) and right of the third party to claim his property that is in the possession of the Bankruptcy Debtor or Curator, is suspended for a period of a maximum period of 90 (ninety) days from the date of the bankruptcy declaration decision.

(1) The suspension as intended in paragraph (1) does not apply to the creditor's bill which is guaranteed by cash and the creditor's right to meet the debt.

(2) During the period of suspension as intended in paragraph (1), the Curator may use the bankruptcy property the form of immovable objects or movable objects that are in the control of the Curator in the context of the debtor's business continuity, in the event that reasonable protection has been provided for the interests of the creditor or third party as intended in paragraph (1).

The provisions of Article 56 paragraph (1) regarding the suspension of the right of execution of *separatist creditors* are considered inconsistent because they are contrary to the previous provisions. In the Guarantee Law, the right of execution is always associated with the time of fall of the debt that must be paid by the debtor. This means that if at the time of maturity the debtor's debt is not paid, then the creditor can exercise the right of execution by selling collateral under his control, the proceeds of which are used to pay off the debtor's debt. To exercise the right

It is not directed that it remains even if the debtor is declared in bankruptcy. However, what needs to be emphasized is that the right of execution arises after the maturity and the debtor's debt is not paid.

Executory rights are the embodiment of the aspect of collateral s uatu debt-receivables engagement. A new will provide a loan to the debtor, if the creditor gets certainty that his receivables will be repaid in the future. The form of guarantee of certainty of creditors' receivables will be repaid by the debtor, in a bonding of debts and receivables in Indonesian civil law, there are known two forms of guarantees, namely general guarantees and special guarantees. General guarantees are regulated in Articles 1131 and 1132 of the BW, while special guarantees are regulated in Articles 1132 and 1133 of the BW.

Furthermore, creditors holding special guarantees or known as separatist creditors, have their own privileges, namely having executory rights. If we look at the previous definition of executory rights, it can be seen that the existence of executory rights granted to separatist creditors, provides a protected position for the editor. This right arises solely so that the creditor gets a better position in the repayment of his receivables, and is closely related to the special security rights he holds, because it is as if the debtor has set aside part or all of his assets for the repayment of his debts, if in the future the debtor defaults.

In addition, the existence of executory rights for separatist creditors is a form of implementation of the government's efforts to run smoothly, especially in the field of business financing, where a business can be run or can grow rapidly inseparable from the existence of credit loans. The party who gives the loan, will not hesitate to disburse the loan to the debtor, because there is a feeling of security for the creditor, that his debt will be repaid in the future, because the creditor has held material rights provide a special guarantee, which the creditor can sell at any time if the debtor defaults. Ole h because it u, it can be said, when between and the debtor has agreed to use a special guarantee, as an accesso ir agreement of the debt and receivables agreement.

One of the issues related to the regulation of the rights of s eparatis creditors in the bankruptcy process is the issue of conflict of legal norms between the law of guarantee n and the law of bankruptcy. The executory rights of separatist creditors are rumored to have been limited by bankruptcy law, which only prioritizes the payment of separatist creditors' receivables. To answer the aforementioned problem, the researcher departs from Hadi Subhan's opinion regarding the history of the law in Indonesia, which states that: "This bankruptcy is an unreasonable debt collection mechanism. The Bankruptcy Law is likened to an emergency law. Because it is equated with an emergency, bankruptcy norms will exclude "normal" laws, including in this case guarantee law, company law, and labor law.

Regarding the issue of norm conflicts that occur between guarantee law and bankruptcy law, according to researchers, to be able to see which law application should apply, the principle of preference can be used. The principle of preference is a legal principle that designates which law should take precedence, if in an event the law is related or violates several regulations. There are several principles of prefe rensi, which are as follows:[30]

a. *Lex superiori derogat legi inferiori*, i.e. higher laws and regulations will override lower laws and regulations.
b. *Lex specialis derogat legi generali*, which is a special regulation that will override regulations of a general nature or special regulations that must be obeyed.

c. *Lex posteriori derogat legi priori*, i.e. the new rule overrides or overrides the old rule.

Based on the hierarchy of laws and regulations above, bankruptcy law and guarantee law have the same legal position or set ara, namely at the level the Law. Jad, in determining the use bankruptcy law or guarantee law, cannot use the principle of *lex superiori derogat legi inferiori*, because in this case there is no superior or higher regulation. If it is based on the principle *of lex superio ri derogat leg i inferiori*, then there is no answer as to which legal option should be used, but rather it should be applied together.

Then, if the choice of law is based on the principle *of lex specialis dero gat legi generalie,* the applicable law is bankruptcy law, because this bankruptcy law regulates bankruptcy as a whole, including the waiting period and the limited execution period, for creditors
separatists to execute the material rights they control, which are not regulated in the basis of guarantee law (both BW, UUJF and UUHT).

The principle of preference gives an illustration that in the application of the separatist creditor's right of execution guaranteed by the guarantee law, it can still be implemented, even though there is a period of suspension and time limitation to execute the property yourself, because bankruptcy is a general confiscation. If the separatist creditor within a period of 2 (two) months , the creditor does not begin to exercise his rights, then the material guarantee is handed over to the curator to execute us.[31]

The bankruptcy of a company will have an impact on the workers who are one of the creditors who are entitled to the fulfillment of all their receivables from the debtor (bankruptcy company), in addition to other creditors. In bankruptcy, three creditors are known, creditors, and concurrent creditors. Each creditor is having a different position and amount of bankruptcy payments. Workers in bankruptcy as preferential creditors who get the right to obtain repayment first from the sale of pa ilit property. The privileged creditor is under the holder of the lien and the mortgage that often arise are the differences in legal and economic positions related to the payment in bankruptcy between creditors and workers. Judging from the 3 (three) cases that have been presented, the author finds that there is a discrepancy between the provisions stipulated in Article 55 paragraph (1) - Law No. 37 of 2004 and practice that occurs, namely in the determination of the distribution list that has been determined by the Supervisory Judge at the request of the Curator, which distribution list has obtained permanent legal force. The discrepancy can be seen specifically in the position of separatist creditors in the distribution of the proceeds of the sale of the bankrupt boedoel with the Company Labor (former) as well as the tax bill whose company is declared bankrupt.

On the other hand, in a debt-receivables legal relationship, the law provides legal protection to Creditors through Article 1131 of the Civil Code. This kete tuan contains the meaning that all the debtor's assets are collateral for all his debts. Article 1132 of the Civil Code establishes the principle of equality of position of creditors.

In the case of a company declared bankrupt or liquidated based on the prevailing laws and regulations, wages and other rights of the employee are debts that are preceded by payment.436 In fact, it is a step to increase labor rights from the lower position they previously held based on Article 1149 of the Civil Code. The increase in rights is indeed allowed based on Article 1134 paragraph (1) of the Civil Code which states as follows: "Privilege is a right that the Law gives to a debtor so that the level is higher than of other receivables, solely

based on the nature of his receivables.

However, it is also remembered that the granting of the right to precedence is as stipulated in Article 9 paragraph (4) of the Manpower Law cannot be defined as a right that is higher than the rights of separatist creditors because Article 1134 paragraph (2) of the Civil Code has also expressly stipulated that: "Pawns and mortgages are higher than the rights of istime wa, except in cases where otherwise stipulated by the Law.

4. CONCLUSION

Articles 1131 and 1132 of the Civil Code are also applied in debt settlement through bankruptcy institutions to achieve a fair distribution for their creditors. However, Law Number 37 of 2004 has provisions that limit the rights of separatist creditors, including Article 55 paragraph (I), Article 56 paragraphs (1) and (3), and Article 59. Separatist credibility can suffer losses due to the rules of the Bankruptcy Law regarding the delay of execution and the limitation of the period of execution of guarantees that are not in line with the rules of the Bankruptcy Law. In the event dispute between the curator and the separatist creditor during the implementation, what clause will be applied. The provisions on material guarantees (mortgages, fiduciary guarantees, mortgages, and mortgages) are clearly a special form of the provisions of general guarantees as stated in Articles 1131 and 1132 of the Civil Code if the principle of la specialis derogat legi generalis is adhered to. Meanwhile, Articles 1131 and 1132 of the Civil Code are further applied under law of coercion. However, bankruptcy law is also a component of civil law, or lex specialis. Therefore, the provisions of bankruptcy law must take precedence if there is a dispute related to this matter. This is in line with the idea that commercial law is a unique part of civil law.

BIBLIOGRAPHY

M. Hadi Shubhan, *Bankruptcy Law (principles, norms, and practice in the courts*), Kencana Prenada Media Groupm Jakarta, 2008, p. 1.

Man HS. Sastrawidjaja, *Bankruptcy Law and Suspension of Debt Payment Obligations,* Bandung, Alumni, 2006, pp. 78-81.

Ari Purwadi, "Application of Bankruptcy Provisions on Troubled Banks," *Journal of Perspective;* Volume *XVI* No . 3 Year 201 1 May Edition, 201 1, hl. 129 - 130.

Hadi M. Shubhan, *loc. cit* See also Rachmadi Usman, *The Dimension Bankruptcy in Indonesia,* Gramedia Pustaka Utama, Jakarta, 2004, p. 12, Jeny Hoft, *Bankruptcy Law in Indonesia (Inclonesian Batikrupcty Lay),* Translated by Kartini Muljadi, Tata Nusa, Jakarta, 2000, p. 66.

Gatot Supramono, *Debt Receivables Agreement,* Kencana Prenada Media Group, Jakarta, 2013, p.180. Based on Article 1136 of the Civil Code, it states that "Payments to creditors are made based on the *principle of creditorum parity* for creditors of the same level".

Eric Brunsstad, "Bankruptcy and Problems of Economic Futility on the Unique Role of Bankruptcy Law," *The Business Lawyer,* Vol. *55,* February, 2000, quoted from the One-Day Seminar on the *Revitalization of the Duties of the Authority Clan /Administrators, Supervisory Judges & Commercial Judges in the Context of Bankruptcy, Proceedings,* Center for Legal Studies, Jakarta, Cet. see also Doctrine of Doctrine and Doctrine. Erick Brunsstad Jr., explained that bankruptcy law has evolved and its various types, from the very simple to the complex, from the humane to immoral. Until now, bankruptcy law can be classified in the following categories: first, *debt colletion;* second, *debt forgiveness;* Debt *Adjusement.* Indonesia's bankruptcy law emphasizes more on the first form, namely *debt collection*. This can be known from the definition of bankruptcy in Article 1 number 1 of Law No. 37 of 2004.

R. Suyatin, *Commercial Law I and II, Pranadya Paramita,* Jakarta, 1983, p. 264. See also Kartono, *Bankruptcy and Payment Withdrawal,* Pradnya Pramita, Jakarta, 1985, pp.1 and 8.

Sudargo Gautarna, *Commentary on Bankruptcy Regulation for Indonesia (I998),* Citra Aditya Bakti, Bandung, 1998, pp. 3-4.

The translation is: "All the debtor's assets, both movable and immovable, both existing and new in the future, become a chain for all debtors' engagements". See Sutan Remy Sjahdeini, *Bankruptcy Law Understanding Bankruptcy Laws Juncto Law No. 4 of 1998,* Graffiti, Jakarta, 2022, p. 7..

https: www.hukumonline.com/berita/baca/lt4balld3b8804d/hakim-Separatist-creditor-shared-rights-with-workers, "Judge Orders Sparatis Creditors to Share Rights with Workers," Tuesday, November 18, 2025.

If after the distribution of the bankruptcy assets, it turns out that not all creditors have paid in full, then the repayment is not only taken from the object that was at the time the debt and receivables agreement was held but also applies to the debtor's assets that will only exist in the future which will belong to the debtor after the debt-receivables agreement is held.

Kartini Muljadi, "Preferred Creditors and Separatist Creditors in Bankruptcy", in Emmy Yuhas sarie, *Bankruptcy Law and Settlements*, Legal Research Center, Jakarta, 20 04.

http://www.hukumonline.com/berita/baca/lt4balld3b8804d/hakim-Separatist-Creditors-Shares-Rights-with-Workers, "Judge Orders Separatist Creditors to Share Rights with Workers," Tuesday, November 18, 2025.

http:// www.hukumonline.com/berta/baca/lt53leblcffl17ac/hukum-kepailitan-assessed-reduction-law-guarantee-material , "Bankruptcy Judgment Assessed-Re' 'lasa, November 18, 202 5.

Juanda Pangaribuan, "Constitutional Court Ensures Workers' Rights in Bankruptcy," http://www.hukumonline.com/berita/baca/lt54d87b9cbelda/mk-ensure-rights-of-workers-in-bankruptcy-bro leh--juanda-pangaribuan-, Tuesday, November 18, 2025.

Peter Mahmud Marzuki, *Legal Research*, Prenada Media, Jakarta, 2005, p. 35.

Arief Sidharta, *Reflections on the Structure of Huk um*, Mandar Maju, Bandung, 1999.

Mosgan Situ Morang, "A Review of Law No. 4 of 1998 on the Determination

of Perpu No. 1 Year 1998 became a Law", *Mnjnlnli Hllklrnl Nnsional,* No. *1* 1999, p. 16 3. The debtor that is subject to general confiscation is called bankruptcy property, while the purpose of bankruptcy is make the bankruptcy property into money to pay all debts of the bankruptcy debtor fairly and evenly balanced (according to the level and nature of each debt) under the supervision of the supervising judge. The management and settlement of bankruptcy assets is carried out by the Curator.

Imran Nating, *The Role and Responsibility of the Curator in the Management and Settlement of Bankruptcy Assets,* Raja Grafindo Persada, Jakarta, 2004.

Ivida Dewi Amrih Suci and Herowai Poesoko, 2016, *Bankruptcy Law on the Position and Rights of Separatist Creditors on Bankruptcy Deitor Collateral*, Yogyakarta: LaksBang Pressindo.

Martiman Prodjohamidjojo, *Bankruptcy Process*, Mandar Maju, Bandu ng, 1999.

R. Anton Suyatno, *The Utilization of Postponement of Debt Payment Obligations*, Kncana, Jakarta, 2012.

Rahayu Hartini, 2008, *Bankruptcy Law Revised Edition Based on Law No.37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations*, Muhammad iyah University Printing House, Malang

Zae ny Asyhadie, *2005*, *Business Law Process and Its Implementation in Indonesia,* PT. Raja Grafindo Persada, Jakarta.

Gunawan Widjaja, *et al.*, 2001, *Fiduciary Guarantee*, Raja Grafindo Persada, Jakarta.

Hadi Shuhban *Bankruptcy Law*, Kencana, Jakarta, 2008.

Frija, Rahman, Etty Susilowati, and Hendro SaptoNumber "*Legal Protection for Separatist Creditors against the Exercise of Executorial Rights in Limited Liability Companies*." Diponegoro Law Journal 5, Number 3 (2016).

Nurlita Sibli, et. al., *Legal Protection for Separatist Creditors related to the Guarantee of Tan ggungan Rights Stipulated as Bankruptcy Bonds*, LexEtSocietatis, Volume XI, Issue 1, pp. 5-19 (2023).

Slamet, S. R. (2016). *Legal Protection and the Position of Separatist Creditors in the Event of Bankruptcy against Debtors*. Indonesian Scientific Forum, 13(1),

Sularto, *Legal Protection of Separatist Creditors in Bankruptcy*, Journal of Legal Research, ol. 24, No. 2. , pp. 242-252 (2012).

Wicaksana, M. D., & Arpangi, A. (2022). *Bankruptcy Petition Limited ap Personal Guarantor Due to Debtor Default (Case Study of Decision Number 51/Bankruptcy/2004/PN. Niaga.Jkt.Pst).* Proceedings of the Unissula Student Scientific Constellation (KIMU) Legal Cluster.