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The impact of Article 1131 of the Civil Code on individual bankruptcy in Indonesia

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Abstract:

Indonesia's bankruptcy process does not set a specific time limit for the sale of assets, including bankruptcy bonds, which are the responsibility of the curator. This condition does not create further legal consequences for a Limited Liability Company, as once declared bankrupt, the legal entity is legally deemed to no longer exist (rechtspersoon disbanded). It differs from individual debtors, who remain legal entities but are unable to engage in new business activities during the bankruptcy process. This study employs a normative juridical method, combining a statutory and conceptual approach, to examine the provisions of Article 1131 of the Civil Code, relevant legal principles, and doctrines in bankruptcy law. This approach enables analysis of the possibility that future assets may be included in the bankruptcy estate, which could hinder the economic recovery of individual debtors. Therefore, it is necessary to further regulate the norm through additional provisions in the Bankruptcy Law.

Keywords:

Bankruptcy, civil code, debtor's assets, individuality, article 1131.

Resumen:

El proceso de quiebra de Indonesia no establece un plazo concreto para la venta de activos, incluidos los bonos de quiebra, que son responsabilidad del curador. Esta condición no tiene consecuencias legales adicionales para una sociedad de responsabilidad limitada, ya que, una vez declarada en quiebra, la persona jurídica se considera legalmente extinguida (*rechtspersoon disbanded*). A diferencia de los deudores individuales, que siguen siendo personas jurídicas pero no pueden desempeñar nuevas actividades comerciales durante el proceso de quiebra. Este estudio emplea un método jurídico normativo, que combina un enfoque estatutario y conceptual, para examinar las disposiciones del artículo 1131 del

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Código Civil, los principios jurídicos pertinentes y las doctrinas del derecho concursal. Este enfoque permite analizar la posibilidad de que los activos futuros se incluyan en la masa concursal, lo que podría obstaculizar la recuperación económica de los deudores individuales. Por lo tanto, es necesario regular aún más la norma mediante disposiciones adicionales en la Ley de Quiebras.

Palabras clave:

Quiebra, código civil, activos del deudor, individualidad, artículo 1131.

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1. INTRODUCTION

Bankruptcy is one of the means provided by the state for creditors to recover losses (Jadiyappa and Hickman 2025) from debtors who are unable to repay their obligations (Wijaya and Hatiyanto 2023). Bankruptcy applications can be addressed to business entities or individuals. Business organizations, such as Limited Liability Companies, and individuals are subjects in Law Number 37 of 2004 concerning bankruptcy and suspension of debt payment obligations.

The consequence of being declared bankrupt is that the debtor loses the right to manage their assets (Simbolon and Sitorus 2024). The management of the bankruptcy debtor's assets, the curator, will be responsible for distributing the bankrupt debtor's assets to creditors according to their respective shares (Kartoningrat and Krisharyanto 2023).

The curator's task is to record and collect information about the assets of bankrupt debtors, both movable and immovable (Silalahi and Purba 2020). To seal the bankrupt debtor's assets, the task involves selling and settling them. Additionally, it will file an Actio Pauliana lawsuit against any sale, purchase, or transfer of the bankrupt debtor's asset rights to a third party (Wiguna *et al.* 2024).

The curator's handling of the bankrupt debtor's assets for distribution to creditors is also referred to as bankruptcy assets (Rokhma and Warka 2023), which is based on the Indonesian Civil Code, which says the following in Article 1131:

> All material possessions of the debtor, both movable and immovable, both existing and new, will exist in the future, become dependents for all his entanglements.

According to Article 1131 of the Civil Code, the curator may use the assets of current and prospective bankrupt debtors as bankruptcy bonds.

Provisions regarding material things that the curator can include in a bankruptcy assets cover new material things that will exist in the future or at the time of bankruptcy, but the property does not yet exist. This arrangement benefits creditors because pending buying and selling activities are not being paid when the debtor has fallen into bankruptcy. However, it can still be included in the bankruptcy bill when the payment has been made and distributed to creditors.

This provision poses a problem for individual debtors who have been sentenced to bankruptcy, as they cannot start or create new businesses by borrowing new capital, since it would be considered new property that would exist in the future.

In contrast to a company, which is the result of human thought, a company as a bankrupt debtor will be liquidated or dead in the sense that it will not be able to carry out any activities and after the procedure by which a company's curator sells and settles the assets of a bankruptcy debtor will automatically be dissolved unless the company is permitted to

continue to run a specific business based on the principle *business going concern* (Manangi and Wicaksana 2024) which means that the company can pay its debts to creditors by running its business. Provisions regarding new material things will exist in the future as clauses that are indeed used for the benefit of creditors.

A bankruptcy debtor, in this case, is an individual who remains alive, retains the same name and identity, and is subject to bankruptcy proceedings. The individual can still start new activities to try to improve their life. Therefore, the individual, as a debtor who has been sentenced to bankruptcy, can borrow again from others as business capital. However, following Article 1131 of the Civil Code, which stipulates that new material assets will exist in the future, there is a possibility that the curator may withdraw the capital to initiate bankruptcy proceedings.

There is no precise regulation in the Law Number 37 of 2004 regarding the length of time for the process of selling and settling the assets of individual bankrupt debtors, so if they wait for the process of selling and settling the debtor's assets in bankruptcy to be completed, the individual as a bankrupt debtor cannot carry out any activities and will not be able to improve his life. Bankruptcy is a process by which creditors can recover losses resulting from debtors' failure to pay their debts. Still, debtors should also be able to continue their lives. How does Article 1131 of the Civil Code impact individual bankruptcy in Indonesia?

2. METHODOLOGY

The research approach chosen is normative juridical, where law is interpreted both as what is written in statutory regulations (law in books) and as rules or standards that function as benchmarks for acceptable human behavior (Lando 2020). Searching and tracing legal principles is a normative juridical research method known as "legal principles research" (Dwi Indriati *et al.* 2022), to provide criticism of the absence of regulations on the period of sale of bankruptcy assets for individual debtors through regulations in Law Number 37 of 2004 as lex specialis and KUHperdata as lex generalis and combining legislative and conceptual approaches, to examine the provisions of Article 1131 of the Civil Code, relevant legal principles in both the Civil Code, civil procedural law and Law Number 37 of 2004, and doctrines in Law Number 37 of 2004. The normative juridical research method in this study uses primary data and also secondary data including primary legal materials as initial provisions, namely statutory regulations, namely the Civil Code and also Law Number 37 of 2004, for secondary legal materials using books related to bankruptcy through Law Number 37 2004 and the Civil Code, relevant journals discussing bankruptcy through Law Number 37 of 2004.

3. RESULTS AND DISCUSSION

3.1. BANKRUPTCY IN INDONESIA

When a debtor files for bankruptcy, they are no longer able to access their property, which will be taken care of by creditors and distributed to them according to their portion (Syamsuddin and Putri 2022). Bankruptcy in Indonesia differs primarily from default or unlawful acts in Indonesia in terms of the state of assets owned by the debtor's estate.

According to Law Number 37 of 2004, Article 1, Paragraph 1, bankruptcy is defined as the general seizure of all the bankrupt debtor's assets, which are then managed and settled by the curator under the supervision of the Supervisory Judge, as stipulated in this law (Basri *et al.* 2024).

Bankruptcy regulations in Indonesia have undergone several developments in recent years, beginning during the pandemic when the force majeure provisions were inapplicable to Law Number 37 of 2004, allowing creditors to avoid filing for bankruptcy in Indonesia (Saifullah 2022). Then, when Article 2, number 1, concerning the requirements for filing for bankruptcy, was used by cooperative business entity administrators to escape liability by filing for voluntary bankruptcy, resulting in members of the cooperative experiencing irretrievable losses from their invested capital. Thus, through Supreme Court Circular Letter No. 1 of 2022 (Wewo 2024), cooperative administrators were stripped of their right to file for voluntary bankruptcy. In 2025, the Indonesian government is working on cross-border bankruptcy regulations. With these developments, bankruptcy regulations in Indonesia require improvements from the perspective of individual debtors to ensure better regulations, thereby preventing future problems.

Creditors or debtors can apply for bankruptcy in Indonesia with the restrictions outlined in Law No. 37 of 2004, Article 2, Number 1, namely (Johan 2021):

1. Debtors with a minimum of two creditors;
2. Failing to complete payment on at least one outstanding debt and a Collectible.

The requirements for the bankruptcy application are made in addition to Article 8, number 1, point 4 of the Law Number 37 of 2004, which states that if some facts or circumstances easily demonstrate that the requirements to be declared bankrupt as indicated in Article 2, number 1, have been fulfilled, the application for a declaration of bankruptcy must be granted. As a result of Article 8, number 1, point 4 of the Law Number 37 of 2004, bankruptcy applications in Indonesia are mandatory to be granted (Jayaningrat *et al.* 2024) by the judge if the conditions outlined in Article 2, number 1, of the Law Number 37 of 2004 have been met.

In Indonesia, filing for bankruptcy requires only fulfilling the requirements outlined in Article 2, number 1. The bankruptcy application filed with the Commercial Court must be approved in accordance with Article 8, paragraph 1, of Law Number 37 of 2004. The simplicity of bankruptcy applications in Indonesia makes it easier for creditors to apply for bankruptcy of their debtors.

The simplicity of bankruptcy applications in Indonesia is aimed at making it easier for creditors to collect debts from debtors (Dachlan *et al.* 2024), as the law in force at the time was still considered troublesome and inefficient for foreign business actors. The provisions in Law Number 37 of 2004 are also intended to allow foreign companies to file bankruptcy applications for debtors in Indonesia.

The International Monetary Fund (IMF) (Wijantini 2024) requires changes to Law Number 37 of 2004 as reciprocity for the provision of debt to Indonesia during the 1998 monetary crisis (Sunardi *et al.* 2024) In Indonesia, the content of Law Number 37 of 2004 itself is also part of Indonesian law's feasibility in receiving aid money from the IMF. The

IMF, which is part of the Western countries in this case, focuses on the company to recover its losses due to its debtors' inability to repay their debts.

3.2. HISTORY OF BANKRUPTCY LAW IN INDONESIA

The history of law in Indonesia is inextricably linked to the Dutch colonial period, as the rules governing Indonesia were established during that time. The bankruptcy arrangements were initially outlined in the Wetboek Van Koophandel, known in Indonesia as the Commercial Code, and are also found in the Reglement van de Rechtsvoering (Gaffar *et al.* 2024).

The Bankruptcy Regulations in the Wetboek Van Koophandel, or the Commercial Law Code, are found in Chapter III under the title "Van de Voorzieningen in Geval van Onvormogen van Kooplieden" or the regulations on traders' incapacity (Ariqah and Anisah 2022).

The Bankruptcy Regulation in the Regulation op de Rechtsvoordering is found in the third book, Van den Staat Von Kenneljk Onvermogen, which pertains to manifest incapacity. The bankruptcy arrangements in the Wetboek Van Koophandel, or the Commercial Law Code, and the Reglement op de Rechtsvoordering are subject to the law. The Wetboek Van Koophandel, or the Commercial Law, focuses on traders or merchants, whereas the Reglement op de Rechtsvoordering applies to individuals who are not traders or merchants (Putra 2021).

The bankruptcy arrangement in the Wetboek Van Koophandel or the Commercial Law Code and the Reglement op de Rechtsvoordering is then replaced by a more specific arrangement through the applicable Feilistment Verordenning based on Kenting and Parulian (2022):

1. Staatblaads No. 276 of 1905; and
2. Staatsblaad No. 348 of 1906.

The existence of bankruptcy arrangements, as outlined in Staatsblad No. 276 of 1905 and Staatsblad No. 348 of 1906 in Indonesia, had to be revised due to economic problems in Indonesia, specifically the monetary crisis that hit the Republic of Indonesia. The financial crisis led to many national and multinational companies in Indonesia going bankrupt because they were unable to pay their debts at the time, which were denominated in dollars.

In response to the monetary crisis, the Government of the Republic of Indonesia issued a regulation, rather than a law, as Law Number 1 of 1998 concerning Amendments to the Bankruptcy Law (Fauzia 2020).

Instead of Law Number 1 of 1998, Law Number 4 of 1998 officially enacted the Government Regulation concerning amendments to the Law on Bankruptcy. To accommodate Law Number 4 of 1998 concerning Amendments to the Law on Bankruptcy, the government issued a Government Regulation, rather than Law Number 1 of 2004, establishing the Commercial Court so that bankruptcy proceedings become the authority of the Commercial Court. The last change to the bankruptcy regulation in Indonesia was

through Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, which has been in effect in Indonesia.

3.3. INDONESIA BANKRUPTCY BASICS

Based on Law Number 37 of 2004, several principles serve as essential foundations for both the formulation and implementation of provisions governing bankruptcy and the suspension of debt payment obligations (Pratama *et al.* 2023). These principles function as normative guidelines to ensure that every process of debt settlement is carried out fairly, equitably, and with legal certainty for all parties involved. By establishing these principles, the bankruptcy mechanism is expected to operate transparently and proportionately, thereby protecting the interests of both creditors and debtors within the framework of the national legal system.3.3.1. The Principle of Balance

This law stipulates several provisions that embody the principle of balance; namely, on the one hand, several provisions can prevent the misuse of bankruptcy petitions under Law Number 37 of 2004 by dishonest debtors. On the other hand, several provisions can prevent the misuse of Law Number 37 of 2004 and bankruptcy institutions by creditors who are not acting in good faith, as stipulated in Article 52 of Law Number 37 of 2004 which states that any person who has taken over debt or receivables from a third party before the bankruptcy declaration decision is pronounced, cannot request debt settlement, if in the case of taking over the debt or receivables, the person concerned did not act in good faith (Agustia *et al.* 2020).

Article 52 provides a balance for creditors who have collateral rights to take the objects used as collateral by the debtor without requiring a bankruptcy court decision. This is because the collateral should belong to the creditor, who, together with the debtor, has agreed to provide it in good faith. Thus, in the event of default, the collateral should be able to be taken without having to go through the bankruptcy process, but the Supreme Court Number 18/PUU-VI/2008 (Ningsih 2025) stipulates that in the event of corporate bankruptcy, the State Rights Bill takes precedence over the rights of other creditors. So that the provisions of Article 52 cannot be implemented immediately, considering that the assets of the debtor must first be collected to pay the debt to the state, and then to the debtor who has collateral rights.

Article 255 paragraph (1) letter a of Law Number 37 of 2004 stipulates that the suspension of debt payment obligations may be terminated at the request of the Supervisory Judge (Daurrohmah *et al.* 2022), one or more Creditors, or at the Court's initiative in the following cases (Silalahi and Iskandar 2024):

1. The debtor, during the suspension of debt payment obligations, acts in bad faith in managing their assets;
2. The debtor has harmed or attempted to harm their creditors;
3. The debtor fails to carry out the actions required of them by the Court at the time or after the suspension of debt payment obligations is granted, or fails to carry out the actions required by the administrator for the benefit of the debtor's assets;
4. During the suspension of debt payment obligations, the condition of the debtor's assets no longer permits the suspension of debt payment obligations to

> continue, or the debtor cannot be expected to fulfill their obligations to creditors on time.

If there is bad faith on the part of the debtor that can harm creditors, the process of suspending debt payment obligations must be ended immediately to protect creditors. This can be achieved by continuing with the bankruptcy process to sell the debtor's assets. This provision strikes a balance, allowing the parties to continue respecting the process and provisions of Law Number 37 of 2004.

The provisions in Article 255 of Law Number 37 of 2004 occurred in the decision with case number 04/Pailit/2015 Jkt.Pst jo. 27/PKPU/2015 Jkt.Pst (Tan and Joseline 2022). When a debtor who is in the process of postponing debt payment obligations carries out actions detrimental to their creditors, the commercial court stops the process of postponing debt payment obligations. It immediately enters the process of selling the debtor's bankrupt assets.

This principle of balance was further developed in Law Number 37 of 2004, which was revised in 2020, following the filing for bankruptcy by cooperative members. This is evident in the decision of the Surabaya Civil Court Number 5/Pailit/2022 Sby jo. 1382 K/Pailit/2022 , which rejected the bankruptcy petition filed by cooperative members who were classified as creditors (Cassandra and Anggoro 2024). However, the court disagreed with the argument that cooperative members could not be classified as creditors but were part of the cooperative.

The imbalance occurred when the Intidana cooperative, under cooperative management, submitted a voluntary bankruptcy application, based on Article 2, paragraph 1, of Law Number 37 of 2004, and was accepted by the Semarang Commercial Court with number 10/Pdt.Sus-PKPU/2015/PN Niaga Smg (Indarto *et al.* 2022), thus making cooperative members unable to take and obtain their rights, namely the capital deposited into the Intidana cooperative.

The principle of balance in Law Number 37 of 2004 concerning the requirements for bankruptcy applications contained in Article 2 number 1 provides an imbalance for cooperative members because they cannot be classified as creditors through Law Number 37 of 2004 so they cannot collect capital that has been deposited to the cooperative but is permitted by Law Number 37 of 2004 for its administrators to submit a voluntary bankruptcy application so that cooperative administrators can escape from the responsibility for capital obtained from members. This imbalance ultimately makes Law Number 37 of 2004 from private law into public law specifically only for cooperatives that are debtors, namely with the role of the state removing the right of cooperative administrators to submit a bankruptcy application independently and cooperative members who cannot be classified as creditors can contact the Minister of Cooperatives to become bankruptcy applicants for cooperatives that are debtors, under the provisions of Supreme Court Circular Letter No. 1 of 2022.

3.3.2. The principle of business going concern

In this law, some provisions allow prospective debtor Companies to continue operating, as in Article 56, number (3) of the Law Number 37 of 2004. However, the principle of

business going concern has difficulties because the provisions of Law Number 37 of 2004 do not have a mechanism for economic assessment as a basis for implementing this principle or even continuing to implement the mechanism for selling the debtor's assets.

The provisions of Article 104, number 1 of Law Number 37 of 2004 state that, based on the approval of the temporary creditors committee, the Curator may continue the Debtor's business. According to Article 104, paragraph 1, the curator is authorized to determine whether the going concern principle is being implemented. The curator himself will determine economic value considerations because the temporary creditors' committee is the only party that can provide an opinion.

The lack of economic considerations for the application of the business going concern principle is also found in Article 179, number 1 of Law Number 37 of 2004, which states that if a reconciliation plan is not offered at the receivables verification meeting, or if the proposed reconciliation plan is not accepted, the curator or creditors present at the meeting may propose that the debtor's business be continued. Article 179, number 1, stipulates that:

1. If the debtor does not provide a reconciliation plan, the curator or creditors present may propose that the debtor continue the business.
2. Rejection of the debtor's reconciliation plan, which is a business proposal explaining the benefits and economic conditions of continuing the business, may allow the curator or creditors present to propose that the debtor continue the business.

If the debtor does not provide a reconciliation plan, there is no economic basis for the future development of the business. Rejection of the debtor's reconciliation plan, which contains a business proposal, should constitute a rejection of the business going-concern principle. However, the curator and creditors present may still propose this without considering economic value.

3.3.3. The principle of justice

In bankruptcy, the principle of justice encompasses the understanding that provisions regarding bankruptcy can serve the sense of justice for all interested parties. This principle of justice prevents the occurrence of arbitrariness by the collector who seeks to pay their respective bills to the debtor by ignoring other creditors, as stipulated in Article 55, number 1 of Law Number 37 of 2004.

3.3.4. Integration principles

The principle of integration in Law Number 37 of 2004 implies that the formal legal system and its substantive law constitute a unified whole within the Indonesian civil law system and national civil procedural law, as stipulated in Article 67 number 3, Article 128 number 4, Article 233 numbers 1 and 2, and Article 299 of Law Number 37 of 2004.

Law Number 37 of 2004, as a lex specialis, will regulate the substantive and formal aspects of the bankruptcy petition process in Indonesia with greater specificity. The Civil Code, which regulates the material provisions of civil law as a lex generalis, will regulate matters

that are not explicitly regulated by Law Number 37 of 2004. Therefore, based on the principle of Lex specialis derogat legi generali, the provisions of Law Number 37 of 2004 are provisions that can override the provisions of the Civil Code in Indonesia, so that as a lex specialis, it should completely regulate any provisions that are to be overridden in the Civil Code. If the provisions of the Civil Code are not set aside, then, as a lex specialis, it is best to provide further regulations to avoid confusion and create a gray area in Law Number 37 of 2004.

The provisions of Article 1131 of the Civil Code regarding future assets are intended to provide for the repayment of debts by debtors to creditors in situations where payments are made to debtors for past business activities that will be paid, but this is not related to general confiscation as stipulated in Law Number 37 of 2004. When the provisions of Article 1131 are connected to general confiscation in Law Number 37 of 2004, it should further specify the duration of the process.

3.4. INDONESIAN BANKRUPTCY PRINCIPLES

The principles outlined in Law Number 37 of 2004 play a crucial role in ensuring justice. The principles in Law Number 37 of 2004 include (Rusli 2019):

3.4.1. The principle of credit parity

The position of creditors, based on the principle of creditor parity (equality of creditor status), is that both have the right to collect their receivables and have equal rights to the bankrupt debtor's assets, including both movable and immovable property. This is based on Article 21 of Law Number 37 of 2004, which states that bankruptcy encompasses all of the debtor's assets at the time the bankruptcy declaration is made, as well as all assets acquired during the bankruptcy process. These articles further elaborate on Articles 1131 and 1132 of the Civil Code, which stipulate that the debtor's assets are used as collateral for the repayment of their debts to all creditors.

All creditors have a balanced interest in receiving payment from the proceeds of the bankruptcy assets. The philosophy behind this principle is that it is unfair for a debtor to possess assets while their debts to creditors remain unpaid.

This principle is weak because it does not differentiate the creditors' positions. Therefore, creditors with large and small receivables, whether secured or unsecured, will receive an equal share. The weakness of generalizing debt repayment among creditors leaves some creditors with large receivables feeling unfairly discriminated against.

The principle of creditor parity aims to provide fairness to all creditors without discriminating based on the debtor's assets, even if the debtor's assets are not directly related to the transactions they undertake. Therefore, the principle of creditor parity will be complemented by the principle of pari passu prorata parte and the principle of structured creditors.

3.4.2. The principle of pari passu prorata parte

The position of creditors based on the principles of pari passu (joint) prorata parte (proportional acquisition) in the repayment of receivables is equal. The debtor's assets, which serve as collateral for each creditor, will be distributed equally among the creditors.

The amount received by creditors is calculated based on each creditor's receivables, which are then compared to the creditors' overall receivables against the debtor's assets. This principle is considered fairer than the principle of Credit Parity because creditors with large amounts of receivables will get greater repayment than creditors with small quantities of receivables.

The weakness of this principle is that there is no difference between creditors who hold guarantees and creditors who do not, although it is felt that it gives more justice than the previous principle. Still, justice in this principle has not been fully realized.

3.4.3. Principles of structured creditor

This principle classifies and groups creditors according to their respective classes. The position of creditors in the principle of structured creditor is qualified in 3 classes, namely:

a) Preferred creditors

Preferred creditors are based on Article 1134 of the Civil Code, which states that a creditor's privileges are granted by law, giving them a higher position than other creditors solely due to the nature of their receivables. This privilege grants them the right to priority in the payment of receivables. The rights of preferred creditors are clarified in Constitutional Court Decision Number 67/PUU-XI/2013, which states that payment of workers' wages is prioritized over all other types of creditors, and Supreme Court Number 18/PUU-VI/2008 (Ningsih 2025) stipulates that in the event of corporate bankruptcy, the State Rights Bill takes precedence over the rights of other creditors.

Preferred creditors are creditors who, by law, receive repayment first due to the nature of their receivables. A preferred creditor is a creditor who has a privilege, which is a right granted by law to a debtor, allowing them to receive a higher rate than other creditors, solely based on the nature of their receivables (Wijayati *et al.* 2021).

Two types of preferred creditors are those established under agreements regulated by Articles 1133 and 1134 of the Civil Code, and those established under the Civil Code, regulated by Articles 1139 and 1149 of the Civil Code. Preferred creditors have the following characteristics, among others (Adjie 2023):

1. It must be prosecuted, meaning that if the holder of this privilege lives silently, it is considered an ordinary bill (concurrent). The bill's owner must demand that it be included in the list of levels according to the level assigned to them under the law.

2. Preferential is not a material right; the owner of the right to special billing rights does not have the right to sell himself the things over which he has the right in advance.
3. Preference is determined by law.
4. Preference only attaches as long as the objects are still in the hands of the debtor; this indicates that privileges are not material rights.
5. The preference passes to the creditor's heirs.

b) Separatist creditors.

Separatist creditors are based on Article 138 of Law Number 37 of 2004, which states that creditors who have receivables secured by pledges, fiduciary guarantees, mortgages, collateral rights on other objects, or privileges on particular objects in the bankrupt estate can exercise their rights as if there were no bankruptcy. However, the provisions in Article 138 have become a new problem because there are provisions in Constitutional Court Decision Number 67/PUU-XI/2013 and Supreme Court Number 18/PUU-VI/2008, which result in before separatist creditors exercise their rights, the state and workers must first be assured of receiving payment and their rights, so that separatist creditors cannot immediately exercise their rights.

Separatists imply "separation" because the position of the creditor is indeed distinct from that of other creditors, in the sense that the creditor can sell himself and retain the proceeds of the sale, which are separate from the bankruptcy property in general (Siregar 2025).

Separatist creditors, who hold tangible guarantees, are regulated under Article 1134, number 2 of the Civil Code, specifically regarding pawn and Mortgage. Currently, the property rights in Indonesia are:

1. Pawn (Articles 1150 to 1160 of the Civil Code);
2. Fiduciary (Law No. 42 of 1999 concerning Fiduciary Guarantees);
3. Dependent Rights (Law No. 4 of 1996 concerning Dependent Rights on Land and Land-Related Objects);
4. Ship Mortgage (Article 1162 to Article 1232 of the Civil Code);
5. Warehouse Receipts (Law No. 9 of 2011 concerning the Warehouse Receipt System).

c) Concurrent creditors.

For concurrent creditors, there is no specific legal basis. However, the general regulations are only based on Articles 1131 and 1132 of the Civil Code, the contents of which are that if the debtor does not fulfill his obligation to pay off his debts to the creditor, then the creditor is given the right to auction off the debtor's assets, therefore concurrent creditors are creditors who do not have special rights either from the law or as the owner of collateral rights.

Concurrent creditors compete with each other to obtain payment from the auction results, so their position is not prioritized in repayment (Siregar 2025). Creditors compete, which means that concurrent creditors do not have privileges; therefore, their positions are equal (Zuroidah and Prasetyo 2024).

For concurrent creditors, the repayment of the debt must wait for the remaining results of the repayment or auction of the bankrupt property. The remaining repayment must be distributed after previously deducting the obligation to pay the receivables to the creditors, the holders of the guarantee rights, and the creditors with privileges proportionately according to the proportion of the amount of receivables of each concurrent creditor (sharing in *pari passu pro rata parte*) (Talia and Shubhan 2022).

3.5. INDONESIA CONDITIONS OF BANKRUPTCY

Submitting bankruptcy applications in Indonesia is regulated under Article 2, number 1, and Article 8, number 4, of Law Number 37 of 2004, which stipulates that the applicant must have two or more creditors, not pay in full at least one debt that has become due and can be collected, and have a proven inability to pay.

3.5.1. Have two or more creditors

According to Article 1, number (2) of the Law Number 37 of 2004, a creditor is a person who has receivables due to an agreement or law that can be collected before the court.

This makes the difference between a bankruptcy application, a default lawsuit, and an unlawful act lawsuit because there is a joint guarantee situation, and things are shared between creditors. This situation creates a struggle for the debtors' property between creditors. Therefore, according to Article 1132 of the Civil Code, as amended by Law Number 37 of 2004, the repayment of debts from debtors to creditors can be carried out in a balanced and fair manner (Jeremia *et al.* 2024).

3.5.2. Failure to pay in full at least one debt that is due and can be collected

The definition of debt can be found in Article 1, Section 6 of the Law Number 37 of 2004, which states that:

> Debt is an obligation that is declared or can be declared in an amount of money both in Indonesian currency and foreign currency, either directly or in the future or in a contingent way, which arises due to an agreement or law and which must be fulfilled by the debtor and if not fulfilled gives the creditor the right to get its fulfillment from the debtor's assets.

Debtors in the Law Number 37 of 2004 can be established through an engagement based on Article 1233 of the Civil Code, specifically through approval and legislation.

An agreement that arises from either an agreement or the law will certainly create rights and obligations for the parties; these obligations are outlined in Article 1234 of the Civil Code, which states that "every agreement is to give something, to do something, or not to do something." From the agreement, one of the parties is required to carry out its obligations, which can be in the form of (Suparji 2018):

1. The obligation of the borrower to pay the principal loan, fees, and interest to the money guarantor person.
2. The obligation of the seller to hand over the goods sold to the buyer;
3. The obligation of the guarantor to pay the creditor of the debt from the debtor that they guarantee in the event of default;
4. The construction obligation is to make a house and hand it over to the buyer/buyer.

Based on the provisions of Article 1234 of the Civil Code, the borrower's obligation to pay the principal, fees, and interest to the guarantor is one of the grounds for the debtor to repay the debt to his creditors. Experts' opinions regarding the definition of debt are as follows:

Sastrawidjaja M.S. said that the definition of debt can be divided into three groups, namely (Suparji 2018):

a) Debt, in a narrow sense, refers to receivables arising from a loan or borrowing agreement. This is a narrow opinion because the engagement underlying the receivables is limited to a borrowing and borrowing agreement, which involves borrowing money rather than encompassing all types of agreements. The other party's achievements, such as the buyer's obligation to pay, are not included as receivables for the seller. Achievements in service agreements and other contracts are also not considered debts.
b) Debt, in a broad sense, is defined as every bill to hand over money based on each agreement, not only a money lending agreement. This includes the category of receivables for shareholders concerned, such as a PT that does not submit dividends to its shareholders. For buyers who do not pay the purchase money, it becomes a debt for the seller. Another example of a passenger who does not pay the fare to the taxi driver under the transportation agreement is for the taxi driver to be receivable. Workers not paid by their business actors have receivables to the entrepreneur concerned.
c) Debt in a comprehensive sense. According to an exhaustive definition, receivables are any goods or services based on an agreement or a law that are not bills for a sum of money. In short, according to a comprehensive definition, receivables are demands for an achievement based on agreements and laws. According to Article 1234 of the Civil Code, the achievements can be in the form of:

    1. Giving something;
    2. Doing something;
    3. Not doing anything.

In a broad sense, the agreement in question is not limited to borrowing agreements but to all types of agreements. Similarly, rights based on unlawful acts can also be interpreted as receivables. So, for example, a person who is hit by a vehicle has a debt to collect a sum of money from the hitter based on Article 1365 of the Civil Code—similarly, agreeing to make a house to a wholesaler, having receivables to the wholesaler to collect from the contractor to complete the construction of the house.

According to Yuhassarie (Wicaksono and Sudiro 2025), debt arises from an agreement or law that requires the debtor to fulfill their obligations. If this is not fulfilled, the creditor has the right to get fulfillment from the debtor's assets. For this reason, the creditor can request that the debtor be declared bankrupt, allowing their assets to be confiscated. According to Yuhassarie (Wicaksono and Sudiro 2025), the definition of debt is every obligation of the debtor to each of its creditors, whether to provide something, perform an action, or refrain from acting. Giving some examples of obligations arising from the agreement (which are covered by the definition of debt as referred to in Law Number 4 of 1998):

a) The debtor's obligation to pay interest and principal debt to the lending party;
b) The seller's obligation to hand over the car to the buyer of the car;
c) The Developer's obligation to create a house and hand it over to the homebuyer;
d) The guarantor must ensure the debtor's repayment of the loan to the creditor.

3.5.3. Proven

Proving is convincing the judge of the truth of the evidence or postulates presented in a dispute or case before the judge or court, as proof is necessary when a dispute arises. The judge must examine and determine which propositions are not valid. Legal uncertainty and arbitrariness will occur if the judge, in carrying out their duties, bases their decision solely on their own beliefs, rather than on the law, which requires evidence. The law of proof refers to a series of rules of conduct that must be followed when presenting evidence to a judge between parties seeking justice (Marda and Dewangga 2023).

According to Elijana, simple proof in bankruptcy refers to the straightforward presentation of evidence in bankruptcy applications (Wicaksono and Sudiro 2025). The limitation of simple proof in bankruptcy cases differs from ordinary proof in general court in that the examination of bankruptcy application cases does not recognize the existence of exceptions, answers, replies, and conclusions as in other lawsuits. The obligation to summon, written in Law Number 37 of 2004, Article 8, paragraph 1, does not mean summoning the debtor to submit answers, duplicates, and conclusions. The summoning of the debtor by the Panel of Judges in the trial is intended so that the debtor listens to the applicant's arguments. In the examination process, with exceptions, answers, duplicates, and conclusions, as in the General Court, do not apply to the bankruptcy process (Gultom and Disyon 2022).

A simple proof can be obtained if the respondent or the bankrupt debtor does not file an *exception to non-dimple contracts*, which is an exception that states the creditor did not perform first. This nondimple contract exception is contained in reciprocal agreements, which cause the existence of a debt to be debated, making it difficult to establish proof quickly (Priamsari 2021).

3.6. CONSEQUENCES OF BANKRUPTCY

Bankruptcy can result in the loss of civil rights and the right to control and manage one's assets. The tangled assets will be controlled and managed by the curator to be given to

creditors. The loss of civil liberties is listed in Article 24 of Law Number 37 of 2004 as follows (Buckley 2022):

1. The debtor, for the sake of the law, loses his right to control and manage his assets included in the bankruptcy property from the date the judgment of the bankruptcy declaration is pronounced.
2. The decision date, as intended in paragraph (1), is calculated from 00.00 local time.
3. If, before the bankruptcy declaration decision is pronounced, a transfer of funds has been carried out through a bank or institution other than the bank on the date of the judgment as intended in paragraph (1), the transfer must be continued.
4. If a Securities Transaction has been carried out on the Stock Exchange before the bankruptcy declaration decision is pronounced, the transaction must be completed.

The assets referred to in Article 24, number 1 of the Law Number 37 of 2004, based on Article 22 of the Law Number 37 of 2004, are all the assets of the debtor at the time the bankruptcy declaration is pronounced, as well as everything obtained during the bankruptcy. Still, some assets are exempt based on Article 22 of the Law Number 37 of 2004, including (Pramono 2023):

1. Objects, including animals that are needed by the debtor in connection with his work, his equipment, medical equipment used for health, beds, and equipment used by the debtor and his family, and foodstuffs for 30 (thirty) days for the debtor and his family, contained in that place;
2. Everything that the debtor earns from his employment as a salary from a position or service, as wages, pensions, waiting money or allowances, to the extent determined by the Supervisory Magistrate, or
3. Money is given to the debtor to fulfill their obligation to provide maintenance as required by law.

3.7. PROTECTION PROVIDED BY BANKRUPTCY

Bankruptcy is one of the legal mechanisms that protects both debtors and creditors, ensuring justice for all parties involved. The following is the protection provided by Law Number 37 of 2004, which is aimed at protecting creditors and debtors in bankruptcy proceedings (Sihotang 2021).

TABLE 1

The protection provided by Law Number 37 of 2004 for parties in a dispute is based on the explanation in the general section of Law Number 37 of 2004.	
Debtors	**Creditors**
In situations where multiple creditors are collecting the debtor's receivables at the same	Selling the debtor's property without considering the debtor's interests will prevent

time, creditors can collect the debtors without engaging in conflict over the debtor's property. This is stated in Article 1, paragraph 1, of Law 37 of 2004, which stipulates that a general seizure will be carried out. This is further elaborated in Article 1, number 5, which states that the distribution of assets to creditors will be carried out through an administrator, namely a curator.	creditors with material security rights from claiming their rights. Normatively, it has been determined through Law 37 of 2004, Article 138, which states that creditors who have receivables secured by pledges, fiduciary guarantees, mortgages, collateral rights on other objects, or privileges on particular objects in the bankrupt estate can exercise their rights as if there were no bankruptcy.
When a debtor sells their property without considering the interests of other creditors, they can avoid creditors with material security rights from demanding their rights. This protection is outlined in Article 41 of Law Number 37 of 2004, which stipulates that the Curator may request the Court to annul any legal actions of the Debtor undertaken before the bankruptcy declaration is issued that are detrimental to creditors. This provision protects debtor actions that cause losses to creditors.	Mitigate fraudulent actions perpetrated by a singular creditor through the provision of advantages to one or multiple specific creditors, thereby inflicting detriment upon other creditors and curtailing the capriciousness of the collector. Protection for other creditors is contained in Article 16 of Law Number 37 of 2004, which states that from the date the bankruptcy declaration decision is pronounced, all creditors, both those who have and those who do not have priority rights, can only collect their receivables by submitting bills to the curator so that the authority over the debtor's assets that become bankrupt assets cannot be executed by creditors unilaterally, but through the curator.
Avoiding deceptive practices by debtors who attempt to benefit one or a few specific creditors at the expense of other creditors, or misleading actions by debtors who try to flee with all their assets to evade their obligations to creditors. Protection for debtor actions that want to benefit only one creditor is protected through Article 16 of Law Number 37 of 2004 which states that from the date the bankruptcy declaration decision is pronounced, all creditors, whether they have priority rights or not, can only collect their receivables by submitting a claim to the curator, so that the power over the debtor's assets that become bankrupt assets cannot be exercised by the debtor unilaterally, but through the curator.	

Table 1. Protection for creditors and debtors based on law number 37 of 2004.

The significance of Law Number 37 of 2004 for both debtors and creditors concerning the objectives of bankruptcy, including (Vellinda 2022):

1. Safeguarding the rights of concurrent creditors (Mantili and Dewi 2020). It is linked to the implementation of the guarantee principle outlined in Article 1131 of the Civil Code. The bankruptcy law aims to prevent conflicts among creditors regarding the debtor's assets.
2. It is essential to ensure that the allocation of a debtor's assets among creditors adheres to the principles of Pari Passu Pro Rata (Kamahayani and Margono 2020). This involves distributing the debtor's assets equally or in proportion to the amounts of their respective claims, following Article 1132 of the Civil Code.

    a) It is essential to prevent the debtor from engaging in actions that could adversely affect the creditors. Once the debtor is declared bankrupt, they lose the authority to manage and transfer their assets. The bankruptcy ruling establishes a legal framework for the debtor's assets, subject to general confiscation.
    b) Protection is afforded to individual debtors, defined as persons rather than legal entities who act in good faith, allowing them to receive debt relief from creditors. Upon the successful completion of a settlement or the liquidation of their assets, these debtors can be discharged from their debts, even if their assets do not cover the total amount owed. This process offers debtors the opportunity for a fresh financial start (Robert *et al.* 2022). However, it is essential to note that this provision is applicable in the United States and does not extend to bankruptcy cases in Indonesia, where debtors remain responsible for settling any outstanding debts.
    c) Administrators who have contributed to the company's poor financial situation and subsequent insolvency due to their errors should face penalties, leading to the court's declaration of bankruptcy (Tan *et al.* 2024).
    d) Facilitating a platform for the debtor and its creditors to engage in negotiations and reach a consensus regarding the restructuring of the debtor's debts (Amalia *et al.* 2022).

Protecting the Law Number 37 of 2004 is crucial, particularly when considering individuals as creditors or debtors, to ensure security and justice for parties related to the debtor's assets.

3.8. BANKRUPTCY ASSETS

The management of a debtor's assets declared bankrupt for execution is referred to as the sale of bankruptcy assets. Bankruptcy asset management includes sealing the assets, recording or registering the assets, continuing the debtor's business, opening the debtor's bankruptcy telegram, transferring the assets, storing the assets, maintaining a peace settlement to ensure the smooth running of the case, or preventing the occurrence of a case (Harahap 2021). The management of these assets, as per Article 1, paragraph 1, in conjunction with Article 1, paragraph 8, of Law Number 37 of 2004, is carried out by a curator appointed by the commercial court and supervised by a supervising judge.

The basis for bankruptcy asset management can be found in Article 1131 of the Civil Code, which states that all movable and immovable assets belonging to the debtor, both existing and future, serve as collateral for the debtor's obligations. This provision can only be used for civil courts, with the condition that the assets owned, along with the profits to be obtained through the business activities, will be used as collateral, in contrast to bankruptcy

which has the nature of a general confiscation of all assets managed by a curator, making the future assets have no time limit.

The foundation for the bankruptcy estate is established in Article 1131 of the Civil Code (Guntoro *et al.* 2023), which asserts that all assets, both movable and immovable, owned by the debtor, whether currently held or acquired in the future, serve as security for the debtor's obligations.

According to Article 1131 of the Civil Code, the debtor's assets, including both movable and immovable property, may serve as collateral for bankruptcy (Abdoeh 2019). This applies to existing assets and those that may exist following the bankruptcy ruling. Furthermore, Article 21 of Law Number 37 of 2004 stipulates that bankruptcy encompasses all assets the debtor owns at the time the bankruptcy declaration is issued (Afilia Dinda Dhiya Ulhaq 2023), as well as any assets acquired during the bankruptcy process.

Assets that will exist in the future are not determined by Law Number 37 of 2004, and Law Number 37 of 2004 itself does not specify a limit on the time required for the settlement and sale of the bankruptcy assets to be carried out.

Not all debtors' assets can be included in the bankruptcy assets, as for those that can be set aside to become bankruptcy assets following Article 22 of the Law Number 37 of 2004 (Dewi 2021), among others:

a) Items essential for the debtor's work, such as tools and medical equipment necessary for health and beds and other furnishings utilized by the debtor and their family, are included. Additionally, provisions for food sufficient for thirty days for both the debtor and their family, which are located on the premises, are also considered necessary;
b) The debtor's earnings derived from their employment, including salary from a job or service, wages, pensions, waiting money, or allowances, will be subject to limits established by the Supervising Judge or
c) Funds are provided to the debtor to meet a legal obligation for maintenance support.

According to Law No. 37 of 2004, it only imposes restrictions on the assets of debtors that can be excluded, but it does not regulate the process. It does not include provisions for time information regarding assets that will be acquired in the future.

In general, the essence of bankruptcy is a process related to the distribution of resources from debtors to their creditors. This bankruptcy process serves as a mechanism for the equitable and systematic distribution of the debtor's assets, subsequently forming the bankruptcy estate. Its certainty characterizes it as the procedures and progress related to the distribution of bankruptcy assets are clearly defined. This includes identifying creditors with the right to claim against the bankrupt entity, outlining the distribution mechanisms among similar and dissimilar creditors, and, crucially, involving third parties as independent entities within the legal framework governing the relationships between creditors and debtors. These independent parties consist of curators and supervisory judges. This approach embodies the principle of debt pooling inherent in bankruptcy proceedings.

Bankruptcy serves not merely as a means to exert pressure on debtors; it can also function as a restructuring mechanism designed to ensure the ongoing operation of business entities. This approach enables businesses with outstanding debts to creditors, which are due but unpaid, to secure a reasonable extension from their creditors, provided they have promising prospects. Such an extension allows these businesses to settle their debts, potentially with or without renegotiating the terms of their credit agreements. This process represents an alternative to traditional debt resolution through bankruptcy.

4. CONCLUSION AND RECOMMENDATION

To ensure justice and uphold legal certainty, the curator in the bankruptcy process for individual debtors is required to establish a clear time limit for including assets in the bankruptcy estate. The absence of a time limit on this provision in Law Number 37 of 2004 allows for the indefinite withdrawal of assets acquired in the future, thereby hindering the debtor's ability to restart economic activities and restore financial stability as a living entity that needs to develop and improve its standard of living. The time limit set by the law determines the period during which assets can be categorized as bankruptcy assets and therefore can be legally seized, protecting individual debtors. In this case, providing a limit to the curator of 2 years after the bankruptcy decision to be able to determine that future assets in the future are the last period for the assets of the individual bankrupt debtor to be subject to general seizure by the curator so that after two years the individual debtor can continue his life and start a new business activity.

The regulation of the two-year post-bankruptcy time limit should be implemented within the framework of Law No. 37 of 2004 (as lex specialis) and Article 1131 of the Civil Code (as lex generalis), preferably through a decree from the Ministry of Law or a circular from the Supreme Court, the institution that regulates receivership and bankruptcy proceedings. This time limit must be enforceable through oversight by judges and court-appointed receivers, to ensure that asset collection does not result in prolonged economic hardship for individual debtors.

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