

## ESTABLISHING A LEGAL MECHANISM FOR SETTLEMENT OF DEBTS AND CREDITORS ACCORDING TO THE BANKRUPTCY LAW

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### ABSTRACT

The financial crisis that hit Indonesia in mid-1997 had a negative impact on the national economy, caused great difficulties in settling debts and receivables for companies to continue their activities, and had a negative impact on society. At that time, many problems arose. Many companies struggle to pay their debts to their creditors and, moreover, many companies go bankrupt. In legal practice, often a debtor (debtor) neglects to fulfill his obligations or achievements, not because it is caused by compelling circumstances (*overmacht*). Such a situation is called breaking a promise (*wanprestasi*). And some entrepreneurs in Indonesia through their companies do not carry out careful calculations on debt through borrowing and borrowing with companies from outside the country. The decline in the rupiah exchange rate has caused at least 3 (three) negative impacts on the national economy, namely: Negative Payments, Negative Spread, Negative Equity. The above circumstances have put many companies at risk of bankruptcy due to the state of the national economy and the inability to pay the company's debts, which are usually denominated in dollars. One of the purposes of this research is to prevent debtors from taking actions that harm creditors, with the method of empirical normative-juridical writing in order to build a strong legal mechanism in solving this problem, a legal framework is needed to manage debt problems quickly, effectively, efficiently and fairly. However, this law also poses many problems in its implementation. Therefore, a solution is needed to overcome bankruptcy by building a strong legal mechanism so that the final settlement of bankruptcy can become law itself, namely justice for the parties.

**Keywords:** Legal Mechanisms, Bankruptcy, Receivables

### ABSTRAK

Krisis keuangan yang melanda Indonesia pada pertengahan tahun 1997 berdampak negatif terhadap perekonomian nasional, menyebabkan kesulitan besar dalam penyelesaian utang dan piutang bagi perusahaan untuk melanjutkan kegiatannya, dan berdampak negatif bagi masyarakat. Saat itu, banyak masalah muncul. Banyak perusahaan berjuang untuk membayar hutang-hutang mereka kepada kreditur mereka dan, terlebih lagi, banyak perusahaan bangkrut. Dalam praktek hukum, acap kali seorang yang berutang (*debitor*) lalai memenuhi kewajibannya atau prestasinya, bukan karena disebabkan oleh keadaan yang memaksa (*overmacht*). Keadaan yang demikian disebut dengan ingkar janji (*wanprestasi*). Dan sebagian pengusaha di Indonesia melalui perusahaannya tidak melakukan perhitungan yang matang terhadap utang melalui pinjam meminjam dengan perusahaan dari luar negara tersebut. Penurunan nilai tukar rupiah telah menimbulkan sedikitnya 3 (tiga) dampak negatif terhadap perekonomian nasional, yaitu: Negative Payments, Negative Spread, Negative Equity. Keadaan di atas telah menempatkan banyak perusahaan pada risiko kebangkrutan karena keadaan ekonomi nasional dan ketidakmampuan untuk membayar hutang perusahaan, yang biasanya dalam mata uang dolar. Tujuan penelitian ini salah satunya untuk mencegah agar debitur tidak melakukan tindakan yang merugikan para kreditor, dengan metode penulisan yuridis normatif empiris agar dapat membangun mekanisme sistem hukum yang kuat dalam penyelesaian masalah ini diperlukan kerangka hukum dalam mengelola masalah utang secara cepat, efektif, efisien dan adil, namun undang-undang ini juga menimbulkan banyak masalah dalam pelaksanaannya. Oleh karena itu, diperlukan solusi untuk mengatasi kepailitan dengan membangun mekanisme sistem hukum yang kuat agar penyelesaian akhir dari kepailitan dapat menjadi hukum itu sendiri, yaitu keadilan bagi para pihak.

**Kata Kunci :** Mekanisme, Sistem Hukum, Pailit,

## A. INTRODUCTION

At that time many problems arose, among others: In mid-1997 there was a drastic depreciation of the rupiah against foreign currencies, especially US\$ from around Rp. 2,300.00 around March to around Rp. 5000.00 per US \$ at the end of 1997 . Even in mid-1998 the rupiah exchange rate touched Rp. 16,000.00 per US\$. This economic condition resulted in a slump in the previously positive economic growth of around 6 – 7% which has contracted to minus 13 – 14%. The inflation rate increased from below 10% to around 70%. Many companies have difficulty paying their debt obligations to creditors and furthermore many companies experience bankruptcy (Bankruptcy). The fall in the rupiah exchange rate has atleast given rise to 3 (three) negative impacts on the national economy that is<sup>1</sup> 1:

1. Negative balance of payments; The negative balance of payments mainly occurs due to the soaring exchange rate in foreign currency (forex) when converted into rupiah. The sizeable debt of private companies and the government has accelerated the burden on the balance of payments while the increase in the value of exports as a result of the "bonanza" of the depreciation of the rupiah cannot be enjoyed immediately.

2. Negative spreads; Negative spreads mainly occur in the financial industry. The government's policy to raise interest rates to curb the demand for foreign currency has led to an increase in bank interest rates. Meanwhile, funds collected from the public are difficult to channel because there are rarely companies that are able to earn a margin above the interest rate.

3. Negative equity. Companies that have already obtained economic bank loans that previously experienced negative equity because the value of their wealth in rupiah is no longer enough and even differs greatly when compared to the rupiah value of foreign currency debt.

The above conditions have resulted in many companies being threatened with bankruptcy due to the condition of the national economy and the inability to pay the company's debts which are generally made in dollars. To overcome this problem, a statutory regulation that regulates this debt problem is needed

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<sup>1</sup> Zainal Asikin, *Bankruptcy Law and Suspension of Debt Payment Obligations*, Jakarta: Pustaka RekaCipta, 2013, page 11

quickly, effectively, efficiently and fairly. Previously, there was already a regulation, namely the old bankruptcy law. However, it is considered unable to meet the needs of business actors to solve their debt problems quickly, effectively, efficiently and fairly.

To anticipate the number of companies that went bankrupt, the Perpu No. 1 of 1998, became a law. No. 4 of 1998 the government has made changes, additions and improvements to the articles contained in the Faillissement Verordening Stb. 1905 No. 217 Jo. Stb. 1906 No. 348. However, it is felt that these changes and improvements still contain several weaknesses, especially those that arise in practice. Then was born Law no. 4 of 2004 concerning the Law on Bankruptcy and Postponement of Debt Payments, came into force on October 18, 2004. However, in its implementation, this law still causes many problems. For that we need a solution to overcome it, so that what is the purpose of making the bankruptcy law itself can be achieved, namely justice for the parties.

In legal practice, often a debtor (debtor) neglects to fulfill his obligations or achievements, not because it is caused by compelling circumstances (overmacht). Such a situation is called breaking a promise (wanprestasi).

In civil law, there are three forms of default, namely:

1. The debtor does not fulfill any performance at all.
2. The debtor is late in fulfilling the performance.
3. The debtor's performance is not as good as it should be<sup>2</sup>.

One of them, the company even experienced serious difficulties in fulfilling debt payment obligations so that creditors were economically disadvantaged. Under these conditions, bankruptcy law is needed to regulate the settlement of debt and creditor disputes between debtors and creditors.<sup>3</sup>

When entering the world of commerce, if the debtor is unable or unwilling to pay his debts to creditors (caused by a difficult economic situation or forced

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<sup>2</sup> Purwahid Patrik, *The Basics of Engagement Law (Affidavits Born From Agreements And From Laws*

<sup>3</sup> Irna Nurhayati, *Overview of the Bankruptcy Act (UU No. 4 of 1998)*, Law Platform, UGM Faculty of Law Periodical Magazine No: 32/VI/1999, page 41

circumstances), then the debtor can apply for a Suspension of Payment Obligations Debt to solve the problem. The debtor or creditor can also apply for a declaration of bankruptcy with the hope that the negligent debtor will be declared bankrupt by a judge through his decision. Bankruptcy is a civil law institution as the realization of the two main principles contained in Article 1131 and Article 1132 of the Indonesian Civil Code.

Article 1131 of the Civil Code stipulates as follows: "All objects of the debtor, both movable and immovable, both existing and new in the future, become dependents for all individual engagements."<sup>4</sup>

Furthermore, Article 1132 of the Civil Code stipulates as follows: "The object becomes a mutual guarantee for all those who owe it, the income from the sale of the objects is divided according to the balance, namely according to the size of the receivables of each, unless among the debtors there are valid reasons to take precedence."<sup>5</sup>

Bankruptcy action is a general confiscation of all assets of the Bankrupt Debtor whose management and settlement is carried out by the Curator under the supervision of the Supervisory Judge. Bankruptcy assets will be distributed according to the portion of the creditor's claim. This principle of bankruptcy is a realization of the provisions of Article 1131 and the Civil Code, namely that the debtor's property becomes a joint guarantee for all creditors which are divided according to the principle of balance or "*pari pasu prorata parte*".<sup>6</sup>

Based on the provisions in the articles above, it is clear that if the debtor is negligent in fulfilling his obligations or his achievements, the creditor is given the right to conduct an auction of the debtor's assets. The proceeds of the sale (auction) must be divided honestly and equally among the creditors in accordance with the balance of the amount of their respective receivables. In general, bankruptcy is related to debtor's debt or creditor's receivables. A creditor may have more than one receivable or claim, and the different

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<sup>4</sup> Article 1131 Civil Law Act

<sup>5</sup> Ibid, Article 1132

<sup>6</sup> Jerry Hoff, Indonesian Bankruptcy Law, Translator Kartini Mulyadi, Jakarta: P.T.

Tatanusa, 2000, p. 13

receivables or claims are required differently in the bankruptcy process.<sup>7</sup>

It should be noted here that not all negligent debtors can be filed for bankruptcy, because according to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which is a manifestation of Article 1131 and Article 1132 of the Civil Code, there must be several conditions. that must be fulfilled, among others, is that the debtor has two or more creditors and has not paid off at least one debt that has matured and can be collected (Article 2 paragraph (1) of Law Number 37 of 2004).

Therefore, the author is interested and wants to know more about the regulation of bankruptcy in Indonesia, therefore the author conducted a study with the theme "**Establishinga Legal Mechanism for Settlement of Debts and Creditors According to the Bankruptcy Law**"

## **B. FOCUS OF PROBLEM**

The formulation of the problem raised in this research is: How is the Settlement of Debts and Creditors in the Bankruptcy Act? And How to build a bankruptcy law mechanism in the implementation of many problems in Indonesia?

## **C. RESEARCH METHODOLOGY**

Research in Establishing a Legal Mechanism for Settlement of Debts and Creditors According to the Bankruptcy is Normative Legal Research. Methods This research is a legal research. Legal research is research that is applied or applied specifically to legal science.<sup>8</sup> Where there is a normative legal research method and there is a legal research method empirical. Here this writing uses a normative legal research method (juridical normative) which is an approach based on the main legal material by examining theories, concepts, legal

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<sup>7</sup> Sutan Remy Sjahdeini, Bankruptcy Law (Understanding faillissementsverordening Juncto Law No. 4 of 1998), Jakarta: Main Library of Graffiti, 2002, p. 89

<sup>8</sup> F. Sugeng Istanto, "Legal Research", CV. Ganda, Yogyakarta, 2007, p. 29, taken from Saldi Isra, Shifting Legislative Functions in the Indonesian Government System After the Amendment of the 1945 Constitution, Dissertation on Postgraduate Program of the Faculty of Law, Gadjah Mada University, Yogyakarta, 2009, Ha1.41

principles and legislation related to this research.<sup>9</sup>

The main source of research is the use of secondary legal materials as a reference, plus primary legal materials. namely data obtained based on library materials. In this normative legal research, the authors collect data in the form of secondary data obtained from books, laws and other library sources.

This Juridical-Normative Approach is used with the intention of approaching the problem by looking at the applicable laws and regulations, documents and various theories. The results of the study are presented in a complete, detailed, clear and systematic way as a scientific work.

## **D. RESEARCH RESULTS AND DISCUSSION**

### **1. Settlement of Debts and Creditors in Bankruptcy Law**

In the traffic of the business world, especially in the case of buying and selling, between the seller and the buyer have obligations that need to be fulfilled by each other. The seller is obliged to deliver the goods and make delivery and the buyer is obliged to make payment according to the agreed price. The obligations of the parties in this sale and purchase in the Civil Code are termed achievements.

Article 1234 of the Civil Code divides achievement into 3 (three) forms, namely to give something, to do something and not to do something. When one of the parties in the agreement, especially the sale and purchase agreement, does not heed its obligations to achieve, then that party can be considered a default. With a state of default, a debt has arisen which is equated with a person's obligation to fulfill his achievements born of an agreement. Default cases will generally be resolved through the District Court.

However, a default case that cannot be resolved in the District Court will usually be taken further to be resolved in the Commercial Court at the District Court through a petition for a declaration of bankruptcy, especially if the debtor defaults to more than one creditor. This is reflected in one example case, namely the case of a Residential Property (Property Developer) as a Debtor who has defaulted on a Housing Unit sale and purchase agreement where the Property as

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<sup>9</sup> Soerjono Soekanto and Sri Mamudji, 2006, "Normative Legal Research A Brief Overview", Jakarta, Rajagrafindo Persada, p. 13

a housing unit seller has not carried out its obligations as a seller to deliver the goods, namely the house after the price of the house has been agreed upon and has been paid by the buyer (creditor). Residential Property defaults not only to one housing buyer, but to hundreds of buyers. Thus, taking into account the purpose of the bankruptcy itself, Residential Property has been filed for bankruptcy by several of its creditors.

The application for bankruptcy is filed on the basis that the Residential Property has not carried out its obligations even though mediation has been carried out with the Police which also led to the rescheduling requested by the Residential Property. However, the application for a declaration of bankruptcy filed by the creditor of this Residential Property was rejected by the Commercial Court at the Central Jakarta District Court on the grounds that the debt had not yet matured.

Based on this case, there is a legal uncertainty regarding the conditions for submitting an application for a declaration of bankruptcy regarding the terms of the debt itself. Debts that have matured in the KPKPU Law are defined as debts that arise due to the lapse of the scheduling time specified in the agreement.

With the lapse of the scheduling time, the debtor can be said to be in default and an obligation arises to carry out the achievements in the agreement so that a debt that has matured is born. The act of Residential Property not to hand over the car to its buyers and not heeding the mediation decision made by Residential Property with the buyers, gives rise to debts that have fallen due to Residential Property due to the expiry of the scheduled time.

Residential Property has entered into one type of default, namely not making achievements in accordance with Article 1243 of the Civil Code because Residential Property has in fact not carried out its achievements to give something. There is a wrong element that has been done by Residential Property, namely not carrying out its achievements to provide houses to housing buyers, so that in fact it is clear that Residential Properties have defaulted.

The condition of the debtor's default in the petition for a declaration of bankruptcy has in fact fulfilled the elements of Article 2 paragraph (1) jo. 8

paragraph (4) of the KPKPU Law. Default creates debt that must be met by the debtor. One of the elements of debt as referred to in Article 1 point 6 of the KPKPU Law is debt arising from an agreement. As debts arising from default are debts arising from agreements.

In general, the debtor's obligation to excel, especially the achievement to give something or commonly known as payment, is not always only in the form of giving a sum of money but also includes giving a pleasure. The obligations of the parties to excel according to Subekti can be equated with the debts referred to in the Civil Code). Debt is born either because of an agreement or an act against the law.

Thus, a state of default where the debtor does not carry out his achievements to provide something can also be equated with debt because he has not carried out the obligations in the agreement. Especially in a sale and purchase agreement, where sometimes a situation arises when the buyer has carried out his achievements, namely making payments according to the agreed price, but the seller does not carry out his achievements to provide something, namely giving the object of sale and purchase.

Such a situation can be categorized into a state of default because it does not carry out its achievements, which the seller should perform his achievements to provide something that is the object of the sale and purchase. This has also explicitly become the seller's main obligation, namely leveraging as stated in Article 1474 of the Civil Code. Furthermore, Article 1235 states that in an agreement to provide something there is an obligation of the debtor to hand over the object in question until it is leveraged.

In an application for a declaration of bankruptcy in which the creditor who is the buyer bases the debt owned by the debtor who is the seller on the basis of not performing the achievement to provide the object of sale and purchase within the specified period of time, in fact it has fulfilled the requirements for the application for a declaration of bankruptcy as stated in Article 2 paragraph (1) jo . 8 paragraph (4) of the KPKPU Law. By not carrying out its achievements to provide the object of sale and purchase within a predetermined period of time, a debt has arisen which is an obligation born of the agreement as if it is associated



with the definition of debt as set out in Article 1 point 6 of the KPKPU Law.

This is also because the debt referred to in the KPKPU Law is the broad definition of debt adopted in the Civil Code. Legal certainty regarding debts that have matured and can be billed based on performance to provide something, especially in a sale and purchase agreement, needs to be enforced so as not to cause differences in interpretation and to carry out law enforcement without discrimination. Furthermore, to ensure legal certainty, there is a need for a formulation between the rules of law and the facts regarding the existence of debts based on one's achievements to provide something, especially in a sale and purchase agreement. When actually in the trial for the bankruptcy declaration, the facts show that there are debts that have met the requirements of Article 2 paragraph (1) jo. 8 paragraph (4) of the PKPU Law, then at that time the bankruptcy decision must be handed down to the debtor.

Thus, the receipt of an application for a declaration of bankruptcy based on a sale and purchase agreement on the seller's performance to provide an object of sale and purchase will in fact provide benefits for many parties as well as economic development in Indonesia. Bankruptcy institutions are basically born to protect all the interests of the parties involved in a bankruptcy process. Thus, all parties involved in a bankruptcy process can have their rights guaranteed, both creditors and debtors.

## **2. Building a bankruptcy law mechanism in its implementation, there are many problems in Indonesia**

### **2.1. Preventive Legal Protection**

#### **a. Preventive Efforts Developer Perspective of Consumer Protection Act**

Based on the provisions of the Consumer Protection Act, developers are included in the category of business actors. The definition of Business Actor in Article 1 point 3 of Law Number 8 of 1999 concerning Consumer Protection, namely:

“Business actor is every individual or business entity, whether domiciled or carrying out activities within the jurisdiction”

The following are the stages that consumers need to pay attention to in

buying a house through a developer/developer<sup>10</sup>

Pre Contractual; This stage is a preparation for consumers before making sure to buy a house of interest. There are several important things that consumers need to consider before making a decision to buy a house from a developer, namely; location, developer identity, permits, technical specifications of buildings, facilities, prices, and environmental infrastructure and facilities.

a. Contractual; Is the stage that is taken when the transaction preparation process has been carried out, the next stage is the sale and purchase agreement, namely after an agreement occurs between the developer as the seller and the consumer as the buyer. This stage of the sale and purchase agreement is carried out in front of the Land Deed Making Official (PPAT), and signed by the developer and the consumer. Then proceed with the stage of handing over the land as well as building houses from the developer to the consumer. At this stage the developer and the consumer agree to sign the minutes of the handover of land and house buildings. At the stage of buying and selling a house, there are two things that need to be clarified;

(a) Payment system for buying and selling houses

(b) Materials/contents of the house sale and purchase binding transaction

b. Post Contractual; At this stage is the result of the realization of the sale and purchase of houses that have been held. Consumers have been able to enjoy or occupy land and houses that have been purchased from developers. Several things that consumers can do in the post contractual phase, among others are;

(a) The handover of land and house buildings from developers to consumers by signing the minutes of handover,

(b) Before signing the minutes of handover, the consumer must re-match the condition of the agreed house. Is it appropriate to the size of the land

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<sup>10</sup> Rahmawati, Dyah, Legal Review of the Implementation of Housing Procurement Agreements Between Banks, Developers and Consumers at PT. Bank Niaga, Tbk Branch A. Yani Semarang, Postgraduate Program Thesis Bachelor Degree from Diponegoro University Semarang, 2006, Published, p. 43

and the building of the house, the specifications of the building used, the facilities in the house and so on?

(c) Using public facilities and social facilities,

(d) Submission of certificates when consumers have paid the price of land and house buildings

Likewise, the prohibitions for business actors have also been clarified in Law No. 8 of 1999, for example in Article 8 letter Business Actors are prohibited from producing and/or trading goods and/or services that are not in accordance with the promises stated in the label, etiquette, information, advertisement or promotion of the sale of the said goods and/or services. At the pre-contractual and contractual stages, of course, the consumer has been promised to have a house certificate as proof of ownership, but in reality the consumer has not yet received his rights.

The provisions in the Consumer Protection Act contribute to improving the business competition climate, where today business competition is something that always exists in the business world. In a competitive situation, of course, efficient allocation of resources is required. Business actors will be required to be able to produce goods/services according to the wishes of consumers. In such circumstances, only efficient business actors can survive and develop their businesses.

The Consumer Protection Law can create fair business competition. As stipulated in the Consumer Protection Law in articles 9 to 18, which are intended to regulate the behavior of business actors, both when they transact with consumers, and when they interact with other business actors.

So that bankruptcy provisions that still pay attention to consumer protection are expected to play a role in improving social functions as a selection mechanism in the business world, so that the selection of inefficient businesses will be better and can create better economic conditions and can avoid unfair business competition. By protecting the business world from unfair competition, it will affect the balanced bargaining position of consumers, because business actors always carry out their activities in accordance with their obligations under applicable laws and regulations.

### **b. Obligations of Developers in the Housing Industry**

In particular, the obligation of the developer or developer as a business actor is contained in Kepmenpera No. 9 / KPTS / M / 1995 concerning Guidelines for Binding Buying and Selling Houses. Obligations of Developers in the Housing Industry Kepmenpera No. 9/KPTS/M/Year 1995 concerning Binding Guidelines

The sale and purchase of houses in the regulation regulates the obligations of business actors in the housing, property/developer sector, namely, firstly, the seller is obliged to carry out the construction of the building according to the agreed time according to architectural drawings, floor plans and technical specifications of the building, which have been agreed and signed jointly by both parties. parties and attached, which is an integral part of the deed of binding the sale and purchase of the house. Second, the Seller is obliged to complete the construction of the building and hand over the land and house buildings on time as agreed to the Buyer, unless there are compelling circumstances (Force Majeure) which are beyond the ability of the Seller, such as natural disasters of war, strikes, riots. , fires, floods and government regulations or policies in the monetary sector. Third, the seller before making the sale and or binding the sale and purchase of the house is required to have a letter of approval in principle for the project plan from the local government and a location permit from the Regency/Municipal Land Office, Certificate from the Regency/Municipal Land Office, that the Developer has obtained the land. for housing and settlement development. And a building permit. Fourth. the seller is obliged to take care of the registration of the acquisition of rights to land and house buildings, immediately after the transfer of rights to land and house buildings or the sale and purchase of houses (land and buildings) before the PPAT. Fifth, if the Seller fails to deliver the Land and House Building on time as agreed to the Buyer, it is required to pay a late submission fine of 2% (two thousandth) of the total price of the Land and House Building for each day of delay. Sixth; If the Seller is found to have neglected his obligation to take care of the registration of the acquisition of the rights to the Land and Building of the House, the Buyer has the right and is deemed to have been given the authority to administer and carry out actions relating to the registration of the acquisition

of the rights to the Land and Building of the house to the competent authority.

**c. Role of Non-Governmental Consumer Protection Institutions (LKPSM)**

The formulation of Article 44 paragraph (3) UUPK, stipulates that LPKSM has duties which include the following activities:

1. Disseminate information in order to increase awareness of the rights and obligations and caution of consumers in consuming goods and/or services.
2. Provide advice to consumers who need it.
3. Cooperate with relevant agencies in an effort to realize consumer protection.
4. Assist consumers in fighting for their rights, including receiving consumer complaints or complaints.
5. Carry out joint supervision with the government and the community on the implementation of consumer protection.

**2.2. Repressive Legal Protection**

a. Repressive Legal Protection based on Law No. 37 of 2004 concerning Bankruptcy and PKPU

All claims of certain parties relating to the bankruptcy estate of the debtor will be submitted to the curator with the permission of the supervisory judge. The bankruptcy law has set out several measures that can be taken. This provision has been regulated in Article 26 of Law no. 37 of 2004 concerning Bankruptcy and PKPU.

Article 36 of Law no. 37 of 2004 confirms the reciprocal agreement that has been made by the debtor. When the bankruptcy decision is pronounced there is a reciprocal agreement that has not been or has only been partially fulfilled, the party entering into the agreement with the Debtor may ask the curator to provide certainty regarding the continuation of the implementation of the agreement within the period agreed upon by the curator and the party and in the event that an agreement is not reached. regarding the period of time the Supervisory Judge determines the period of time. If within a period of time the curator does not provide an answer or is not willing to continue the implementation of the agreement, the agreement ends and the party entering into

the agreement with the debtor can claim compensation and will be treated as a concurrent creditor.

Then Article 37 of Law no. 37 of 2004 confirms that if in the reciprocal agreement it has been agreed that the delivery of merchandise which is usually traded for a period of time and the party who must surrender the object before the delivery is carried out is declared bankrupt, the agreement is annulled by the pronouncement of a bankruptcy declaration decision, and in the event that the opposing party is harmed due to the abolition, the person concerned may apply as a concurrent creditor to obtain compensation.

Thus, based on the provisions of Article 26, Article 36 and Article 37 of Law no. 37 of 2004 above, consumers can file a claim with the curator. If the curator then ignores the consumer's demands, the consumer can apply as a concurrent creditor to the Supervisory Judge.

The provisions in the bankruptcy state that there are three creditors who get compensation guarantees. Among them are separatist creditors, namely creditors holding material guarantees [Based on Article 1134 paragraph (2) of the Civil Code, namely Pawns and Mortgages], then preferred creditors who have the right to precede because of the nature of their receivables by law are given a special position [as stipulated in Article 1139 of the Civil Code -1149] and the last is concurrent creditors, namely creditors who are not included in the separatist creditors and preferred creditors. [As referred to in article 113 jo. Article 1132 of the Civil Code]

Article 2 paragraph (1) of the Bankruptcy Law and PKPU No. 34 of 2007 contains provisions regarding bankruptcy where a debtor who has two or more creditors and does not pay off at least one debt that has matured and can be collected, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors. Elucidation of Article 2 paragraph 1 which is meant by "Creditors" in this paragraph are concurrent creditors, separatist creditors and preferred creditors. Specifically regarding separatist creditors and preferred creditors, they can apply for a declaration of bankruptcy without losing their collateral rights over the property they have on the Debtor's assets and their right to take precedence.

Legal protection that has been given to concurrent creditors can relate to three parties, namely bankrupt debtors, separatist creditors, curators and supervisory judges. Legal protection of concurrent creditors against bankrupt debtors has been regulated in Law No. 34 of 2007 concerning Bankruptcy and PKPU, including those relating to confiscation of guarantees, *actio pauliana*, body coercion, Objections to Rehabilitation Applications, Appeals to the Decision of the Supervisory Judge.

## **E. CONCLUSION**

Based on the results of research that has been carried out by the author, the following conclusions can be drawn:

1. Settlement of debtors' debts to creditors through bankruptcy is essentially a series of processes starting from the application for a declaration of bankruptcy, management and settlement of bankrupt assets, and finally ending the bankruptcy. Settlement of debtors' debts to creditors through bankruptcy can be settled in two ways, namely by reconciliation (*akkoord*) and by settlement of bankrupt assets. Settlement by conciliation may occur if the Debtor submits a reconciliation plan and is approved by the Creditor in accordance with the provisions of Article 151 of the UUK and obtains ratification based on a Court decision which has permanent legal force. Settlement by way of settlement of bankruptcy assets may occur if the Debtor does not submit a reconciliation plan or proposes a reconciliation plan but is rejected by the concurrent creditors or the ratification of the settlement is rejected based on a court decision which has permanent legal force. Settlement of Debtor's debts to Creditors through bankruptcy by way of amicable (*akkoord*) distribution and payment is carried out in accordance with an agreement that has been agreed upon by the Debtor and Creditors, while settlement by means of settlement of bankruptcy assets is carried out by the Curator, the distribution and payment of which are carried out at once after all or all of the bankrupt assets have been sold or gradually after accumulating sufficient money from the sale of the bankruptcy estate until all of the bankrupt assets have been sold.

2. Settlement of debtors' debts to creditors through bankruptcy,

although it has been regulated through UUK but in its implementation there are still obstacles, including the absence of funds for the costs of managing and settling bankrupt assets. uncooperative, the way to overcome this is to coordinate directly or by letter with the agencies/institutions related to the assets of the Bankrupt Debtor and take firm action, for example asking the Judge to arrest the Bankrupt Debtor, the Bankrupt debtor to sell/hide his assets before being declared bankrupt. lawsuit and report to the Police. Settlement of the debtor's debt to creditors through bankruptcy will end quickly and effectively depending on the good faith of the parties.

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