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## ***THE PRIORITY DISTRIBUTION OF WEALTH THE DEBTOR'S BANKRUPT (BOEDEL BANKRUPTCY) TOWARDS SEPARATIST AND PREFERENTIAL OF CREDITOR BASED ON PRINCIPLES OF FAIRNESS AND LEGAL SECURITY***

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### Article Info

#### Keywords:

*bankruptcy, boedel bankruptcy, preferred creditors, separatist creditors*

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### Abstract

*Indonesia modern civil law development lasted to align with community life progress. In 1998 made bankruptcy laws reform of colonial legacy, which was revised in 2004 by Law No. 37. Additionally, the bankruptcy law instruments sourced on the Civil Code and some other provisions. After the court decision on bankruptcy declaration, bankruptcy process was arrangement and distribution of wealth the debtor's bankrupt (boedel bankruptcy) by curator. So far, the difficulty legal curator instrument cared and settled bankruptcy estate. The prioritization of splitting on the preference and separatist creditor. This research was classified as a normative legal research. Basically, the research based on secondary data. The research conclusion, first, completion of settlement the boedel bankruptcy arranged which reflected in a series of activities that sequence according to the stages and institutionally involve the creditor committee, curator, and the supervisory judge; second, the principles of justice that could be applied in determining the division of boedel bankruptcy to creditors, particularly the preferred and separatist creditors, namely the principle of *pari passu* and *pro rata*, the principle of balance, the principle of proportional, and the principles of fairness; third, instruments of Indonesia bankruptcy law consists of elements of civil law (Civil Code), bankruptcy law and suspension of debt payments (Act No. 37 of 2004), a variety of laws and regulations under the law, occasionally based on the policy elements. This condition reduces the level of security in the application of the law.*

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## Introduction

The most common problem is the settlement of debts between debtors and creditors or between creditors. One of the alternative settlement of debt disputes is with the representing of bankruptcy law institutions. (Perkembangan hukum kepailitan, 2004)

The main principle in bankruptcy is creditorium parity and pari passu prorata principle. Bankruptcy (Pasal 1 angka 1 UU Kepailitan) means public confiscation, is after the debtor is declared bankrupt by the Court, the authority over all of his property turns to the curator. The main task of the Curator is to manage and defray the beodel of bankruptcy, as soon as the debtor is declared bankrupt (Pasal 306 UU No. 37, 2004)

In order to ensure legal certainty of the decisions of bankruptcy, the management and the ordering must proceed immediately even if the bankrupt debtor commits a cassation or a judicial review to the Supreme Court. (Simanjuntak, 2003) This is in line with civil law theory related to the immediate verdict (Pasal 16 UU Kepailitan) (uitvoerbaar bij voorrad). The bankruptcy process has 2 (two) phases or 2 (two) priods: the custody phase (conceratoir) and the insolvency phase or the executor phase. (Sastrawidjaja, 2006)

The Bankruptcy Law as a special provision governing the settlement of debts through the means of bankruptcy, does not strictly regulate to which creditors are prioritized. On the one hand on material guarantees, the Bankruptcy Law gives priority to the right to

self-executed bankruptcy boedels tied to material guarantees for 2 (two) months after the debtor's bankruptcy is insolvent. On the other hand, the employer / employee creditors and the tax office as privileged creditors (preferred creditors) also have a priority right in the payment of their bills under the Law (Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan terhadap Buruh/Karyawan dan Undang-Undang Nomor 16 Tahun 2009 tentang Penetapan Perpu No. 5 Tahun 2008 Tentang perubahan Keempat Atas Undang-Undang No. 6 Tahun 1983 Tentang Ketentuan Umum dan Tata , 2003) dan KUH Perdata without being firmly stressed in the Bankruptcy Law.

Based on the above description, the problems in this study are formulated as follows: (1) How is the arrangement of settlement and clearance of debtor's assets bankrupt (boedel pailit) by the curator against the creditors in accordance with the principle of legal certainty ?; (2) How to prioritize the division of bankrupt debtors' assets against preferred and separatist creditors according to the principles of justice ?; (3) How is the instrument of Indonesian bankruptcy law system in order to enforce the assets of bankrupt debtor (boedel pailit) which is expected to fulfill the sense of justice and legal certainty for the creditors?

The theory of cybernetics law is one of the first systems theory by Norbert Wiener. (Wiener, 1993) In legal science, Parson (Soekanto, 1994) uses cybernetics to explain the law as part of the norm system in social systems. Law is the center of strength, control, and binding of all elements of the social system. In the context of legal science analysis shows high objectivity. This

conception develops in line with the widespread conception of the rule of law in the rule of law which sees the law as the supreme (rule) that gives the authority and the limits of authority for each party to act. Everyone should act according to the law, and obey the law in whatever position the person is in. (Hartono, 1987)

In justice as fairness, the position of genuine equality relates to the natural conditions in the traditional theory of contract. People do not look at the tendencies and inclinations of many as automatically lead, and then seek the best way to fulfill them. However, their passion and inspiration. restricted from the start with the principles of justice that show the boundaries that must be respected the system of many people's goals.

The theory of positive law comes from the legal thought of the legal mazhab positivism which depicts legal dimension which is completely legalistic.

According to John Austin, law is a command of the law giver, the law is placed as the order of the highest power holders, the law is a command for thinking beings, the law is a logical system of a fixed and closed (closed logical system ), the positive law must meet several elements, namely command, sanction, obligation, and power.

Meanwhile, Hans Kelsen: the law must be cleansed of non-legal elements, such as ethics, sociology, politics, and so on. The law is included in the sollencategory (law as required), not seinscategory (law as reality). The law is obeyed because people must obey the law as a state order, negligence of the command will lead to sanctions. In addition, Kelsen is also famous for *stufenbauthese*, which explains that law is a tiered norm system. The legal system is essentially a hierarchical system composed of the lowest

to the highest. The lower law must be grounded, sourced, and should not conflict with the higher law. The opposite effect of the lower law is the cancellation of its legal power. The higher the legal standing in its rank the more abstract and general the nature of the norm it contains.

Developmental Law Theory is a theory that was born by Mochtar Kusumaatmadja. Mochtar Kusumaatmadja admits that his legal conception. There are several crucial arguments that led to the Development Law Theory attracted a lot of attention. If described, these aspects globally are as follows: First, Theory of Law Development up to now is a legal theory that exists in Indonesia because it was created by the people of Indonesia by looking at the cultural dimensions of Indonesian society. Therefore, by measuring the dimensions of Development Law Theory was born, grow and develop in accordance with the conditions of Indonesia, the application in accordance with the conditions and situations of pluralistic Indonesian society. Secondly, in dimensional, Development Law Theory uses a frame of reference on the way of life of society and nation of Indonesia based on the principle of Pancasila that is familial then the norms, principles, institutions and rules contained in the Theory of Development Law is relatively already a dimension which includes structure, culture and substance as stated by Lawrence W. Friedman. (Friedman, 1984) Thirdly, Developmental Law Theory basically provides the basic function of law as a "tool of social reform" (law as a tool of social engineering) and law as a system is indispensable for the nation of Indonesia as a developing country.

## Research Methods

Research method in this research is normative law research, because this research is an effort to find the rule of law, legal principles and legal doctrine to answer the problem under study. (Marzuki, 1984) This research is conducted by examining secondary data, so that can be categorized as normative law research. (Soekanto & Mamudji, Peneltian Hukum Normatif Suatu Tinjauan Singkat, 1985) This research is analytical descriptive to bankrupt decision and report of curator. The secondary data treated in this study consisted of primary legal materials, namely the Bankruptcy Law, the Law on Taxation and the Manpower Law and the Law on Mortgage Rights and secondary law materials sourced from law books and other relevant legal writings.

The study also used interviews in data collection (Soekanto, Pengantar Penelitian Hukum, 2010). Interview conducted to relevant parties with research, namely the curator whose duty and authority to manage and clear up the bankruptcy property assets declared bankrupt by the Commercial Court.

Data analysis in this research uses qualitative approach. Data analysis is done thoroughly from existing sources and is a unity, which is further systematically arranged on the position of the curator. The position of preferred creditors and separatist creditors consisting of priorities in the divorce of bankruptcy inheritance by the curator of the creditor position, the priority of the position of preferred creditors and separatist creditors against the limitations of bankruptcy inheritance, and efforts to ensure legal certainty in determining the priority of bankruptcy inheritance for preferred creditors and separatist creditor .

## Discussion

Settlement and Handling of Debit Bankrupt Debtor's Property (Boedel Pailit) by Curator Against the Creditor. Disparity in debtors and creditors, ie in a broad and narrow sense. In a narrow sense, the debtor is a party that has debt arising solely from the debt agreements only. In a broader sense, the debtor is a party that has the obligation to pay any sums incurred for any reason whatsoever, either because of agreements of debts and other agreements or arising out of law.

Debtor of State-Owned Enterprises engaged in public interest, then the request for bankruptcy is only submitted by the Minister of Finance. Settlement and ordering is an activity of treating a bankrupt inheritance (boedel Pailit) as its object. The status of bankruptcy assets is determined and valid since the court's decision which is the entrance for the settlement of the bankruptcy and handling of the bankrupt property. Each bankruptcy verdict contains the verdict which becomes the point of change of the debtor's assests status belonging to a property right, turned into a bankrupt inheritance. Not all of the debtor's assets that has been declared bankrupt is a bankrupt inheritance (boedel). Some things are exempt from bankrupt assets, which are as follow.

- a. The goods mentioned in the Civil Procedure Law Article 451 number 2-5; money or salary of the savings mentioned in the regulation Article 749 paragraph 3; and copyright, for which the seizure is not held, as described in the Civil Procedure Law Article 452 paragraph (1), except where this bankruptcy has been filed by debtors creditors, as mentioned in paragraph (2).
- b. All proceeds of debtor income go bankrupt during bankruptcy, ie salary of a

- position or service, wages, pensions, waiting money or allowances, where it is stipulated by the supervisory judge.
- c. The money that is given to the debtor is bankrupt to fulfill its obligation to provide income according to the laws and regulations.
  - d. A sum of money set by the supervisory judge of the favorable income proceeds, as defined in the KUH. Civil Law Article 311 to cover the expenses referred to in Article 312.
  - e. Allowances from the income of his children received by the bankrupt debtors under the KUH. Civil Article Article 318.

The initial phase starts from the first creditor meeting, which can be considered to contain the basic principles of legality, as it is a decision-making forum. Civil law refers to the agreement (tussenkomst) interested parties to be mutually bound (verbintennis). In this case, creditors may engage in or take an agreement or disagreement which binds their respective attitudes, rights, and obligations. The position of the creditor meeting is one level below the supervisory judge, since the consent among the creditors must be with the knowledge of the supervisory judge, so that in its implementation depends and determined by the approval of the supervisory judge.

Internally the bankrupt debtor has the right to offer a peace to all of his creditors together (Pasal 144). The proposed peace plan is inserted at least eight days before the receivables matching meeting (Pasal 145). The determination and arrangement of the peace offering step includes part of elegant legal steps, finding solutions, and avoiding disputes that end in court. This is parallel and illustrates the paradigm of modern law, which places law as the determining factor or

controlling behavior of legal subjects in traffic law relations.

The settlement and handling of bankruptcy debtor assets (boedel pailit) can be explained and seen in relation to the position, duties, and authorities of some related institutions, such as curators, creditor committees, and supervisory judges.

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Determining the Priority of Bankruptcy Distribution of Inheritance Against Preferred Creditor and Separatist Creditor Reflecting Principles of Justice.

Determining the priority of distributing bankrupt inheritance to the preferred creditors and creditor of separatist fairly or in accordance with the principles of justice is to put the relationship between the two groups of creditors against the bankruptcy inheritance. The discussion explains the identification of "fairness" parameters with empirical picture of bankrupt debtors' assets against preferred creditors (laborers and taxes) and separatist creditor (Bank). Some elements are placed as parameters of principles of justice, among others, the principle of balance, proportionality, usefulness, and fairness principles.

A fair sense here means that the property must be divided by:

1. *Pari passu*, with the understanding that the property must be shared jointly among the creditors;
2. *Pro rata*, in accordance with the size of the balance of each creditor receivables against debtor debt overall. (Muljadi & Widjaja, 2003)

The principle of fairness that can be used as a benchmark to determine the priority of the distribution is the balance principle of the bill of each creditor according to the *pari passu* principle. The creditor must receive a fair and proportional payment. Based on the philosophical spirit that exists in the purpose of bankruptcy law containing the principles of justice that can be applied is a proportional principle.

To better understand the description of determining the division of bankrupt debtors' assets (*debedel pailit*) for preferred creditors and separatist creditor needs to be described more empirically. Here is one example of preferred creditors, ie workers who have the right to receive workers' wages. The provision of Article 95 Paragraph (4) of Law Number 13 Year 2003 concerning Manpower (Law No. 13 Year 2003), confirms that in the case of a company declared bankrupt or liquidated under applicable laws and regulations, wages and other rights of the worker / laborer is the debt that takes precedence over the payment. In the explanation of Article 95 Paragraph (4) of the Manpower Law, it is mentioned that what is meant by the payment is that the wage of the worker / laborer must be paid in advance of the other debts.

Can conclude that workers who have workers' wage rights are preferred creditor who take precedence over a separatist

creditor. This brings the logical consequence that workers are entitled to bankruptcy *boedel* for the full payment of the wages of workers' debts. In respect of the phrase "prior to payment" in Article 95 paragraph (4), the Curator is of the opinion that the wages of the workers / laborers shall be the debt of priority over creditor *separatis*, the preferred creditor, and the concurrent creditor or the debt of the bankrupt assets (*vide* Article 39 paragraph 2) of the Bankruptcy Law), while the other rights of the workers enter into the preferred creditor class. (Wawancara dengan Kurator)

Refers to the law theory of cybernetics that puts the law as the main controlling factor among other social factors, leading to the goal of achieving justice. This justice is abstract but it can be approached if the legal relationships between the parties (legal subjects) proceed well on the basis of legal ties. Similarly, the problem of determining the division of bankruptcy inheritance can be argued in accordance with the principles of justice in the perspective of cybernetics' legal theory, if in its judging considered the related theoretical elements, thus determining a decision.

In another perspective, justice must be regarded as one of the components of the legal idea comparable to the other components, namely the finality (sanctions) and certainty. The aspect of justice refers to the equality of right before the law, the aspect of finality pointing to the goal of justice advances the good in human life, while the aspect of certainty points to the assurance that the law that contains justice and finality (sanction) should serve as a strictly adhered rule. The essence is that the law and justice are two sides of one currency. On the one hand, justice is described as matter and law

as a form. On the other hand, the value of justice is the material that must fill the form of law. Law is a form that must protect the value of justice. Justice has the normative and constitutive nature of the law. Justice is normative to the law because it serves as a transcendental principle that underlies every dignified law. Justice is the legal foundation of law as well as subtracting the positive legal system.

Based on the theory of justice as stated above, justice for each party in the management and settlement of the bankruptcy debtor's assets, should be a component of the legal idea of bankruptcy resolution, in addition to the final component and legal certainty. Fairness for debtors and creditors must be the material of managing and solving bankruptcy assets. Therefore, it is arguable that the division of bankruptcy inheritance takes into account the principles of justice, if the arrangement of the bankruptcy inheritance is a form of law that must protect the value of justice. Justice must be the basis of legal morality and benchmark. Accordingly, based on fairness based on fairness values fairness, business courts and curators appointed by business court judges should pay attention to fairness for each stakeholder, including corporate debtor that is declared bankrupt by a court of commerce.

Bankruptcy law in Indonesia has not yet demonstrated a unified whole legal system that can guarantee good bankruptcy arrangements. Judging from the legal construction, bankruptcy law is included in the matter of regulating the division of bankruptcy inheritance, still varied, comprising elements of general civil law (Civil Code), bankruptcy law and postponement of debt obligation (Law No. 37 of 2004). The results show that in the Act of Bankruptcy and Suspension of Debt Obligation No. 37 of 2004 there are some less

harmonious provisions that have the potential to create legal or multi-interpretation uncertainty as follows: (1) Article 68 is contradictory to Article 1 letter (7) Jo Article 11 paragraph (1) of Article 56 Paragraph (1) of the Bankruptcy Law, (3) Article 76 of the Law on Bankruptcy Law, and (4) Elucidation of Article 127 Paragraph (1) of the Bankruptcy Law.

Based on the results of research and review of the authors, either through the results of interviews or based on their own observations in daily practice as the legal bearer in the field of bankruptcy, is the state of the instrument of positive legal system of bankruptcy is still no legal unity.

In the case of the classification or creditor category, Article 1135 of the Civil Code which states: "Among the privileged debts, the levels are governed by various properties of their privileges." Based on those articles, it can be seen that there are 3 (three) the creditor class, namely the separatist creditors, the preferred creditors, and the concurrent creditor. Thus, the distribution of the proceeds of the sale of bankrupt assets is done in the order of priority where the higher-creditor earns a prior share of other creditors whose position is lower and between creditors of the same level obtain payment on the prorated principle (*pari passu prorata parte*).

Positive law in Indonesia, the existence of the Constitutional Court Ruling. One of them is the presence of Decision of the Constitutional Court relating to the testing of the provision of Article 95 paragraph (4) of Law Number 13 Year 2003 concerning Manpower of the 1945 Constitution, which is stipulated in Decision of the Constitutional Court. 67 / PUU-XI / 2013, September 11, 2014.

When examined further, the reflection of the legal order refers to the decision of the Constitutional Court, it appeared to bring out its own characteristics. This is apparent in its considerations.

First, that philosophically the development of law, especially in the field of manpower which is also related to bankruptcy, is still oriented to the values of the protection of society's punishment. The legal fact according to the Constitutional Court's decision, is always connected with the purpose of the state, among others, to protect the entire Indonesian nation and the entire blood of Indonesia. Constitutionally, the right of every person to live and the right of life and life which includes the right to work and get rewarded and treated a fair and decent work relationship.

Second, human rights are used as the basic reference values that are universal in the relationship of horizontal responsibility. Therefore, the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, in particular the Government and constitutionally determines that to uphold and protect human rights in accordance with the principles of a democratic constitutional state, the implementation of human rights is guaranteed, regulated, and set forth in legislation.

On the other hand, the Constitutional Court has stipulated matters related to the strengthening of norms of bankruptcy law, particularly related to its material matters.

**Legal Basis for the Right of Creditor.** Regarding the legal basis for the collateral right of each creditor is the same, except for the right of state billing. The legal basis for separatist creditors and for workers / laborers is the same, namely agreements made with

debtors. Regarding the legal basis of state obligations is the legislation. As to the legal basis for the existence of ranking or payment priority in consideration of Decision Number 18 / PUU-VI / 2008 mentioned above, is due to the difference of position caused by the contents of each agreement due to certain factors. Although between the separatist creditors and the workers the legal basis is the same, namely the agreement, but when viewed from another aspect, namely the subject aspects of the law that deal, object, and risk, between them there is a constitutionally significant difference.

In the aspect of the legal subject, mortgage, and fiduciary agreements and other dependent agreements, are agreements made by legal subjects, ie entrepreneurs and investors, socially economically those parties may be constructed equally. Moreover the financiers, who may be entrepreneurs as well. Conversely, the employment agreement is an agreement made by different legal subjects, ie employers and workers / laborers. Entrepreneurs and workers, socially economically disparate, but one party, as entrepreneurs are certainly stronger and taller, than workers / laborers, because workers are socially economically obviously weaker and lower than employers, although between employers and workers need each other. The company will not produce without workers / laborers and workers can not work without any employers. Based on such considerations, according to the Court, since the workers are socially economically located weaker and lower than the employers and workers' rights have been guaranteed by the 1945 Constitution, the Law must provide assurance of protection for the fulfillment of the rights of the workers / laborers.

In the object's aspect, the mortgage, fiduciary, and other dependent agreements



that are the object are assets. In the meantime, the employment agreement that is the object is the force or skill (service) in return for services in the framework to meet the basic needs of life for the self and the worker's family, so between the two in this aspect has a fundamental difference, those are assets and human. The question is how the difference is related to what is actually protected by law. Constitutional rights and under Article 28I Paragraph (1) shall be non-deductible in any circumstance, under which subparagraph (4) and paragraph (5) of the Article, in this case the Government, shall protect, promote, enforce and fulfill them in legislation in accordance with the principles of a democratic constitutional state.

The curator responds from the perspective of protection against laborers in companies declared bankrupt, and from a justice perspective on repayment: the bills of separatist creditors such as the Bank of rights holders

To further provide a description with a broader dimension again, to discuss the condition of Indonesian bankruptcy law can not be separated from the definition or formulation of a dispute legally.

As has been elaborated elsewhere, that bankruptcy under the Bankruptcy Law is a common confiscation of all the assets of a bankrupt debtor whose stewardship and ordering are carried out by the curator under the supervision of a supervisory judge. Bankruptcy serves as an emergency window, which is used as a last resort when other situations are not possible. Bankruptcy is intended to avoid seizure of debtor's property if at the same time there are some creditors who collect their debts from the debtor. Bankruptcy can prevent creditors who hold rights to the material security

claiming their rights by selling the debtor's assets regardless of the interests of other debtors or creditors. Bankruptcy can avoid fraud committed by one of the creditors or debtors themselves.

In connection with the case in practice, in the division of bankruptcy boedel, the worker of a bankrupt company for example has an interest in obtaining his / her rights, especially normative / constitutional rights. In this case the curator who performs the management and the imposition of bankruptcy assets must pay attention to the Manpower Law.

Related to this, more adequate description can be found in the General elucidation of Law no. 4 of 1996 concerning Mortgage Rights, particularly explanation of item 4 of paragraph 2, there are exceptions of preferred position from the creditor of the dependent, namely; that the preferred position of the creditor holding the mortgage rights does not reduce the preferences of state receivables according to the applicable law. Thus the preferred position, the creditor holder of the mortgage is defeated by the state receivable. In the case of State receivables that defeats the creditor of the mortgage, it is guided by the provisions of Article 1137 Civil Code, state receivable whose position is higher than the mortgage right as referred to in the figure of General Explanation The Mortgage Act is tax only.

Construction of other bankruptcy laws based on Law no. 37 of 2004 on KPKPU is that; "The creditor of the mortgagee shall exercise his right (execute the mortgage) within a period of no more than 2 (two) months after the commencement of insolvency". After the expiration of the period referred to in paragraph 1, the curator shall demand to be submitted the collateral for further sale in

accordance with the way that has been determined in such a way. In this case, after the debtor is declared insolvency, the position of the mortgage is as a treasure outside the bankruptcy (boedel) assets, shall remain the execution of the creditor holder of the mortgage to the object of the right of time obligation by the provisions in the Law KPKPU taken over by the curator after passing a period of 2 months .

With regard to the imposition of bankruptcy assets, with reference to the Theory of Development Law, the principles of law and regulations of bankruptcy law should be able to regulate the settlement and the order of bankruptcy of debtor, so that the debtors get their rights proportionally. Also, the law also includes arrangements relating to the courts and curators who perform the impropriety of bankruptcy assets, so that the processes can take place to realize the enactment of the legal rules of ordering of bankruptcy assets in reality.

Within the dimensions of the principle of law, it can be understood that the seemingly independent rules of law are in fact bound by some of the more general sense of nature, which prioritizes an ethical demand. Although the principle of positive law but at the same time transcends the positive law by referring to an ethical judgment. Thus, the legal principle of providing an ethical judgment on positive law can and the principle of law be outside the positive law. Due to the existence of ties by legal principles, hukumpun is a system. These independent legal rules are then bound in a composition of unity caused by these laws of law to originate from a single parent of ethical judgment. With such legal thinking constructs, in bankruptcy law, especially concerning the management and disposition of bankrupt debtors' assets, prospectively

forward should be regulated within the framework of an adequate, integrative and harmonious legal system.

When connected with the place of growth and the enactment of law, namely the community, it can be seen that the business community is experiencing changes and rapid development. This rapid development requires changes and refinement of business law, especially bankruptcy laws that can regularly accommodate the development of the business world. The decision of the commercial court and the role of the curator appointed by the court judge are also expected to support the application desired by the legislation undergoing the amendment. Thus, bankruptcy law becomes a means to support the process of business development and bankruptcy for the changes and developments of the business community can take place in an orderly and orderly manner as the goal of the business community who run their business.

In addition, the law of bankruptcy also maintains order through legal norms that create legal justice. In this case, the law not only functions as a social rule but also functions to organize and support the process of change in the business world or business world. Therefore, the principles and rules of bankruptcy law must be a living law in the settlement and settlement of bankruptcy assets. This growing law of bankruptcy undergoing these changes may reflect the values prevailing in the business world, as well as reflecting the fairness of employees or workers of companies experiencing bankruptcy under commercial court decisions. Also, the law of bankruptcy should take into account the interests of the State, in particular the corporate tax payable by the bankrupt company.

To bring justice to the parties in bankruptcy requires a court institution with sufficient authority. However, such authority is also accompanied by signs which are also specified in the laws governing bankruptcy. The curator also needs a regulation of his authority to be strong enough in performing his duties and functions of managing and securing bankrupt property by promoting the principles of justice.

The legal problems of *kepelipan* due to the coming into effect of several conflicting legislations require an understanding of the law as a means of renewing the public, especially the business world, the law of the treaty, the legal law, the labor law and the tax law. The theory of development law encourages Indonesia to become an economically advanced country as well as advanced in its legal development with due regard to the condition of Indonesia.

Related to the legal certainty concerning the management and ordering of bankruptcy treasures, the curator needs certainty so as not to be punished in carrying out his duties. The inner legal certainty contained in this Bankruptcy Act will strengthen the curator's legal protection under the provisions of Article 50 of the Criminal Code (Penal Code). The Article has provided that a person shall not be subject to criminal sanction if performing work on the order of the law.

Researchers argue that it is better to divide the bankruptcy *boed* to consider or consider the principle of equilibrium and the principle of justice. With the principle of justice, the intent is that the provisions concerning bankruptcy can satisfy a sense of justice for all creditors. This principle can prevent arbitrariness by creditors who seek payment of their respective bills against the debtor regardless of other creditors. Although there

are creditors who take precedence over others, but the division of bankrupt *boedel* remains to be done proportionately. The division of assets is proportionately carried out by applying the principle of *pari passu prorata parte*, "in which the division of the bankrupt *boedel* is not uniformly distributed, but rather proportional.

Liquidation in bankruptcy does not result in the immediate dissolution of a company, even if the bankruptcy has expired the company can live again by meeting the requirements after rehabilitation. The consequence of liquidation for the Bank is that when using the Banking Act the disbursed assets of the bank are partly limited to the customer's deposit funds and the bills of the creditors. Banks can still go ahead and controlling is the curator supervised by a supervisory judge. Therefore, when using bankruptcy, the intention of Bank Indonesia to distribute all bank assets is not achieved.

## **Conclusion**

1. Legal arrangements concerning the settlement and settlement of assets of bankrupt debtors (*boedel pailit*) are essentially the treatment of all bankruptcy property of both real and potential borrowers. The settlement of bankruptcy bidding and processing is nothing but activities or actions concerning the continuation of the splitting of legally-validated asset is a bankrupt debtor inheritance. Not all or all of the assets attached to the bankrupt debtor is the object of the settlement and the treatment, because sometimes in certain cases, especially in the case of potential assets expressed as non-bankrupt debtor which can be distributed to the creditor. The law has arranged in such a way that the settlement of the assets of the debtor of

bankruptcy is reflected in a series of successive activities according to the stages. Institutionally, the completion of bankruptcy processing and dispensing involves several subjects, such as creditor committees, curators, and supervisory judges.

2. Determining the priority of distributing bankrupt inheritance to the preferred creditor and the separatist creditor fairly or in accordance with the principles of justice is to put the relationship between the two groups of creditors against the bankruptcy inheritance. Thus, the descriptions in the discussion will describe what can be identified as "fairness" parameters or benchmarks accompanied by an empirical picture of the practice of securing a bankrupt debtors' assets against a preferred creditor (labor and tax) and a separatist creditor (Bank). The principle of fairness in setting assets for the division of bankruptcy booths against preferred creditors and separatist creditors as creditors who are equally privileged is based on the nature of the receivables, that is, one receives a repayment before it is granted to the other creditor. The privilege of separatist creditors is based on the right of collateral possessed by the creditor who grants the right to sell by material auction guaranteed to him. The proceeds from the sale of material can be for the settlement of receivables preceded by other creditors. There are some justice principles that can be applied in determining the division of bankrupt inheritance to creditors, especially to preferred creditors and separatist creditors, namely the principles of pariah pasu and prorata, the principle of balance, proportional principle, and fairness principle.
3. Bankruptcy legal instruments (general), and especially regarding the division of (priority) of bankrupt debtors' assets (boedel pailit) are characterized by several elements. If the law of bankruptcy 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 whole legal system that can guarantee good bankruptcy arrangements. Judging from its legal construction, bankruptcy law is included in the matter of regulating the division of bankruptcy inheritance, still varied, comprising elements of general civil law (KUH Perdata), bankruptcy law and postponement of debt obligation (Law No. 37 of 2004), various laws and regulations - legislation under the law, sometimes even based on policy elements. The enactment of several legal provisions as a positive law of bankruptcy, particularly regulating the distribution of bankruptcy inheritance to creditors resulted in the curators having difficulty in managing and settling the bankrupt property.
4. The legal certainty in determining the priority of the bankruptcy inheritance sharing of the preferred creditors and the separatist creditors, which if the available bankruptcy booths are insufficient to pay off the debts of the preferred creditors and the separatist creditors, the priority in the division of bankruptcy inheritance must follow the instruments of legislation to obtain certainty laws relevant to those who are also privileged creditors of bankruptcy. The legal development perspective in curbing bankruptcy claims to preferred creditors and separatist creditors, ie wages and other rights of the workers / laborers is a debt that precedes

payment, ie the wage of the worker / laborer has to be paid ahead of the other debts as a constitutional interpretation concerning the position of the workers / laborers' wages as a precedent.

### **Recommendation**

1. It is necessary to revise the arrangements of the settlement and order of the assets of the bankrupt debtor (boedel pailit), covering various aspects. Substances that need to be addressed and developed include, among others, the identification, recording and administration of bankruptcy debtor assets (boedel pailit). In addition, synergy and institutional solidity of the parties involved in the management and maintenance of bankruptcy booths, such as between the supervisory judge, the creditor committee, the curator, and the debtor and creditor are required. Settling can be done by making changes to the law, synchronization, or harmonization. Therefore, in order for the legislators, namely the President and the House of Representatives, to revise the Bankruptcy Law, the President must issue the Government Regulation as a more concrete rule, and that the Minister shall issue a Ministerial Regulation as a guideline or procedure of procedure for the management and ordering of the boedel bankrupt. Revise these provisions in order to prevent the occurrence of stronger creditors get more shares from weak creditors.
2. It should be emphasized on the principles of justice that serve as a guide for the prioritization of the division of bankrupt debtors' assets (debedel pailit) for preferred creditors and separatist creditors. Such assertion can be done

through the inclusion of the principles of justice in the applicable laws and regulations. There should be amendments to the Special Bankruptcy Law which specifies the provisions governing the details and priorities of creditors entitled to bankruptcy inheritance of companies declared bankrupt by the commercial court. It is necessary to establish a type of regulation that is a guideline of implementation which guarantees the implementation of the right of the executor of separatist creditors, and gives high respect to the existence of the material security law, because the contractual relationship tied between the debtor and the creditor is valid as the law for those who make it.

3. In order for the Ministry of Justice and Human Rights through the National Legal Development Board (BPHN) to involve the existing academicians and curatorial profession organizations, immediately undertake research, assessment, and formulation of aspects of legal instruments applicable in bankruptcy. These activities are expected to provide recommendations on the importance of immediate synchronization and harmonization. Furthermore, should be drafted design and design to realize a system of bankruptcy law that is intact, comprehensive, and integrative.

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