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Research Article

The Evolution of the Indonesian Bankruptcy Law: A Historical Analysis

Anita Kadir
Commissioner of the Judicial Commission of Indonesia (KY-RI), Indonesia

Ahmad Sabirin *
Institute for Climate Law and Sustainable Policy, Indonesia

ABSTRACT: This paper examines the development of bankruptcy law in Indonesia, focusing on changes in the norms, laws, and regulations that govern bankruptcy from time to time. The problem raised in this study is how the evolution of bankruptcy law affects the practice of debt settlement in Indonesia. The research method used is a legal history research approach, which involves collecting data through literature studies and archival research. The results of this paper show significant changes in bankruptcy law in Indonesia, especially with the enactment of Law No. 37 of 2004. Court decisions reflect the application of new norms and contribute to a better understanding of bankruptcy. This paper recommends that Bankruptcy Law requirements should be tightened so that only debtors who cannot pay can file for bankruptcy. Second, the capacity and role of curators need to be improved through further training and supervision so that the task of managing bankruptcy assets can be carried out transparently and professionally to protect the interests of all parties. Third, the government needs to expand socialization about bankruptcy law to increase public understanding.

KEYWORDS: Bankcruptcy, Debts, Evolution, and History.

*Corresponding author, email: ahmad.sabirin@uiii.ac.id

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I. INTRODUCTION

To realize a just and prosperous society based on Pancasila and its 1945 Constitution, Indonesia directs its development of national law towards building a national legal system through the formation of new laws. These laws include regulations on bankruptcy and the postponement of debt payment obligations. The monetary crisis that has affected Asian countries, including Indonesia, since mid-1997 has created challenges for the national economy and trade, which, if not resolved promptly, will have a broader impact, including job loss and other social problems. Bankruptcy law prevents creditors from acting independently to claim a debtor's assets and provides a solution for creditors to determine how to settle the debts of debtors jointly.[1]

The development of the global economy has a significant impact on the evolution of law, particularly commercial law. Radjagukguk states that globalization will cause developing countries' economic policies and regulations on investment, trade, and services to converge with those of developed countries. Indonesia has revised its economic laws, including its bankruptcy laws, to adjust to the global economy. These revisions were also made in response to pressure from international bodies such as the World Trade Organization, the International Monetary Fund, and the World Bank.[2]

Corporate bankruptcy can occur due to the rapid development of the economy and trade, and various kinds of debt and receivable problems arise in society. Likewise, the monetary crisis in Indonesia has had an unfavorable impact on the national economy, causing significant difficulties for businesses in resolving debts and receivables to continue their operations. The development of bankruptcy law in Indonesia is inseparable from the condition of the national economy, primarily the events of mid-1997.

Corporate bankruptcy is a legal phenomenon that is feared by the owner of the company and by its leadership.[3] Corporate bankruptcy means that a company cannot pay its debts. To declare a debtor bankrupt by the court in the Indonesian

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1 Douglas G Baird, "A World without Bankruptcy" (1987) 50:2 Law and Contemporary Problems at 29.

2 Melike Arslan, "Differentiating and connecting indicators: the quality and performance of law in the World Bank's Doing Business Project" (2020) 16:1 International Journal of Law in Context at 21.

3 Wenping Ye, Zhongfeng Su & David Ahlstrom, "Bankruptcy laws, entrepreneurs' socio-cognitions, and the pursuit of innovative opportunities" (2022) 59:3 Small Business Economics at 1005.

context, namely the Commercial Court, several juridical criteria must be met as stipulated in Law Number 37 of 2004.

First, the debtor must have at least two creditors, which reflects the collective nature of the bankruptcy mechanism. This requirement distinguishes bankruptcy from ordinary debt disputes, while also aiming to protect the interests of more than one creditor. Second, the debtor must have at least one debt that is due and collectable. Indonesian bankruptcy law does not require proof of insolvency in the sense of financial balance, but it is sufficient to have a debt that has matured but not been paid.

This shows that Indonesia's bankruptcy system adheres to a formal bankruptcy test, which emphasizes legal certainty and process efficiency. Third, the existence of the debt must be proven simply (simple proof). This principle requires judges to be able to quickly and clearly assess the existence of debts and the plurality of creditors without entering into complex legal or factual disputes. When a case requires complicated proof, then the matter is not eligible to be examined through the bankruptcy mechanism and should be resolved through a regular civil lawsuit.

Bankruptcy law in Indonesia has increasingly evolved to protect creditor interests. This can be seen in the requirements for filing for bankruptcy. The broad definition of debt allows separatist and preferred creditors to apply for bankruptcy without giving up their right to take precedence.

Bankruptcy law must adapt to the changing dynamics of society to reflect national social and economic goals. In 1998, based on Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the government issued a Government Regulation in Lieu of Law Number 1 of 1998 on Bankruptcy, which amended the previously applicable bankruptcy provisions. The issuance of this Government Regulation in Lieu of Law of 1998 is an emergency measure taken in response to the severe economic and monetary crisis that hit Indonesia during that period. The economic crisis of 1997–1998 caused many business actors to experience liquidity difficulties and fail to meet their debt payment obligations, so that the bankruptcy mechanism that existed at that time was considered inadequate to handle the surge in debt-receivable disputes and uncertainty in the business world.

In addition, the weakness of the previous bankruptcy regime raises concerns about creditor protection, legal certainty, and the stability of the national financial system. Therefore, the government views the existence of a compelling urgency as referred to in Article 22 of the 1945 Constitution, which justifies the issuance of the Government Regulation in Lieu of Law of 1998 without going through ordinary legislative procedures. Government Regulation in Lieu of Law of 1998 aims to strengthen the bankruptcy legal framework, accelerate the settlement of debts and receivables, and restore the confidence of domestic and international investors and creditors during a crisis situation. The regulation was then passed into law and became the basis for the reform of Indonesia's bankruptcy law in the future.

The amendment of Bankruptcy Law was made because developed by the Dutch colonial government, was no longer suitable for the needs of the community in settling debts and receivables. After the Government of Indonesia amended the Bankruptcy Law as contained in the Stb. 1905 No. 217 jo Stb. 1906 No. 348 in lieu of Law No. 1 of 1998 on April 22nd, 1998. It came into force 120 days later, on August 22nd of 1998, and remained in effect until it was ratified into Law No. 4 of 1998 on Bankruptcy on September 9, 1998.[4] However, after being in effect for nearly six years, Law No.4 of 1998 on Bankruptcy was revised into Law No. 37 of 2004, covering Bankruptcy and the Suspension of Debt Payment Obligations in October of 2004, and remains enforced to the present day.[5]

Thus, the application for Declaration of Bankruptcy and Suspension of Debt Payment Obligations, as well as the right to intermediate property, is examined and decided by the Commercial Court. The Commercial Court is a specialized court within Indonesia's Courts of General Jurisdiction, which is formed and tasked with receiving, analyzing, and determining applications for declaration of bankruptcy and postponement of debt payment obligations. These actions are carried out based on the laws and regulations stipulated in Article 300 paragraph (1) of Law No. 37 of 2004.[6]

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4 Ni Martina & I Arjaya, *Commercial Court Legal System of Bankruptcy: Debtor Assets Less Than the Amount of Debts* (Atlantis Press, 2018) at 11.

5 Gunardi Lie et al, "Problematik UU No. 37 Tahun 2004 tentang Kepailitan dan PKPU terhadap Bank sebagai Kreditor Separatis" (2020) 2:2 Jurnal Bakti Masyarakat Indonesia at 21-22.

6 Intan Nurjannah Lase et al, "Problems Resulting from Filing an Effort for Judicial Review of the Cancellation of a Bankruptcy Decision which was preceded by an Application for Postponement of Debt

Because the Commercial Court is in the general court, the Chairman of the Commercial Court is not known. It is because the Chairman of the District Court concerned also supervises the Commercial Court, and the existence of the Commercial Court, with the law above No. 37 of 2004, is possible based on the provisions of Law No. 2 of 1986, as amended by Law No. 8 of 2004. Article 8 of Law No. 8 of 2004 stipulates that specialization regulated in the law can be held in the General Judiciary.

Debt that has expired and can be collected is the obligation to pay a debt that has become due, either because it has been agreed, because of the acceleration of the collection time as agreed, due to the imposition of sanctions or fines by the competent agency, or because of the decision of a court, arbitrator, or arbitral tribunal.

Article 2, paragraph (1) of Law No. 37 of 2004 stipulates that a debtor who has two or more creditors and does not pay in full at least one payable debt is to be declared bankrupt by the Court's decision, either on their application or on the application of one or more of their creditors. In this paragraph, "creditor" refers to concurrent creditors, separatist creditors, and preferred creditors. Separatist and preferred creditors can apply for a bankruptcy declaration and retain their right over the debtor's assets and their right to precedence.

The Commercial Court's decision on the application for a declaration of bankruptcy can be implemented first, which is called an immediately executable judgment, or "Uitvoerbaar Bij Voorraad". An immediate decision is a judgment that can be carried out immediately, even if it has not yet obtained permanent legal force. The aim of this principle is to make the trial process simple, fast, and low-cost, and to make it easier for the litigant to obtain their rights immediately.[7]

An immediate judgment is a way for the settlement process on the debtor's assets to be completed immediately and used to pay debts. This can avoid the seizure of assets owned by bankrupt debtors from creditors, so that the assets can be disposed of relatively to their creditors. Bankruptcy declaration changes a

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Payment Obligations (Analysis of Supreme Court Decision No. 96 PK/PDT.SUSPAILIT/2014)" (2023) 2:11 Formosa Journal of Applied Science (FJAS) at 2940.

7 Nelson Simanjuntak, Manotar Tampubolon & Favio Farinella, "Discrimination of persons with mental illness: testing the principles for the protection of persons with mental illness and the improvement of mental health care in Indonesia" (2024) at 25-26.

person's legal status to be incapable of performing legal acts and controlling and managing their assets.[8] A Curator is authorized to carry out the task of managing or settling bankruptcy assets from the date the bankruptcy declaration decision is pronounced, even though the decision is filed for cassation or review.

Law No. 37 of 2004 stipulates that if the bankruptcy declaration decision is annulled by cassation or review, all actions performed by the curator before or on the date of receipt of the notice of cancellation remain valid and binding on the Debtor. This is distinct from ordinary civil cases, whereby if the decision is cancelled at the level of appeal, cassation, or review, then the implementation of the immediate decision by the District Court is also invalid, and if the goods or assets have been transferred to a third party, the original owner must initiate a lawsuit to reclaim them from the party who controls them.[9]

However, if the disputed goods or assets are still in the possession of the Plaintiff, then the execution of the judgment is, in principle, carried out by requiring the Plaintiff to return the goods to the Defendant. In such conditions, the execution is considered to have been sufficient when the Defendant, from the beginning, did request that his belongings be returned by the Plaintiff. It is different from the bankruptcy declaration decision, which causes immediate and automatic legal consequences. Since the bankruptcy judgment is pronounced, all execution actions against the debtor's assets that have been previously initiated must be stopped immediately, and subsequently, the management and settlement of the bankruptcy assets are under the authority of the Curator under the supervision of the Supervisory Judge.

Since then, there are no more judgments that can be implemented individually against the Debtor, including coercive execution actions, such as the Debtor's hostage-taking, as affirmed in Article 31 paragraph (1) of Law Number 37 of 2004. On the other hand, in ordinary civil cases, the judgment that can be enforced in advance (uitvoerbaar bij voorraad) is limited only to a judgment that meets one of the conditions as stipulated in Article 180 paragraph (1) of the Herzien Inlandsch Reglement or Article 191 paragraph (1) of the

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8 Sumurung Simaremare et al, "Politik Hukum Jangka Waktu Penundaan Kewajiban Pembayaran Utang di Indonesia" (2021) 6 Jurnal Ius Constituendum at 110.

9 Ermanto Fahamsyah et al, "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism be Applied?" (2024) 7:1 Volksgeist: Jurnal Ilmu Hukum dan Konstitusi at 199.

Rechtsreglement voor de Buitengewesten. This provision gives the authority to the District Court to order that the decision can be implemented first even if it is submitted by resistance or legal remedy, provided: a) there is evidence in the form of an authentic deed or deed under the hand that according to the law has evidentiary force; b) there is a previous court decision that has acquired permanent legal force; or c) the granting of the provision lawsuit.

Thus, disputes regarding property rights under the control of the Plaintiff in ordinary civil cases have a fundamentally different execution regime compared to the legal consequences arising from the bankruptcy declaration judgment, which is collective, comprehensive, and stops all individual execution actions against the Debtor.[10]

Article 16, paragraph (2) of the Law No. 37 of 2004 stipulates that all actions of the Curator on the bankruptcy property before the date of cancellation of the judgment remain valid and binding on the Debtor. The Curator's actions include all acts related to managing and settling bankruptcy assets, while the term "remaining valid and binding on the Debtor" states that the actions of the Curator cannot be contested in any Court. Thus, the essence of bankruptcy law in Indonesia philosophically is a tool for collecting debts. To facilitate its application as a benchmark for bankruptcy declarations is the non-payment or cessation of paying debts.

II. METHODOLOGY

This paper employs a legal history research approach, which focuses on analyzing the development and changes in bankruptcy law in Indonesia over time.[11] Legal history research examines how legal norms, rules, and regulations related to bankruptcy have evolved, developed, and been applied in various social, political, and economic contexts. In this context, the data collected primarily comes from historical documents, archives, bankruptcy decisions issued by the Commercial

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[10] Ariffani, Rilawadi Sahputra & Syaiful Azmi, "Analysis Of Consideration Of The Judge's Decision The Process Of Management And Settlement Of The Debtor's Property After The Bankruptcy Of The Debtor In Bankruptcy (Case Study No. 1/Pdt.Sus-Renvoi Prosedur/2022/PN.Niaga.Mdn)" (2023) 2:4 International Asia Of Law and Money Laundering (IAML) at 147.

[11] Kornelius Benuf & Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer" (2020) 7:1 Gema Keadilan at 24.

Court and the Supreme Court, as well as a study of relevant laws, regulations, and literature. The nature of the research is descriptive-analytical, where the data collected will be processed and analyzed systematically to explain the relationship between the development of bankruptcy law and its historical context. The research method employed is a qualitative approach, which enables researchers to delve deeper into the historical context and implications of the data obtained. This research utilizes various data sources, including historical documents, archives, and literature related to bankruptcy.

Data collection techniques are employed through literature studies and archival research, which involve gathering information from historical documents, laws and regulations, and relevant court decisions. Data analysis is carried out both historically and qualitatively by interpreting legal materials and grouping legal concepts related to the development of bankruptcy law. The analysis results reveal the relationship between various historical periods and legal changes, and provide relevant conclusions to the problems studied.[12] This paper is expected to provide theoretical and practical benefits. Theoretically, the research results are expected to contribute to the development of legal science, especially in understanding the evolution of bankruptcy law and the postponement of debt payment obligations. Practically, this research is expected to provide input for law enforcement, regulators, and the public, and help businesspeople understand the historical context of debt and receivables settlement through bankruptcy. Thus, this paper is expected to serve as a reference for future research on the history of bankruptcy law.

III. THE HISTORY OF BANKRUPTCY LAW

Throughout history, the treatment of bankruptcy parties by the law has varied. This section explains bankruptcy laws in several countries and their implementation.

A. Ancient Rome

[12] Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (CV. Rajawali, 2009) at 35.

The first records of bankruptcy law can be traced back to Roman Law in 118 BC. In the 5th century BC, if the Debtor could not pay off his debt, the Creditor had the right to sell the Debtor as an enslaved person.[13] The proceeds of the Debtor's sale were a source of repayment for his debt to the Creditor.

Bankruptcy law in Ancient Rome had distinct differences from the bankruptcy laws in force today. In Ancient Rome, the only party that could file for bankruptcy was the Creditor, while in the current bankruptcy law, the Debtor can also file a bankruptcy application. Secondly, debtors who were unable to pay their debts were imprisoned, while the current bankruptcy law does not permit this process.[14] Further, all assets of the Debtor were controlled, sold, and distributed to the Creditors until all debts of the Debtor were paid off. Both in the Roman Republic and in Ancient Greece, the debtor's non-payment could result in death, slavery, mutilation, imprisonment, or exile.[15]

During the 2nd century AD, using slavery as a form of debt repayment was abolished, however imprisonment of the debtor continued. Creditors were prohibited from using the imprisoned debtor as a servant, and the debtor could only be withheld as collateral until a friend or family member of the debtor pays off the debt.

Within several cities in the Roman Empire the execution of debtors' wealth to pay off debts was a common practice. Supervision of the repayment of the debts of the Creditors from the proceeds of the sale of the Debtor's assets was carried out by a judge, who ensures that the repayment of each Creditor's bills is carried out proportionally to the amount of the bill.

B. France

The influence of Italian merchants on French cities led to the adoption of similar bankruptcy laws, occurred mainly in the late Middle Ages to the beginning of

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13 Ulrike Malmendier, "Law and Finance 'at the Origin'" (2009) 47:4 Journal of Economic Literature at 1077.

14 Thomas G W Telfer & Virginia Torrie, *Debt and Federalism: Landmark Cases in Canadian Bankruptcy and Insolvency Law, 1894-1937* (UBC Press, 2022) at 23-24.

15 Rachel Kerr, Henry Redwood & James Gow, *Reconciliation after War: Historical Perspectives on Transitional Justice* (Routledge, 2022) at 22-23.

modern times, i.e. around the 13th to 16th centuries.[16] The main provisions on bankruptcy in France were contained in the Ordonnance de Commerce of 1673, a French trade ordinance issued during the reign of King Louis XIV, often referred to as the Ordonnance de Colbert, because it was initiated by Jean-Baptiste Colbert, the French Minister of Finance at the time.[17] Chapter XI on Des Faillites et Banqueroutes outlined bankruptcy laws, with distinctions in treatment between concurrent creditors and preferred creditors.[18]

In 1807, the Ordinance was refined into the Code de Commerce (Trade Code), which stipulated that bankruptcy only applied to traders. Meanwhile, criminal penalties could also be imposed on debtors who have deceived creditors in bad faith. The Code was introduced in other European countries, including the Netherlands, which subsequently applied the law in its colonies, such as the Dutch East Indies.[19]

C. The Netherlands

Bankruptcy in the Netherlands was initially regulated by the Code de Commerce, after its annexation by the French Empire. This legal framework distinguishes between traders and non-traders, a distinction that was subsequently maintained within bankruptcy legislation following the replacement of the Code de Commerce. Specifically, the bankruptcy of traders was regulated under the Wetboek van Koophandel (Dutch Commercial Code), particularly in Book III, which governed arrangements applicable in cases of merchants' insolvency (Regelingen over voorzieningen in geval van onvermogen van kooplieden). Book III was limited in scope, as it regulated only bankruptcy and the suspension of debt payment obligations. These provisions remained in force only until 1896,

16 Michele Fratianni & Franco Spinelli, "Italian City-states and Financial Evolution" (2006) 10:3 European Review of Economic History at 263.

17 Lewis Wade, "Royal Companies, Risk Management and Sovereignty in Old Regime France" (2023) 138:592 The English Historical Review at 443.

18 Pierre Labardin, "Accounting Prescription and Practice in Nineteenth-century France: An Analysis of Bankruptcy Cases" (2011) 21:3 Accounting History Review at 263.

19 Annamaria Monti, "The Italian Destiny of the French Code de commerce" in *Modernization, National Identity and Legal Instrumentalism in Private Law* (Brill | Nijhoff, 2019) at 112.

when the bankruptcy regime contained in the Dutch Commercial Code was replaced by the Faillissementswet 1893, which entered into force in 1896.[20]

In contrast, bankruptcy proceedings against non-trader debtors were governed by the Wetboek van Burgerlijke Rechtsvordering (Dutch Code of Civil Procedure), specifically Book III, Title VII, which regulated the state of apparent insolvency (Regeling van Staat van Kennelijk Onvermogen). The Faillissementswet 1893 was received by the Tweede Kamer on 28 April 1893, approved by the Eerste Kamer on 27 September 1893, and subsequently ratified by the Queen of the Netherlands on 30 September 1893. Pursuant to Article 1 of the Law dated 20 January 1896 *(Staatsblad No. 9),* the Faillissementswet 1893 came into force on 1 September 1896. Although this statute remained in force for nearly a century, it underwent several significant amendments, notably in 1925, 1935, and 1992, primarily to refine the rules on the suspension of debt payment obligations and to adjust the legal consequences arising from the reform of property law introduced through the revised Books 3, 5, 6, and 7 of the Dutch Civil Code (BW).[21]

Historically, Dutch bankruptcy law, based on the *Faillissementswet* 1893, recognized only two procedures, while the third procedure, aimed at individual debtors, was introduced much later through legislative reform in 1998.[22] The first process is bankruptcy, which involves liquidating the company's assets. The second legal process is the suspension of debt payment obligations *(surseance),* which only applies to companies. The third process is the repayment of debts designed for individuals *(Schuldsanering).* The Dutch Bankruptcy Law was enacted in 1893, then based on the *"principle of concordance"* promulgated in Indonesia by the Government of the Dutch East Indies in 1906 under the name of *Faillissements Verordening.*[23]

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[20] Boudewijn Sirks, "Sources of Commercial Law in the Dutch Republic and Kingdom" in *Understanding the Sources of Early Modern and Modern Commercial Law* (Brill | Nijhoff, 2018) at 166.

[21] Dave De Ruysscher, "At the end, the creditors win: pre-insolvency proceedings in France, Belgium and the Netherlands (1807–c1910)" (2018) 6:2 Comparative Legal History at 185.

[22] Paolo Di Martino, Mark Latham & Michelangelo Vasta, "Bankruptcy Laws Around Europe (1850–2015): Institutional Change and Institutional Features" (2020) 21:4 Enterprise & Society at 938.

[23] Cornelis Marinus (Marco) in 't Veld, "Conservatism among Merchants? Codification and Customary Mercantile Law Traditions in the Netherlands (19th–20th Century)" (2020) 34:1 Noesis at 218.

D. England

The Statute of Bankruptcy of 1570 was a key piece of legislation that shaped the English approach to bankruptcy law. It was primarily designed to protect creditors from fraudulent debtors.[24] According to the law, the debtor's assets were confiscated and sold to pay off their debts, for which the debtor remained responsible until the debts were paid off in full. If the debtor failed to pay off all their debts in full, they could be imprisoned or endure cruel punishment such as having their ears cut off.[25]

In England, early bankruptcy law, which emerged in the sixteenth century, was essentially aimed at protecting creditors and punishing debtors who failed or refused to meet their obligations. In this early regime, bankruptcy could generally only be filed by creditors, and debtors were treated as if they had committed a commercial offense, rather than experiencing financial distress. It was not until the nineteenth century that English bankruptcy law began to adopt a more balanced approach, which allowed the debtor himself to file for bankruptcy as a way to settle his debts to creditors.[26]

These changes reflect the economic and social developments resulting from industrialization, as well as the growing view that insolvency should be dealt with through legal rehabilitation, not just punishment. Legislative reforms during the nineteenth century gradually reduced the punitive nature of bankruptcy and introduced more orderly debt settlement mechanisms.

This development culminated in the modernization of bankruptcy law in the twentieth century, in particular with the enactment of the Insolvency Act 1986, which came into force on 29 December 1986 and is to this day the main legal framework governing bankruptcy and insolvency in the United Kingdom. The 1986 law brought together previous regulations and affirmed a shift towards a

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24 Fleur Stolker, "The Forgotten History of Bankruptcy, 1543–1624" (2023) 44:3 Journal of Legal History at 297.

25 Robert Nantes, *English Bankrupts 1732–1831: A Social Account* University of Exeter, 2020) at 27-28.

26 Charles Jordan Tabb, "The Historical Evolution of the Bankruptcy Discharge" (1991) 65:1 American Bankruptcy Law Journal at 65.

more rehabilitative and collective insolvency system, which balances the interests of creditors with the protection of debtors.[27]

E. The United States of America

During the American colonial period, the thirteen colonies operated primarily under English law, and the first federal U.S. bankruptcy law was not enacted until 1800, after independence. The opportunity for a debtor to voluntarily file a declaration of bankruptcy was only included in the bankruptcy law of the United States after the enactment of the Bankruptcy Act of 1841.[28] Later, the Bankruptcy Act of 1898 was the law in force until the Bankruptcy Code, enacted by the Bankruptcy Reform Act of 1978, came into effect. The Bankruptcy Code formed the basis for modern U.S. bankruptcy law.[29]

The United States Bankruptcy Code regulates bankruptcy for partnerships, companies and individuals. It also applies to municipal legal entities, which are regulated by Chapter 9, with exceptions for railway companies, insurance companies, and banking institutions, which are prohibited from filing under this chapter.[30]

F. Indonesia

Before Indonesia proclaimed its independence on August 17, 1945, bankruptcy was regulated in the Commercial Code (W.V.K), Book III, entitled Regulation on Merchants' Incapacity. Later, this was replaced by Article 2 of the Stb. 1906-348, an amendment to the original bankruptcy regulation. Bankruptcy applicable to non-traders is governed by the Rv (Wetboek van Burgerlijke Rechtsvordering, Stb. 1847-52 Jo. 1849-63), specifically Book III, Chapter VII, entitled On the Actual Situation of Incapacity, covering Articles 899 to 915. These provisions were later repealed by Stb. 1906-348. The enactment of these two regulations has caused posed several challenges, including excessive bureaucratic formalities,

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27 John Armour, Audrey Hsu & Adrian Walters, "Corporate Insolvency in the United Kingdom: The Impact of the Enterprise Act 2002" (2008) 5:2 European Company and Financial Law Review at 21.

28 *Ibid* at 19.

29 Jayprakash Mishra, "Fast-Track Corporate Insolvency Resolution Process: A Comparative Study of India and the USA\" (2023) 5:1 Indian Journal of Law and Legal Research at 4-5.

30 Elizabeth Warren & Robert M Lawless, *Bankruptcy and Article 9: 2024 Statutory Supplement* (Aspen Publishing, 2024) at 11-12.

high costs, lengthy implementation timelines, and d) few creditors can interfere with the course of the bankruptcy process.[31]

These difficulties raised a desire for creditors to lower costs and increase the efficiency of implementation. To achieve this goal, the Faillissementsverordening (Stb. 1906-348 Jo. Stb. 1905-217) was enacted on November 1, 1906. The provisions governing bankruptcy for non-merchant debtors in the R.V. (Wetboek van Burgerlijke Rechtsvordering, Stb. 1847-52 Jo. 1849-63), Book III, Chapter VII, Articles 899 to 915, were later repealed through Stb. 1906-348, together with the entire Book III of the W.V.K.

This repeal was carried out to modernize and harmonize the procedural framework of civil and bankruptcy law, while addressing inconsistencies and obsolete rules that were no longer in accordance with commercial and legal practice contemporary. As a result of the revocation, the bankruptcy arrangement for non-merchant debtors was moved to a revised legal framework, thus providing clearer guidelines for the courts, improving procedural efficiency, and affirming a more systematic distinction between bankruptcy for merchants and non-merchants.

Under the provisions of Article 163 I.S., the population of the Dutch East Indies was divided into several groups: a) Europeans, including Dutch nationals; b) Bumiputera, or native Indonesians; and c) Foreign Orientals, such as Chinese, Arabs, and British Indians. The Foreign Orientals were further subdivided into Chinese Foreign Orientals and non-Chinese Foreign Orientals, including individuals from India, Pakistan, Arabia, and other regions. The primary purpose of this legal classification was to determine which legal system applied to individuals, particularly in matters of marriage, inheritance, and property rights.

Each group was therefore subject to different sets of laws and customary regulations, reflecting the colonial administration's approach to managing a highly diverse population.[32] Although the Faillissementsverordening only applied

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31 Hendra Onggowijaya, "Regulation Model for Filing an Actio Pauliana Lawsuit by Creditors to Revoke the Debtor's Legal Actions Prior to Declaration of Bankruptcy by the Commercial Court" (2022) 11:7 International Journal of Research in Business and Social Science at 2150.

32 Bart Luttikhuis, "Beyond race: constructions of 'Europeanness' in late-colonial legal practice in the Dutch East Indies" (2013) 20:4 European Review of History / Revue européenne d'histoire at 543.

to Europeans, other groups in the Dutch East Indies could also use the Faillissementsverordening, such as the Chinese Foreign East, through existing law enforcement institutions. In contrast, Foreign Orientals could voluntarily adapt Western civil and commercial law through various legal mechanisms.

Faillissementsverordening (Stb. 1905-217 Jo. Stb. 1906-348), which was the legacy of the Dutch East Indies government, eventually became obsolete and no longer adequate to meet the needs of the Indonesian people in debt settlement. To address this, the Indonesian government issued Government Regulation in place of Law No. 1 of 1998 on April 22, 1998, pursuant to Article 22 paragraph (1) of the 1945 Constitution, which amended the existing provisions of the bankruptcy law. This Government Regulation, in place of Law No. 1 of 1998, was later enacted as Law No. 4 of 1998 on Bankruptcy and Suspension of Debt Payment Obligations, thus effectively replacing the Dutch colonial legacy Faillissementsverordening and providing a modern legal framework for bankruptcy in Indonesia.

The amendments mentioned above still faced several shortcomings and weaknesses and did not adequately meet the developmental and legal needs of the community. In response, Law No. 37 of 2004 was ratified on November 18, 2004.

The history of Indonesian bankruptcy law can be divided into several key periods. Initially, the Faillissementsverordening (Stb. 1905-217 Jo. Stb. 1906-348), enacted by the Dutch East Indies government, served as the primary legal framework for bankruptcy. This law, based on Dutch bankruptcy law, became applicable in Indonesia following independence on 17 August 1945, pursuant to Article II of the Transitional Provisions of the 1945 Constitution. Over time, the Faillissementsverordening became outdated and no longer met the needs of society. To modernize the law, the Indonesian government issued Government Regulation in Lieu of Law No. 1 of 1998 on 22 April 1998, under Article 22(1) of the 1945 Constitution, which amended the colonial bankruptcy law.[33]

[33] Faishal Fatahillah, "Perbandingan konsep Hukum Kepailitan Amerika (Chapter 11) dan Hukum Kepailitan Indonesia" (2023) 6:3 Jurnal USM Law Review at 1368.

This Government Regulation instead of Law No. 1 of 1998 was subsequently ratified into law as Law No. 4 of 1998, introducing updated provisions for bankruptcy and debt suspension. Despite these changes, further reform was needed to address material gaps and adapt to societal and legal developments. This led to the enactment of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, promulgated on 18 November 2004, which remains in force today. Article 307 of Law No. 37 of 2004 formally repealed both the colonial Faillissementsverordening and Law No. 4 of 1998, while Article 305 ensured that existing regulations implementing these earlier laws remained valid as long as they did not conflict with the new law.[34]

Thus, the development of Indonesian bankruptcy law can be summarized in four main periods: 1) 1945–1947: Faillissementsverordening applied immediately after independence; 2) 1947–1998: Continued application of colonial law with minor adaptations; 3) 1998–2004: Implementation of Law No. 4 of 1998 based on Government Regulation instead of Law No. 1 of 1998 No. 1/1998; 4) 2004–present: Enforcement of Law No. 37 of 2004, forming the current legal framework for bankruptcy and debt suspension in Indonesia. This chronological approach clarifies the evolution from colonial law to modern Indonesian bankruptcy law, highlighting the key reforms and the rationale behind each legislative update.[35]

IV. ENFORCEMENT OF BANKRUPTCY LAWS IN INDONESIA

A. 1945-1947

Article II of the Transitional Provisions of the 1945 Constitution stipulated that all existing state institutions and regulations would remain in effect immediately after Indonesia's independence, unless and until they were amended or replaced by new laws enacted by the Indonesian government. The Transitional Provisions were necessary to ensure legal continuity and stability during the transition from

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[34] Aidhya Diory Amamie Marpaung & Akhmad Budi Cahyono, "Konsekuensi Bagi Debitor Yang Tidak Mengajukan Rencana Perdamaian Dalam Proses Penundaan Kewajiban Pembayaran Utang" (2023) 9:3 Jurnal Hukum – RA: Hukum untuk Mengatur dan Melindungi Masyarakat at 296.

[35] Rinaldi, Yuhelson & Nur Hakim, "Perlindungan Hukum bagi Kreditor Separatis terkait dengan Penolakan Perdamaian dalam Proses PKPU" (2025) 2:7 Cendekia: Jurnal Penelitian dan Pengkajian Ilmiah at 1332.

colonial rule to an independent state, preventing a legal vacuum and maintaining the functioning of government, courts, and public administration while new legislation was gradually developed. The Constitution introduced new guidelines. Under this Transitional Rule, all legal instruments originating from the Dutch East Indies era remained in force after the proclamation of the Independence of the Republic of Indonesia, unless deemed contrary to the values of Pancasila and the 1945 Constitution. Under the Transitional Rule, following the proclamation of Indonesian independence on August 17, 1945, the existing colonial-era bankruptcy regulations continued to apply.

B. 1947-1998

During this period, the Bankruptcy Regulation was not widely understood or used among Bumiputra or Indigenous people. At that time, this bankruptcy regulation applied only to traders in the community subject to Western trade law. During this time, Bumiputra entrepreneurs did not conduct business activities through established entities. They did not engage in the issuance or trading of securities, bookkeeping transactions, or the use of payments through the banking system, and they did not impose their debts on the company's assets. Herman Peter Jan Molengraaff, as the planner and drafter of the Faillissements Law, stated that since Article 1 of the WvK abolished distinctions regarding traders, their commercial actions, and commercial objects, the legal position of traders and other parties in bankruptcy (Faillissements) needed to be equalized. Consequently, under the Faillissements Law, there is no longer a distinction between traders and non-traders in the treatment of bankruptcy cases.

The existence of economic challenges in Indonesia since mid-1997 has created difficulties, including the fulfillment of obligations to creditors. In this context, to provide opportunities for both creditors and debtor companies to achieve a fair settlement, it is legally essential that the mechanism can be applied quickly, transparently, and effectively. One of the key legal tools for resolving debts and receivables is the bankruptcy regime and the system for postponement of debt payment obligations, which serves as the formal framework to ensure orderly and equitable settlement between the parties involved.

The existing bankruptcy regulations, namely Stb. 1905 No. 217 Jo. Stb. 1906 No. 348 was considered in need of improvement and adaptation to the prevailing economic conditions. At the time, Indonesia was facing severe monetary turmoil with significant economic consequences, and one of the most urgent challenges was the settlement of corporate debts and receivables. Therefore, it was essential to establish bankruptcy and debt suspension regulations that could be applied by both debtors and creditors in a fair, fast, transparent, and effective manner.

In addition to addressing these urgent debt settlement needs, the creation of a specialized court within the general court system, tasked with handling, examining, and deciding business-related disputes, including matters of bankruptcy and suspension of debt payment obligations, was also considered crucial. Such a mechanism ensures that the business and economic activities can function efficiently while providing legal certainty and protection for all parties involved.

C. 1998-2004

Improvements to the Bankruptcy Law were implemented to address several urgent needs amid the rapid and extensive expansion of business activities.[36] These included the resolution of debt and receivables problems quickly, relatively, openly and effectively, namely: a) Improvement around the conditions and procedures for requesting a bankruptcy declaration, including the provision of a definite time frame for making a bankruptcy declaration decision; b) Improvement of the arrangement in the form of additional provisions on interim measures that can be taken by the parties concerned, especially the creditor, on the debtor's assets before the bankruptcy declaration decision; c) Strengthening the function of the Curator to enable the proper provision of these services in addition to the institution that has been known so far, namely the Heritage Center. The added provisions include those that regulate the conditions to carry out activities as Curators and their obligations; d) Affirmation of legal remedies that can be taken against the bankruptcy declaration decision that can be directly submitted to the Supreme Court for that purpose.

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[36] Brigita Natalia Rose Santi & Adi Sulistiyono, "Eksistensi Kedaulatan Kreditor Konkuren dalam Perdamaian melalui PKPU yang Berkeadilan" (2025) 4:3 Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora at 594.

The procedures and time frame for legal remedy were also addressed in this improvement. These included the introduction of a mechanism for suspending the exercise of rights by creditors holding dependent rights, liens, or other collateral rights. Provisions regarding the legal status of agreements the Debtor entered into before the bankruptcy declaration decision were also addressed. Improvements were also made to the decision on the postponement of debt payment obligations as stipulated in Chapter II. The amendment also stated that the Commercial Court will resolve bankruptcy issues.[37]

The financial crisis faced by Southeast Asian countries, including Indonesia, since mid-1997 has posed challenges to national economies and trade. These challenges affect the continuity of business activities, which hinders the fulfilment of debt repayment obligations. To overcome the monetary shocks and economic crises that hit Indonesia in 1997–1998, the Government of Indonesia issued Government Regulation in Lieu of Law No. 1 of 1998 on April 22, 1998 as an emergency measure to reform the obsolete Dutch East Indies bankruptcy regulations (Faillissementsverordening Stb. 1905-217 Jo. Stb. 1906-348). These reforms were encouraged by the International Monetary Fund (IMF), which recommended the reform of Indonesia's legal framework to allow for more effective debt settlement and corporate restructuring, which is considered essential to restore financial stability during the crisis.

The Government of Indonesia issued Government Regulation in Lieu of Law No. 1 of 1998 amended and added provisions to the Faillissementsverordening, which originally came into effect on November 1, 1906, but did not officially repeal it. Furthermore, on September 9, 1998, the Government of Indonesia passed Law No. 4 of 1998 Amendments to the Bankruptcy Law, which ratified and replaced Government of Indonesia issued Government Regulation in Lieu of Law No. 1 of 1998, thus providing a permanent legal framework for bankruptcy and postponement of debt payment obligations, in line with the economic recovery goals promoted by the IMF.[38]

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37 S H Sutan Remy Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan (Memahami Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran)* (Kencana, 2016) at 21-22.

38 Yohanes Alexander Kenting & Hizkia Dapot Parulian, "Kedudukan Kreditor Separatis terhadap Rencana Perdamaian dalam Proses Penundaan Kewajiban Pembayaran Utang" (2022) 5:2 Jurnal Ilmu Hukum Alethea at 103.

D. Special Characteristics of the Bankruptcy Law

Bankruptcy and Suspension of Debt Payment Obligations are legal remedies in Indonesia available to all debtors, whether individuals or companies. Some of the unique characteristics of the Bankruptcy Law are 1) Confiscation in general, according to the law, namely that "Bankruptcy is a general confiscation of all assets of the Bankruptcy Debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as stipulated in the Law." Thus, an individual's status will not be affected by bankruptcy; he will not be pardoned. Similarly, a company remains after a ruling, and a bankruptcy declaration is pronounced.

During the bankruptcy process, actions against the bankruptcy assets may be carried out only by the Curator, but other actions remain within the authority of the Debtor's corporate organs. 2) Equal treatment of Creditors, where the law of bankruptcy favors equal treatment and not a race in which the first Creditor is the most likely to be paid first. Fair treatment of domestic and foreign creditors is the main principle in Indonesian bankruptcy law, and there is no discrimination between the two parties. 3) Creditor parity, where all creditors have the same right to payment. This means that the proceeds of the bankruptcy estate will be distributed in accordance with the largest portion of creditors' claims.

However, the principle of parity of the crematorium will not apply to Creditors who have security rights, such as a mortgage, or to creditors who hold lien rights that are entitled to priority under applicable laws and regulations. Upon the entry of the bankruptcy judgment, the Debtor's obligations will be frozen by the bankruptcy declaration. The position of the Creditor in the bankruptcy estate will not change, and the bankruptcy estate will be frozen, preventing the Bankruptcy Debtor from transferring its assets.

The primary purpose of bankruptcy law is to ensure that all creditors are fully satisfied. Unlike the bankruptcy laws of some other states, it provides Debtors with an initial opportunity through a general debt settlement. Under the Indonesian Bankruptcy Law, no Debtor may be relieved of debt payment obligations because of Bankruptcy or Suspension of Debt Payment Obligations,

except when he pays the amount of his debt in full or offers a settlement or peace to the Creditors that is accepted by a qualified majority of Creditors.

The Judge's duty to examine and decide on a bankruptcy case, or the Curator's duty to administer a bankruptcy case, can be carried out correctly only if the person concerned fully understands and masters the principles of the Criminal Code. Civil and Criminal Code. Trade. In the end, it determines that "The application for declaration of bankruptcy must be granted if there are facts or circumstances that are simply proven that the requirements for declaring bankruptcy as referred to in Article 2 paragraph (1) have been met."

E. Government Regulation in Lieu Law No. 1 of 1998, in Conjunction with Law No. 4 of 1998

Government Regulation instead of Law (Perppu) No. 1 of 1998 was issued by the Indonesian government in response to the severe monetary crisis that began in mid-1997. The crisis had a major negative impact on the national economy and made it difficult for many businesses to continue operating and to repay their debts, which potentially affects the Indonesian economy and poses a burden on the economic system itself.[39] One urgent issue at that time was how to resolve growing corporate debts and receivables in a fair, fast, transparent, and effective way. For this reason, the government amended the old Bankruptcy Law (Stb. 1905 No. 217 jo. Stb. 1906 No. 348) through this Perppu, which was enacted on April 22, 1998, and came into force on August 22, 1998. Because it was issued as a Government Regulation instead of a law, it later had to be approved by the House of Representatives, and it was formally confirmed as Law No. 4 of 1998 on September 9, 1998, without changes. The urgency referred to in the regulation was not limited to war or political conflict, but also included economic emergencies, since financial crises can seriously affect social stability, politics, and national security.

The amended Bankruptcy Law consists of three main chapters. Chapter I regulates bankruptcy in general and contains more than 200 articles, including a number of revised provisions. Chapter II regulates the Suspension of Debt

[39] Sonnyendah Retnaningsih & Isis Ikwansyah, "Legal Status of Individual Bankrupt Debtors after Termination of Bankruptcy and Rehabilitation under Indonesian Bankruptcy Law" (2017) 7:1 Indonesian Law Review at 81.

Payment Obligations (PKPU), which provides a legal mechanism for debtors and creditors to negotiate debt restructuring under court supervision. Chapter III, which was newly added, establishes the Commercial Court to handle bankruptcy and related commercial cases. The creation of the Commercial Court was intended to ensure that bankruptcy cases are handled by a specialized court within the general judicial system. This specialization does not contradict the Indonesian judicial system or the 1945 Constitution, because the structure and authority of courts are regulated by law. The 120-day period before the regulation came into effect was used to prepare the establishment of the Commercial Court and supporting institutions such as curators and administrators.

The new law introduced several important improvements. It clarified the requirements and procedures for filing a bankruptcy petition, including setting clear time limits for court decisions. It also allowed temporary measures to protect a debtor's assets before a bankruptcy decision is issued and confirmed that legal remedies against a bankruptcy declaration can be submitted directly to the Supreme Court. In practice, a bankruptcy petition is filed with the Chief Justice of the Commercial Court and registered by the court registrar, and the applicant receives written proof of registration. Bankruptcy can be declared for individuals or business entities and is based on the existence of unpaid debts involving at least two creditors.[40] The examination process is designed to be simple and fast: the creditor only needs to prove straightforwardly that the legal requirements for bankruptcy are met, without going through lengthy procedures typical of ordinary civil lawsuits.

F. Government Regulation in Lieu Law No. 1 of 1998 and the Bankruptcy Regulation of Stb. Of 1905-217 jo Stb. 1906-348

On November 1, 1906, in Indonesia, Stb 1905-217 jo Stb 1906-348 came into effect, and then on 22 April 1998, Government Regulation in Lieu Law No. 1 of 1998 was stipulated, which went into effect on August 22, 1998, and which was later approved as Law No. 4 of 1998. The difference between Government Regulation in Lieu Law No. 1 of 1998 and Bankruptcy Regulation Stb 1905-217 Jo Stb 1906-348 Government Regulation in Lieu Law No. 1 of 1998 consists of

40 *Ibid* at 82.

3 (three) Chapters, namely: 1) CHAPTER I: about Bankruptcy articles 1 to 211 accompanied by amendments to 51 articles; 2) CHAPTER II: regarding the Postponement of Debt Payment Obligations, Articles 212 to 279 accompanied by amendments to 41 articles; 3) CHAPTER III: about the Commercial Court, Articles 280 to 289, so it consists of 10 articles (new); 4) Meanwhile, the Bankruptcy Regulations (Faillisements Verordering Stb 1905-217 Jo Stb 1906-348) consist of 2 (two) Chapters, namely: a) CHAPTER I: about Bankruptcy articles 1 to 211; b) CHAPTER II: regarding the Suspension of Payment of articles 212 to 279.

Government Regulation in Lieu Law No. 1 of 1998 stipulates that a decision on an application for a declaration of bankruptcy must be made within 30 days of the date on which the application for bankruptcy requirements is registered. A bankruptcy declaration must be pronounced if it appears at first glance that some events or circumstances show that the debtor is ceasing to pay his debts, and if a debtor files the application, also about the existence of the right of collection from that person. The purpose stated above is to expedite the completion of the bankruptcy application. The legal remedy provided by Government Regulation in Lieu Law No. 1 of 1998 is Cassation and Review, as specified in articles 284 paragraph (2) and 286 paragraph (1). Meanwhile, according to Stb 1905-217, Jo Stb 1906-348 can be appealed to the High Court.

Under Government Regulation in Lieu Law No. 1 of 1998, the declaration of bankruptcy and the postponement of debt payment obligations are referred to in the Chapter. I and II are examined and decided by the Commercial Court within the General Court. The application for a declaration of bankruptcy must be granted if some facts or circumstances prove that the statement to be declared bankrupt, as referred to in Article 1 paragraph (1), has been fulfilled. Meanwhile, Article 1 paragraph (1) Stb 1905-217 Jo Stb 1906-348 stipulates that "Every debtor who is in a state of having stopped paying his debts, by the decision of the Judge, either on his reporting, or at the request of a person or more of his creditors, is declared bankrupt."

Stb 1905-217 Jo Stb 1906-348, which came into force in Indonesia on November 1, 1906, and then on April 22, 1998, was stipulated Government Regulation in Lieu Law No. 1 of 1998, which came into force after 120 (one hundred and

twenty) days from the date of promulgation so that it officially came into force on August 22, 1998 which only changed and added the Faillissementsverordering Stb. 1905-217 Jo. Stb. 1906-348, then it was approved to become Law No. 4 of 1998 on September 9, 1998, which was subsequently replaced by Law No. 37 of 2004 on November 18, 2004.

V. CONCLUSION

This paper concludes that bankruptcy law in Indonesia has undergone significant development from the colonial era to the enactment of Law No. 37 of 2004. These legal changes aim to balance the interests of creditors and debtors and to provide a more effective mechanism for debt and receivable settlement. The law strengthens creditors' position by expanding the requirements for filing bankruptcy proceedings against debtors who fail to pay their debts. In addition, these regulatory changes are adjusted to national economic dynamics, such as the 1997 monetary crisis, which prompted the government to adopt more responsive regulations to address corporate debt and receivables fairly and transparently. However, this paper also identified several weaknesses in the implementation of bankruptcy law, particularly in the protection of debtors. Current regulations generally protect creditors' interests more effectively, making the debtor's position relatively weak in bankruptcy proceedings.

Based on these findings, several recommendations can be considered. First, the law is revised to better balance creditor rights and debtors' protection, particularly for debtors acting in good faith. Second, the capacity and role of curators should be enhanced through further training and supervision to ensure that the management of bankruptcy assets is carried out transparently and professionally, thereby protecting the interests of all parties. Third, the government should expand public education on bankruptcy law to increase public understanding, especially among businesspeople, of their rights and obligations in the bankruptcy process. This socialization aims to provide the public with a clear understanding of debt and receivable management and of bankruptcy.

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COMPETING INTEREST

The authors confirm that they have no conflicts of interest in this paper.

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