



Bankruptcy Legal System Reform in Settlement of Debtors' Debt According to the Bankruptcy law

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ABSTRACT

According to Law No. 37 of 2004, bankruptcy is the complete seizure of a bankrupt debtor's assets, with the curator managing and settling them under the watchful eye of a supervising judge. There are several conditions for a debtor to be declared bankrupt, including having two or more creditors and not being able to make payments of at least one debt that is due and collectible and can be at his request or the request of one or more creditors. This article discusses the principle of distributing the debtor's assets if a debtor is declared bankrupt. According to Bankruptcy Law Regarding creditor provisions, in bankruptcy, three creditors are guaranteed compensation; the first is a separatist creditor, namely the creditor holding a material guarantee, then the preferred creditor, who has the right to precede because of the nature of his receivables by law is given a special position, and the last is a concurrent creditor – specifically, creditors who do not fall under the categories of favored and separatist creditors. After Article 2 paragraph (1) is explained, it is determined that creditors are concurrent, separatist, and preferential. Separatist and preferred creditors can apply for a declaration of bankruptcy without losing collateral rights to their assets on the debtor's assets and their right to take precedence. The debtor's assets will eventually be distributed by the portion of the amount of the creditor's credit. This bankruptcy principle means that the debtor's property is jointly guaranteed for all creditors divided according to the principle of balance or "Pari Pasu Prorata Parte".

1. Introduction

In the dynamics of national development, "legal life appears full of hues and colors, keeping with the pace of social and national life in various disciplines and sectors. Through national development, a national legal system can be created to realize the welfare of society as a whole, serving as a legal foundation that can prevent and resolve conflicts, among other things. National law development is not only directed towards realizing a legal system that guarantees the functioning of law as a means of social change. Developing a solution to this problem involves reintroducing bankruptcy laws and institutions in Indonesia.

Various problems that occur in society and the life of a state, like in Indonesia, should be associated with the existence of law because Indonesia is a state based on law (*rechts-staat*) and not a state based solely on power (*machtstaat*). When there is a case involving social, cultural, economic, educational, religious, and political

dimensions, the existence of the law will inevitably be questioned again and even sued by the public, primarily when the law is judged or evaluated as having failed to carry out its sacred mission.¹

From the beginning to the present, bankruptcy institutions are conceptually meant to serve as substitute institutions for the settlement of debtors' obligations to creditors in a proportional manner. The holder of material collateral rights by selling the debtor's goods without regard to the interests of the debtor or other creditors and to avoid fraud committed by one of the creditors or the debtor himself.²

The bankruptcy implementation parity principle is the *pari passu* or *prorate parte* principle. The crematorium parity principle implies all debtor's assets, both movable and assets currently owned by the debtor and goods that will be owned by the debtor in the future, will serve as collateral for the settlement of obligations to creditors. Meanwhile, the principle of *pari passu prorata parte* means that the debtor's assets will be divided proportionally between creditors unless there are creditors who, according to law, must take precedence in paying bills.³ Law Number 37 of 2004 about Bankruptcy and Suspension of Obligations for Payment of Debt (from now on referred to as the Bankruptcy Law) contains provisions for settling debts through bankruptcy law that expressly represent the development of bankruptcy law, which was enacted initially in Indonesia before the Bankruptcy Law's enactment. These were later amended by Government Regulation instead of Law (PERPU) No. 1 of 1998 concerning Amendments to the Law on Bankruptcy jo. Law No. 4 of 1998. The changes regarding the bankruptcy provisions until the enactment of the Bankruptcy Law are to meet the developments and legal needs of the community and are expected to create legal certainty.

Bankruptcy, in general, means general confiscation, where when the debtor is declared bankrupt by the Commercial Court, all of the debtor's assets (both individuals and legal entities) are transferred to the curator.⁴ From discussions about the curator, notably the Curator's roles, obligations, and powers. As an impartial third party, the curator must be morally upright, independent, and professional. The Curator needs this desperately to do management and management tasks responsibly.

Regarding the debt restructuring to creditors, the effectiveness of the Suspension of Debt Payment Obligations application is very dependent on the good faith of the debtor and creditor so that the Reconstruction Plan can be implemented to pay off the debtor's debts. However, determining the status of a Suspension of Debt Payment Obligations application, whether approved or not, will depend heavily on the creditor's decision.⁵

The Bankruptcy Law gives the curator relatively large authority in carrying out the task of managing and settling bankrupt bowels" immediately after the debtor is declared bankrupt by the Commercial Court.⁶ To guarantee legal certainty regarding a bankruptcy declaration decision by the Commercial Court, the curator manages and sorts out all assets. The bankrupt debtor (bowl bankrupt) must act immediately even though the bankrupt debtor makes efforts to review the Supreme Court against the decision.⁷ In Indonesian civil law, theory is also called an immediate decision (*uitvoerbaar bij voorrad*).⁸ The bankruptcy process has 2 (two) phases or 2 (two) periods, namely, the deposit phase (*conceratorir*)⁹ The insolvency or executor phase is:¹⁰

Firstly, The Curator's duties and responsibilities in carrying out administrative tasks, such as taking an inventory of the debtors' assets, confirming debts to creditors, and organizing creditor meetings,

¹ Faisal Santiago. (2014) "Penegakan Hukum Tindak Pidana Korupsi oleh Penegak Hukum untuk Terciptanya Ketertiban Hukum." *Pagaruyuang Law Journal* 1.1 (2017): 23-43 4

² Faisal Santiago. (2008) "Hukum Niaga dan Kepailitan." , Jakarta, CintyaPres, p.43

³ Lilik Mulyadi, *Bankruptcy Cases and Postponement of Debt Payment Obligations (PKPU) Practice*, Bandung, Alumni, p. 3

⁴ Article 1 paragraph 1 Bankruptcy Law.

⁵ Tania, Neysa, Dixon Sanjaya, and Jason Novienco. (2021) "Perlindungan Hukum bagi Debitor terhadap Pelaksanaan Rencana Perdamaian Penundaan Kewajiban Pembayaran Utang Akibat Pandemi COVID-19." *Nagari Law Review*: 41-58.

⁶ Article 306 of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt, jo. Presidential Decree No. 97 of 1999 concerning the Establishment of a Commercial Court at the Ujung Pandang District Court, Medan District Court, Surabaya District Court, and Semarang District Court

⁷ Ricardo Simanjuntak, *Kemandirian Tugas Kurator Dalam Melakukan Pengurusan dan Pemberesan Dalam Kepailitan*, Paper Presented in a Seminar di Hotel Le Meridien, Jakarta, 2013, p. 7.

⁸ Article 16 of the Bankruptcy Law.

⁹ Man S. Sastrawidjaja, *Bankruptcy Law and Postponement of Debt Payment Obligations*, PT. Alumni, Bandung, 2006, p. 187.

¹⁰ Article 69 paragraph (1) of the Bankruptcy Law

include the management of bankrupt assets. The curator's responsibility for overseeing the insolvent model begins at 00.00 local time on the day of the bankruptcy ruling.¹¹

Secondly, phase Execute bankruptcy resolutions, which means liquidating or selling the debtor's assets; the Curator is responsible for several tasks, including settling bankrupt *boedel*. The distribution of proceeds from the sale of bankrupt *boedel* to creditors is made by each creditor's position and order. The curator will encounter several legal issues because bankruptcy settlement is complicated. Important and frequently contentious matters in the bankruptcy procedure include the curator's distribution of bankrupt debts to minority and preferred creditors. Because preferential creditors have a comparatively equivalent standing as privileged creditors¹² With creditors who are separatists,¹³ Therefore, it will be challenging for the curator to distribute Boedel among those stakeholders in the bankruptcy process and decide which ones should come first. In addition to concurrent creditors and bankrupt debtors who also have a legal interest in the bankruptcy procedure, preferential and separatist creditors are included.

When entering the world of commerce, if the debtor cannot pay his debt to the creditor (caused by difficult economic conditions or forced circumstances), the debtor can apply for a Suspension of Debt Payment Obligations to resolve the problem. The debtor or creditor can also apply for a declaration of bankruptcy in the hope that the negligent debtor will be declared bankrupt by a judge through his decision.¹⁴

The curator will have difficulty solving the matter if the bankrupt bill is divided sufficiently to cover "all creditors' "bills. The curator must establish "the priority for" paying "creditors' bills based on" their "level of credit to distribute the bankruptcy model to creditors who have privileges or priority for doing so. In bankruptcy law, creditors are classified according to their level; claims Man. S. Sastrawidjaja are:¹⁵The first a. Separatist creditors can use their legal rights as though bankruptcy had never happened. When one or more creditors own material guarantees to guarantee the fulfillment of their receivables, such as mortgages, fiduciary guarantees, mortgages, and mortgages, they are considered dissident creditors under bankruptcy law. The legal right to hold the position of a separatist creditor is bestowed upon one another through a legally enforceable guarantee agreement. The second preferred or creditors with special rights are creditors as regulated in the Civil Code's Articles 1139 and 1149.¹⁶ Preferred creditors have special rights because they are granted by law, and the third concurrent or competing creditors are creditors who do not have privileges so that their positions are equal.

Issues will arise about each creditor's standing under bankruptcy law, particularly in cases where a bankrupt debtor has many creditors that have rights or priority (preferential and separatist creditors). Regarding the distribution of the earnings from the sale of bankrupt *boedel* to creditors who have special or preceding advantages under bankruptcy law, specific legal regulations are required. This structure is necessary to maintain clarity and order.¹⁷

It is evident from previous research on bankruptcy law that different approaches have been taken to the topics that will be covered in this study. The subject is discussed with an emphasis on modernizing the bankruptcy law system for settling debts of debtors to preserve the legal rights of creditors, which the Bankruptcy Law guarantees. Based on the explanation above, its author takes the problem from the background above as follows: how is the renewal of using the bankruptcy law system to settle debts owed by debtors according to the bankruptcy law, and how are the instruments of the Indonesian bankruptcy legal system in managing the assets of bankrupt debtors are expected to provide creditors with a feeling of justice and legal certainty. Based on the description of the research background above, the researcher is interested in researching problems that often occur in bankruptcy law when settling obligations owed to creditors by debtors, so the authors raise the title: "Bankruptcy Legal System in Settlement of Debtors' Debt According to the Bankruptcy Law."

¹¹ Article 24 paragraph (2) of the Bankruptcy Law

¹² What the Creditors mean in Article 2 paragraph (1) of the Bankruptcy Law are concurrent, separatist, and preferred creditors. Separatist and preferred creditors can apply for a declaration of bankruptcy without losing collateral rights to the assets they have on the debtor's assets and their rights to precedence.

¹³ See also for the same purpose in Article 2, paragraph (1)

¹⁴ Herlina Basri, (2023). (Establishing a Legal Mechanism for Settlement of Debtors and Creditors According to the Bankruptcy Law). The 2nd International Conference On State Law, Politic & Democracy (ICon-SLPD), *Proceeding diselenggarakan Master Of Law Department And Law Science Pamulang University, January 2023*

¹⁵ Man. S. Sastrawidjaja, *Op. cit.*, p. 127.

¹⁶ Explanation of Article 60 paragraph (2), Bankruptcy Law

¹⁷ Sutan Remy Sjdeini, *op.cit.*, p. 6

2. Method

This study employs a legal research methodology. Research applied to or primarily focused on legal science is known as legal research.¹⁸ Where legal research methodologies exist in two flavors: normative and empirical, here, this writing uses a normative legal research method (normative juridical), namely an approach that is carried out based on the primary legal material by examining theories, concepts, legal principles, and statutory regulations related to this research.¹⁹

3. Result and Discussion

3.1. Renewal of the bankruptcy law system in settling debtors' debts according to the bankruptcy law

Bankruptcy, which in the text of the dictionary "Bankrupt" as the Black's Law Dictionary²⁰ This inability must be accompanied by a concrete action to submit, either voluntarily by the debtor himself or at the request of a third party outside the debtor, a request for a declaration of bankruptcy to the court from the condition of being unable to pay from a debtor.²¹ The definition of bankruptcy based on Article 1 point 1 of the Bankruptcy Law is a general confiscation of all assets of the Bankrupt Debtor, the management and settlement of which is carried out by the Curator under the supervision of the Supervisory Judge as stipulated in this law.²² Stipulating a court ruling about the debtor's bankruptcy statement is a crucial step in the court application process for bankruptcy. This ruling has several ramifications, including how creditors will be positioned regarding the equitable allocation of their rights to the assets of the bankrupt debtor (boedel bankrupt). In this instance, it seems that this paper's primary topic of debate is how to settle the administration and settlement of bankruptcy assets.

Completion of the management and settlement of bankrupt debtors is a series of activities for the treatment of the actual and potential assets of the bankrupt debtor. Another way to put it is that property that legally becomes bankrupt assets is connected to the administration and settlement of the bankrupt debtor's assets (*boedel insolvent*). Managing and resolving bankrupt assets, including obligations of bankrupt debtors that turned into receivables and paid to creditors, is known as management and settlement of bankrupt assets. In light of this knowledge, a few key ideas about the settlement of management and the settlement of insolvent models need to be clarified. It first affects debtors and creditors, who are the people with the most stake in a situation where they compete with one another as legal subjects in bankruptcy. According to Article 1 point 2 of Law Number 37 of 2004, an individual who owes money as a result of a contract or other legal obligation whose repayment can be demanded in court is considered a debtor, as confirmed by the formulation Indonesian bankruptcy law (Law No. 37 of 2004). Article 1 number 3 defines a creditor as an individual who possesses receivables arising from contracts or laws that are enforceable in court. It is, therefore, possible to define the debtor as a party having debts to creditors and the creditors as parties having bills or receivables from debtors based on this formulation.

Conceptually, there is a disparity in understanding the meaning of debtors and creditors; that is, the meanings of debtors and creditors in broad and narrow sense are as follows. In a narrow sense, a debtor is a party that has debts arising solely from a debt agreement. Based on the definition of debt in the narrow sense, what's meant by creditor is a party that has a bill or right to claim in the form of payment of an amount of money that this right arises solely from a debt agreement. In a broad sense, a debtor is a party that must pay a sum of money arising for any reason, whether due to a loan agreement and other agreements or from a law.

Examining this discrepancy in light of Law Number 37 of 2004, which specifies various solutions to various categories of debtors, gives it a broader interpretation. Nonetheless, there hasn't been a clear identification of the subtle differences between the many kinds of debtors.

¹⁸ Sugeng Istanto, (2007), *Legal Research*, CV. Doubles, Yogyakarta, 2007, p. 29,

¹⁹ Soerjono Soekanto and Sri Mamudji, (2006), *Normative Legal Research A Brief Overview*, Jakarta, Rajagrafindo Persada, p. 13

²⁰ Black's Law Dictionary defines bankruptcy as the state or condition of a person (individual, partnership, corporation, municipality) who cannot pay its debt as they are or become due. The term includes a person against whom an involuntary petition has been filed, who has flown a voluntary petition, or who has been adjudged a bankrupt."

²¹ Gunawan Widjaja, (2009). *Legal and Business Risk of Bankrupt Companies*, *Op.cit.*, pp. 15-16

²² *Ibid*

Thus, the researcher believes that to strengthen its normative force, Indonesia's positive bankruptcy law, in this example, Law Number 37 of 2004 needs to include more precise and comprehensive guidelines about the various rules that apply to the following debtors. Legal matters are classified that can be provided (corporations/companies or persons):

- a. Using a scale that includes big, small, and medium-sized businesses.
- b. Cooperative and non-cooperative business structures.
- c. The provision of debtor firms' shares, registered and unregistered, are listed on the stock exchange.
- d. Financial institution types: businesses that function as both banks and financing organizations.
- e. People, people, and legal entities.
- f. People aren't business owners, such as housewives, pensioners, physicians, attorneys, notaries, and government employees.
- g. People with debts that are both above and below a specific threshold.

This classification is crucial for evaluating and identifying debtors who meet the requirements to be declared bankrupt. On the other hand, it is assumed that not every debtor qualifies for bankruptcy. It is possible to argue that, about a debtor who has paid his creditors, bankruptcy law essentially regulates the debtor's primary subject. Regulations governing bankruptcy make a distinction between debtors who are non-individual/legal entities and those who are individuals. Are individual and non-individual bankruptcy cases handled differently under the Bankruptcy Law? The Bankruptcy Law does not differentiate between persons and legal organizations that file for bankruptcy (individuals). The Bankruptcy Law has no explicit provisions on its content or application.

Nevertheless, reading some of its provisions leads one to conclude that there is a tendency toward differentiation. For instance, Article 2 paragraph (5) of the Bankruptcy Law specifies that only the Minister of Finance may file a bankruptcy declaration application on behalf of debtors who are Insurance Companies, Reinsurance Companies, Funds Pensions, or State-Owned Enterprises engaged in public interest operations. This clause suggests that debtors who are not distinct legal entities have a dominant nature. Moreover, a debtor still tied by a valid marriage may only make an application for a declaration of bankruptcy with the approval of their spouse, according to Article 4 paragraph (1) of the Bankruptcy Law requirements. This shows private legal entities, individual debtors, or both. The fundamental goal of bankruptcy law arrangements must be to standardize the fact borrowers are accountable for paying their creditors, regardless of the differences in debtor categories.

This activity aims to settle bankrupt assets and complete legal administration, with the bankrupt as the focal point. The treatment of assets is allegedly legitimate under law, meaning that the status of holdings as bankrupt is determined and applies since a court decision regarding the debtor's bankruptcy statement. The court's ruling on the declaration of bankruptcy serves as the starting point for managing and settling bankrupt assets. The end of transforming the debtor's assets, which were once owned or corporate property rights, to become the bankrupt debtor's assets (bowel bankrupt) is contained in every business court decision regarding a declaration of bankruptcy. One legal outcome of a bankruptcy court ruling is completing asset settlement and management (*boedel* bankrupt).

According to bankruptcy law, a bankruptcy *boedel* includes all the debtor's assets when the bankruptcy declaration decision is pronounced and everything obtained during the bankruptcy.[Article 21 Law Number 37 of 2004 concerning Bankruptcy] Meanwhile, in another formulation according to law general civil law, the bankrupt debtor or bankrupt debtor's assets, namely all the debtor's assets, both movable and immovable, will later become dependents (collateral) for all debtors' debts.[See Article 1131 of the Civil Code].

Thus, the debtor's assets are limited to fixed assets, such as land, and movable assets, such as jewelry, vehicles, equipment, and structures. Comprising items under another person's control and over which the debtor has rights, such as things rented out to other parties or under another individual's management.

Debt Payment and Protection Law No. 8 of 1999 concerning Consumer Protection are not complementary, resulting in uncertainty when bankruptcy cases involving consumers arise. The two laws are the legal basis for debtors, creditors, business actors, and consumers in economic activities. The bankruptcy law and the consumer protection law are parallel or horizontal regulations, which can result in legal uncertainty for consumers in bankruptcy cases if the rights of one of the parties are neglected.

Plans for the curator to manage and pay the bankrupt debtor's assets (*boedel bankrupt*) against creditors in compliance with progressive law. The occurrence of bankruptcy cases resulting in the neglect of consumer rights is one of the indicators of not achieving legal certainty. Legal certainty will occur if the legal objectives, especially consumer protection and bankruptcy laws, are achieved. As stated by van Apeldoorn, there are two essential things regarding legal certainty: (1) legal certainty means that it can be determined what law applies to concrete problems, and (2) legal certainty means legal protection. Legal certainty is not only in the form of articles in the law but also consistency in the judge's decision between the decisions of one judge and the decisions of other judges for similar cases that have been decided.

The elements of legal certainty include the coherence of the law's provisions as well as their thorough and transparent formulation, which informs the public of what is permissible and what is not, protection of individual interests through security and protection guarantees for the parties, protection from arbitrary action that is justified, identification of the laws that apply to specific situations, and legal protection. So the author can analyze here in the renewal of the Bankruptcy Law and Suspension of Obligations for Payment of Debt, it is necessary to renew, especially for Article 2 paragraph (1) Law Number 37 of 2004 Law on Bankruptcy and Suspension of Obligations for Payment of Debt which defines bankruptcy as: "Debtor who has two or more creditors and does not pay off at least one debt that has matured and is payable, is declared bankrupt by a court decision either at his request or at the request of one or more of his creditors."

Article 8, paragraph 4 states, "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, it can be seen from the two articles that the author of the analysis does not provide legal certainty for creditors because, in this case, the conditions are very easy for bankruptcy. The Commercial Court must grant the application for a declaration of bankruptcy if some facts or circumstances prove that the two bankruptcy requirements in Article 2 paragraph (1) of the Bankruptcy Law have been fulfilled.

Regarding facts or circumstances that are proven, Hadi stated that there are differences in the conceptual boundaries of this simple proof. The elucidation of Article 8 paragraph (4) of the Bankruptcy Law only states that two or more creditors and that money is past due and not paid. Meanwhile, the difference in the amount of debt that the bankruptcy applicant and the bankrupt respondent argued did not preclude the imposition of a bankruptcy statement.

Here, the author observes that it is necessary to improve the arrangements in the management settlement and settlement of the bankrupt debtor's assets (*boedel bankrupt*), which cover various aspects. Substances that need to be addressed and developed include identifying, recording, and administering the assets of bankrupt debtors (*boedel bankrupt*).

In this case, it is also expected that the Panel of Judges of the Commercial Court, in examining the case for a bankruptcy statement submitted by Creditors as stipulated in Article 8 paragraph (1) a of the Bankruptcy Law, is obliged to summon the Debtor, it is suggested that when the Debtor is present at the trial the Panel of Judges inquires about assets The debtor/requests a list of the debtor's assets because so far the bankruptcy application submitted by the creditor does not include data on the assets owned by the debtor. Research in the field shows that loading assets owned by the Debtor in the bankruptcy declaration decision is beneficial to the Curator in managing and dealing with bankruptcy assets, which means that it can expedite bankruptcy settlement. So far, when trials in commercial courts have not been carried out on this matter by judges, that is what causes "naughty" debtors to take refuge in the bankruptcy law and postponement of debt payment obligations so that in terms of legal protection for creditors, they do not get justice and rights. Creditors' rights here are neglected.

3.2. Instrument of the Indonesian bankruptcy legal system in the Settlement of Bankrupt Debtors' Assets

Managing the assets of the bankrupt debtor (*bowel bankrupt*) and, especially regarding the distribution (priority) of the bankrupt debtor's assets (*bowel bankrupt*), is characterized by several elements. If bankruptcy law is seen as a regulatory system, then in this case, there is more than one interrelated element or part. Bankruptcy law in Indonesia has not yet demonstrated a unified legal system that is intact and comprehensive and can guarantee the excellent management of bankruptcy. Judging from the legal construction of bankruptcy law, including matters governing the distribution of bankrupt models, it still varies, consisting of elements of general civil law (KUH Perdata), bankruptcy laws, and postponement of debt payment obligations (Law

Number 37 of 2004), various statutory regulations under the law, sometimes even based on elements of policy. The enactment of several legal provisions as positive bankruptcy law, especially those governing the distribution of bankrupt models to creditors, resulted in the curator experiencing difficulties in managing and settling the bankrupt assets.

Apart from that, there are weaknesses in the legal instruments, whose essence is a lack of consistency in norms throughout multiple articles in the same legal document. The results of the study show that in the Bankruptcy and Suspensions of Obligations for Payment of Law No. 37 on Debt in 2004, several provisions are less harmonious, which have the potential to cause legal uncertainty or multiple interpretations, as follows:

- (1) In connection with Article 11 paragraph (1) of the Bankruptcy Law, Article 68 violates Article 1 letter (7);
- (2) The Bankruptcy Law's Article 56, paragraph (1);
- (3) Under the Bankruptcy Act, Article 76;
- (4) An explanation of Bankruptcy Law Article 127, Paragraph 1.

A situation like this essentially causes problems for stakeholders when executing bankruptcy legislation in general, particularly when it comes to the distribution of bankrupt assets, particularly when allocating priorities for equally privileged and equal creditors. Indonesian bankruptcy legislation lacks legal certainty, is insufficient, and is therefore difficult to apply. Establishing priorities for allocating insolvent boedels is challenging in light of these legal concerns.

There is still no legal unity in the instrument of the bankruptcy-positive legal system. In essence, the legal instruments that can be applied are as follows: Article 1131 of the Civil Code, all the debtor's assets, both movable and immovable, both those that already exist and those that will exist in the future, are borne by all individual engagements. Article 1132 of the Civil Code: These objects are shared as collateral for all those who owe them; the income from the sale of these objects is divided according to the balance, namely according to the size of each receivable, unless there are good reasons among the debtors. Right to take precedence. Article 1134 of the Civil Code: A particular right is a right that is given by law to a creditor so that the level is higher than other creditors, solely based on the nature of the debt. Pledges and mortgages are higher than privileges, except in cases where the law provides otherwise.

After examining how the primary bankruptcy statute was written, it was discovered that several components created unclear circumstances and uncertainty while processing bankruptcy cases. Because of the ambiguity in how it is to be applied, the existence of a "potential" material element in Article 1131 that will only exist in the future contains a normative weakness, particularly when it comes to accountability for every engagement, as the *das sollen* in the engagement itself is something specific and tangible.

The concepts of material law found in Articles 1132 and 1134 of the Civil Code are pretty good. Furthermore, material properties, both actual and potential, can effectively be used as collateral for the payment of existing debts by paying them in a balanced manner by the size of each party's receivables. This is the principle of balance regarding settling guarantees of material rights. Inherent in material privileges are the concepts found in Article 1134's provisions, which state that each object has a debt payment function based on the type of receivables and is dispersed progressively based on their level. For parties with credit rights, this is what the proportionate principle means. On the other hand, the presence of an exception clause seriously compromises the integrity of the rules within it. Due to the inconsistent application of these regulations, legal certainty is not highly valued.

Regarding the classification or category of creditors, Article 1135 of the Civil Code states: "Among privileged debtors, the levels are regulated according to the various characteristics of their privileges." Based on this article, it can be seen that there are 3 (three) creditor groups, namely separatist creditors, preferred creditors, and concurrent creditors. Thus, the distribution of the proceeds from the sale of bankruptcy assets is carried out based on priority, where creditors with a higher position receive an earlier distribution than other creditors with a lower position, and creditors with the same level receive payment on a pro-rata basis (*pari passu pro rata part*).

The explanation above demonstrates how several legal systems, such as aspects of general civil law, bankruptcy law, guarantee law, and others, generally indicate the objective circumstances of bankruptcy regulatory instruments, especially those about the partition of bankrupt boedels and rights Law dependents.

A judge's declaration of bankruptcy results in the general confiscation (*algemene beslag*) of the debtor's assets. The objective is to be able to pay off all debts to creditors in a balanced, fair, and equitable way. Due to creditors' relative positions, payment of debts is made according to the *passu pro rata parte* principle. Still, during the implementation phase, it is controlled according to the order or priority of receivables that need to be paid beforehand, as per the Law's regulations about guarantees for loans that are given. Debtor as opposed to a creditor. It was agreed upon from the beginning that these creditors would pay their debts first and in separate transactions, granting them the authority to seize the collateralized assets. These creditors include those with pledges, fiduciaries, mortgages, and other forms of security. Based on statutory regulations, the following sequence is billed on state rights, auction offices, and public bodies formed by the Government, then labor wages. The elucidation of the articles states, "What's meant by prior payment is the worker/laborer's wages must be paid in advance other debts.

One of the most essential and fundamental components that power the business process is the employee's/laborers' role within the organization. Capital is an additional component that makes a business move and is also necessary. Since each of these components is obligated by an agreement, their status regarding certainty, guarantee, and future actions if a risk materializes beyond the mutual consent of all parties is different. Diverse positions and risks in diverse economic lives must still be considered, which is not always possible. Therefore, when establishing laws, workers' rights must not be penalized in bankruptcy. Still, they also must not obstruct the rights of separatist creditors, who have been regulated in provisions of guarantee law in the form of pledges, mortgages, fiduciaries, or other security rights.

In the aspect of the legal subject, mortgage, mortgage, fiduciary agreements, and other dependency agreements are agreements made by legal subjects, namely entrepreneurs and investors, in which socio-economically, the parties can be constructed the same. What's more, investors may be entrepreneurs, too. Conversely, work agreements are entered into by different legal subjects, namely employers and workers/laborers. Entrepreneurs and workers/laborers, socio-economically, are not equal. Still, one party, as an entrepreneur, is undoubtedly more robust and higher up when compared to workers/laborers because workers/laborers are socio-economically clearly weaker and lower than employers, even though employers and workers/laborers need each other. Companies will not produce without workers/laborers, and workers/laborers cannot work without employers. Because workers/laborers are socio-economically weaker and lower than employers and the 1945 Constitution has guaranteed workers/laborers' rights, the law must protect fulfilling these workers/laborers' rights.

In the aspect of risk, for entrepreneurs, risk is part of what is reasonable in managing their business, apart from profits and losses. Therefore, risk becomes the scope of his consideration when doing business, not the scope of consideration of workers/laborers. Meanwhile, for workers/laborers, wages are a means of meeting the necessities of life for themselves and their families. Hence, it would be improper to use arguments about hazards that were outside the purview of consideration to justify lowering the earnings of workers or laborers. Being held accountable for something in which he was not involved in the business is unfair. Furthermore, according to Article 28A of the 1945 Constitution, to live and protect life is a constitutional right and, based on Article 28I paragraph (1), is an entitlement that cannot be reduced under any circumstances; that is why based on paragraph (4) and paragraph (5) of the article, the state, in this case, the government, must protect, promote, uphold, and fulfill it in laws and regulations that are by the principles of a democratic rule of law.

In practice, creditors separatists with material rights can use their right to execution as if the bankruptcy had never occurred (see Article 55 paragraph (1) of the Bankruptcy Law). Still, the execution rights are suspended for 90 days from when the bankruptcy declaration decision is pronounced (vide Article 56 paragraph (1) of the Bankruptcy Law) unless the suspension is previously appointed. Based on Article 59 (2) of the Bankruptcy Law, if the curator carries out the sale of collateral, it does not reduce the rights of the creditor holding the material rights to the proceeds from the sale of the collateral. Thus, the proceeds from the sale of collateral are distributed in advance to the holders of material rights (separatist creditors) according to their nature, which separates them from other creditors.

However, there are often problems where the debtor has debts to more than one creditor; in this case, one of the many creditors can file for bankruptcy. This has consequences for creditors, including creditors holding

mortgage rights. According to Article 21 of Law no. 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt states, If the debtor has at least two creditors and only one debt to the creditor is due, the court can determine that the debtor is bankrupt. Furthermore, if the bankruptcy decision has been rendered, then immediately all of the debtor's assets that existed at the time of bankruptcy are determined, and the debtor's assets that will exist become bankrupt assets except for the debtor's assets, which are limitedly determined, are not included as bankruptcy assets. Consequently, all of the debtor's assets aside from those not eligible to become bankrupt assets (*boedel*).

The researcher will go into greater detail on the existence of bankruptcy legal system tools in Indonesia in the following section, especially as it relates to managing and resolving bankruptcy *model*, which are more prospective. This section's content is theoretically and thematically connected to progressive law theory, which is frequently applied theory.

Progressive law initiated by the lawyer Satjipto Rahardjo is a phenomenal idea for law enforcement officials, especially judges, so that they are not shackled by legal positivism, which has so far given injustice to *yustisiabellen* (justice seekers) in upholding the law because law enforcement is a series of processes to describe values, ideas, a reasonably abstract ideal that is the goal of the law. Legal goals or ideals initiate moral values, such as justice and truth. These values must be realized in objective reality. The existence of law is recognized if the moral values contained in the law can be implemented or not.

Learning from history, we will still think that changes won't happen again, the world won't cease evolving, and that changes will halt at a specific time regarded as having reached its pinnacle. Progressive law does not think so but looks at the world and law with a flowing view, like "*panta rei*" (everything flows) from the philosopher Heraklitos. First, the paradigm in progressive law is that "law is for humans." This grip, optics, or fundamental belief does not see the law as central in judging, but humans are at the center of the rotation of the law. The law revolves around humans as its center. Laws exist for humans, not humans for laws. If we hold on to the belief that humans are for the law, then humans will always be tried, maybe even forced, to be able to enter into the schemes that have been made by law. The two progressive laws refuse to maintain the status quo in judging. Maintaining the status quo has the same effect as when people think the law is the yardstick for everything and humans are for the law.

Law enforcement is a means to achieve legal goals, and all energy should be mobilized so that the law can work to realize moral values in law. The failure of the law to recognize its value threatens the danger of bankruptcy of the existing law. Laws that poorly implement moral values will be distant and isolated from society. The success of law enforcement will determine and become a barometer of legal legitimacy.

4. Conclusion

Modernizing the bankruptcy code to resolve obligations owed by debtors according to the bankruptcy law here it can be concluded that legal certainty in determining the priority of the distribution of bankruptcy model to preferred creditors and separatist creditors, which if the available bankrupt *boedels* are not sufficient to pay off the debts of preferred creditors and separatist creditors, For parties that are also privileged creditors of bankrupt firms, legal certainty on the priority in the distribution of bankrupt *boedels* must be obtained by statutory regulations. Updating the legal system in bankruptcy law here, there are several things to pay attention to in settlement of debtors' debts to creditors through bankruptcy; even though it has been regulated through the Bankruptcy Law, in practice, there are still obstacles, including the lack of funds for management and settlement of bankrupt assets, the way to overcome this is that the curator makes loans from creditors or the debtor's family, the bankrupt debtor is not cooperative, the way to overcome this is to coordinate directly or by letter with agencies/institutions related to the bankrupt debtor's assets and take firm action, for example asking the judge to arrest the bankrupt debtor, Bankrupt debtors sell/hide their assets before being declared bankrupt, the way to deal with this is to report it to the police and file a lawsuit. Depending on the parties' good faith, the bankruptcy process will swiftly and efficiently settle obligations owed by debtors to creditors.

Instruments of the Indonesian bankruptcy legal system in settlement of bankrupt debtors' assets (*boedel* bankrupt), which are anticipated to provide creditors with a sense of fairness and legal certainty, in this case, Bankruptcy legal instruments (regulations) in general, and specifically regarding the distribution (priority) of debtors' assets bankruptcy (*boedel* bankrupt) is characterized by several elements. If bankruptcy law is seen as a regulatory system, then in this case, there is more than one interrelated element or part. Bankruptcy law in

Indonesia has not yet demonstrated a unified legal system that is intact and comprehensive and can guarantee the excellent management of bankruptcy. Judging from the legal construction of bankruptcy law, including matters governing the distribution of bankrupt *boedels*, it is still diverse, consisting of elements of general or Civil Law Code, bankruptcy law, and suspension of debt payment obligations, various statutory regulations under the law, sometimes even based on elements of policy. The enactment of several legal provisions as positive bankruptcy law, especially those governing the distribution of bankrupt *boedels* to creditors, resulted in the curator experiencing difficulties in managing and settling the bankrupt assets.

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