

## RECONSTRUCTION OF CONCURRENT CREDITOR RIGHTS IN BANKRUPTCY LAW AND SUSPENSION OF DEBT PAYMENT OBLIGATIONS IN THE FRAMEWORK OF LEGAL DEVELOPMENT

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### Abstract

Debt payment obligation is the principle of justice as stated by Aristoteles, and is one of the important aspects in business transactions. If a debtor fails to fulfill his obligations, legal problem will arise that must be resolved. This research aims to examine and reconstruct the rights of Concurrent Creditors in the Bankruptcy law for the purpose of legal development so as to provide justice to all parties. This research used normative legal research methods. Data collection techniques used in this research are literature studies and law research. The data analysis technique used in this research is qualitative analysis. The results show that the rights of Concurrent Creditors in the Bankruptcy Law need to be reconstructed in the context of the purpose of legal development. The reconstruction of Concurrent Creditors rights can be made by increasing the understanding and awareness of Concurrent Creditors, improving adequate facilities and infrastructure, and strengthening law enforcement with a new paradigm.

**Keywords:** Reconstruction, Concurrent Creditor, Bankruptcy, and Determinor.

### INTRODUCTION

The rights of Concurrent Creditors must be guaranteed by providing legal protection in the Bankruptcy Law and Suspension of Debt Payment Obligations in accordance with the principle of justice or balance of rights among the creditors (Soelistyo, 2022). Law Number 37 of 2004, State Gazette of the Republic of Indonesia of 2004 Number 131 and Supplement to the State Gazette of the Republic of Indonesia of 2004 Number 4443 concerning the Law on Bankruptcy and Suspension of Debt Payment Obligations, herewith abbreviated as UUK-PKPU.

The Debtor himself can file a bankruptcy petition or a voluntary bankruptcy petition in order to have his right. Suppose the Debtor himself submits a petition of bankruptcy in that case, it must be fulfilled in accordance with the provisions of Limited Liability Company Law Number 40 of 2007, which provides that before filing a bankruptcy petition through the Commercial Court, an Extraordinary General Meeting of Shareholders of the Company must first be held with resolution stating that the company or the Debtor will file a bankruptcy petition through the Commercial Court (Lubis, 2018).

The emergence of rights and obligations of the parties, namely the Creditors and the Debtors have been due and payable in accordance with the provision of Bankruptcy Law, which is the basis of determination (*determinor*) in order to become an individual creditor or legal entity as a creditor because the person or legal entity concerned have concluded the transactions by

delivering goods, money and or services to the Debtor, or in other words it can be stated that the creditor enters into a transaction with the Debtor where the Creditor has delivered the goods, money and or services to the Debtor.

The delivery of the goods, money and or services from Creditors to Debtors also varies. There is a delivery of goods, money and or services followed by the provision of guarantees, which are then made as legal obligation or liability, and there are creditors who handover goods, money and or services without collateral.

In practice there is a legal inequality to protect the rights of Concurrent Creditors that may occur in the process of establishing UUK-PKPU due to:

1. The DPR (the House of Representatives) invites the Association of Indonesian National Banks (PERBANAS) or Banking Institutions to a Hearing Meeting;
2. The DPR also invites the Ministry of Finance or the Directorate General of Taxes to a Hearing Meeting;
3. The DPR then invites workers to a Hearing Meeting represented by the Labor Organization;
4. The DPR never conducts to a Hearing Meeting with Concurrent Creditors.

The Banking Institutions, Ministry of Finance or Directorate General of Taxes and Workers have institutionalized or had a forum at the Hearing Meeting with the DPR, then dialogues and expresses its concern, and the result is their concerns are fully accepted by the DPR and written in the text of the law. Still, there is one type of creditor who is not institutionalized, who has no organization or legal resort, and who has never held a Hearing Meeting with the DPR, namely Concurrent Creditors, then, the legal interests of the Concurrent Creditors are not cared about or ignored in the DPR. The Concurrent Creditors, in fact, appear later in Commercial Court after a company is declared bankrupt. The Curator (Receiver) published an announcement in Mass Media about the company's bankruptcy by notifying, among others for creditors verification meeting. The Creditors come to fulfill the invitation of the Curator and submit their receivables due to Curator along with the evidences. The Curator will then classify and verify the creditors account who have entered into transactions of goods, money and or services without collateral in the classification of Concurrent Creditors column.

There is also Separatist Creditor it is generally called party who provides loan or money followed by collateral or guarantees over which then the security right is made under notarial deed. Other creditors are parties who provided job services to Debtors, namely Worker/Workers with the status as "Preferred Creditor" on wage bills owed before or after the bankruptcy judgment is pronounced.

There is one institution that is also referred to as a creditor, however, this creditor has never conducted a transaction of goods, money or services with the Debtor, namely the State or the Directorate General of Taxes or the Creditor of the Tax Office Bill. Tax Office Bill now is treated as a "Preferred Creditor" because the Law on Taxation is categorized as public law and compulsory law, however, the Bankruptcy Law is categorized as the Specific Law or Lex

Specialis, therefore in view of the legal term of *“lex specialis derogat legi generalis”* where the Specialis Law must subdue the public law and compulsory law, or in other word that the rank of the Bankruptcy Law is above of the Taxation Law that is why regarding to the determinor that Tax Office Bill is actually not truly creditor in bankruptcy. With a new paradigm, that Tax Office Bill right is not waived but for the sake of justice it shall be changed in to the third Concurrent Creditor rank to protect Concurrent Creditor.

In addition, there is another Creditor called "Concurrent Creditor" who are generally in the disadvantaged position in the event of occurrence of bankruptcy because Concurrent Creditors has concluded transactions in goods, money and or services with Debtors but are not followed by providing guarantees or collateral, in UUK-PKPU they are called "Concurrent Creditors" or "*Unsecured Creditors*" and it is these Concurrent Creditors are the main object of research in this Dissertation.

In Singapore, Concurrent Creditor rights are regulated under the Insolvency, Restructuring, and Dissolution Act (IRDA). This law stipulates that Concurrent Creditors are entitled to participate in distributing bankruptcy assets (Chan, 2011). Meanwhile, in the United States, Concurrent Creditor rights are regulated in the United States of Bankruptcy Code. This law stipulates that Concurrent Creditors are entitled to participate in distributing bankruptcy assets (Khairunnisa & Nephi, 2023).

With a new paradigm is that all the legal proceeding and liquidation of bankruptcy assets must be carried out via the Commercial Court as a Special Legal Court. The Workers are creditors who provide services to Debtor with the status or rank of "Preferred Creditor" before or after the bankruptcy judgment is pronounced; then according to the normative juridical rules of the prevailing UUK-PKPU now in force, the Separatist Creditors are protected by the UUK-PKPU with several privileges i.e. Separatist Creditor can carry out the execution or sale of collaterals via General Court instead of Commercial Court, and the Separatist Creditor may execute its rights as if no bankruptcy occurred, and in the event the proceeds of the sale of collaterals are not sufficient to cover for all of the claims, then the Separatist Creditors will be treated as Concurrent Creditors for the shortage of their claims, so it is true that business people say "*Cash is the King*". With a new paradigm, that the shortage claim of Separatist Creditor shall not to be otomaticly treated as Concurrent Creditor but it shall be changed in to the second Concurrent Creditor rank to protect Concurrent Creditor rights.

The Tax Office Bill who in substance or ontology is "Not Real Creditor" due to fact that a transaction of goods, money and or service between the Tax Office Bill with Debtor never exist, and the Tax Office Bill does not fulfill also the 3<sup>rd</sup> clause of the Article 1320 of the Civil Code, saying *a certain thing*. Workers or Labor Creditors, Separatist Creditors and Tax Office Bill Creditor have all eroded or drained the bankrupt's assets so that the rights of Concurrent Creditors would not be protected, and generally Concurrent Creditors get the smallest share or even no share at all from the estate of the Debtor or bankruptcy assets that is why it is needed to be restored.

## RESEARCH METHODS

This study used normative legal research methods. Normative legal research is a type of research that focuses on the analysis and interpretation of legal theories, regulations, and other legal documents. This method aims to understand the existing legal framework and explain or provide arguments related to certain aspects of the law (Rizkia & Fardiansyah, 2023). Data collection techniques in this study include literature studies and tracing laws. The data analysis technique used in this study is qualitative analysis. Qualitative analysis is carried out by analyzing data that has been collected to answer research questions.

## RESULTS AND DISCUSSION

### Definition and terms of Concurrent Creditors

Concurrent Creditors are those whose rights are not guaranteed with collateral. So their rights are only guaranteed by a general guarantee, namely the lex general rule of the Article 1131 of the Civil Code (Arman, 2022). And the determination or "*determinor*" of one or one business entity to be a Creditor in Bankruptcy is stipulated in the 3<sup>rd</sup> clause of the Article 1320 of the Civil Code that determines that the terms of a valid agreement are:

1. Agree those who bind themselves;
2. The ability to make an engagement;
3. *A certain thing*;
4. A lawful cause.

The Concurrent Creditors are commonly referred to as "Competing Creditors" who are competing here with other Concurrent Creditors at the same level to obtain bankruptcy assets proportionally. In France, Germany, the Netherlands, the United Kingdom, the United States, Australia, and Singapore they are called "*Unsecured Creditors*" or "*Non Preferential Rights*" translated or interpreted as Unsecured or Unsecured Creditors (Damaswara, 2012).

### Concurrent Creditor Rights in UUK-PKPU

It has been a universally accepted principle of law, even since ancient Greece; according to **Thalamus**, promises must be kept, and debts must be paid. Debt payment guarantees according to the history of civil law, which comes from Roman Law, then goes to France, and from France goes to Germany, and from Germany goes to the Netherlands (Ginting, 2018) which then with the Transitional Regulation of the Article 2 of the Constitution 1945, civil law applies to Indonesia as long as there is nothing new. The doctrine of Concurrent Creditors is specified in the UUK-PKPU: "Concurrent Creditors "MUST" be given a share determined by the Supervisory Judge."

Based on the decision of the Constitutional Court Number 67/PUU-XI/2013, dated September 11, 2014, the order of distribution of bankruptcy assets is:

1. First order : preferred creditors, namely labor wages.
2. Second order : separatist creditors.
3. Third order : workers' preferred creditors for severance pay<sup>[7]</sup>
4. Fourth order : creditors in the form of tax agency bills.
5. Fifth order : concurrent creditors.

From the opinion of the **Thalamus** Philosopher quoted above, debts to be paid were stated, and then in the UUK-PKPU, it was stated that "Concurrent Creditors "MUST" be given a share determined by the Supervisory Judge." Based on the decision of the Constitutional Court quoted above, Concurrent Creditors get distribution of bankruptcy assets in the last or fifth order, even though Preferred Creditors, namely Labor Wages, Separatist Creditors, Preferred Creditors of Labor Wages for Severance Payments, Tax Agency Bill Creditors have spent or drained bankruptcy assets first. Based on the study cases data that Concurrent Creditors get the smallest or even in certain cases no share at all in the distribution of the bankruptcy assets, this situation causes gross injustice against the Concurrent Creditors.

### **Discrimination against Concurrent Creditors in the Modern Age and the Age of Digitalization**

In ancient times, debtor or debtors who were enslaved or forced labor, even the enslaved people, could be sold to other parties if the debtor was unable to pay his debt to creditor because there might be class differences with the debtor. Now the debtors, in this case, Concurrent Creditors such as being enslaved or discriminated against because of the UUK-PKPU and various other laws related to bankruptcy, declare the rights of certain creditors to take precedence over payment, and the Constitutional Court, in its decision, places Concurrent Creditors in the last rank to get bankruptcy assets. Therefore, Concurrent Creditors sometimes get a very minimal share of the bankruptcy assets from the total amount of receivables, even not getting bankruptcy assets at all or zero, therefore UUK-PKPU is urgently needed to change.

Now, we have long left the era of slavery, discrimination, class differences, and primordialism because Indonesia has been bound by the principle of Statehood of "Pancasila" with the intention of the welfare state. Then, in Pancasila (the five principles of Statehood), it is stated that social justice for all Indonesian people is very basic. It is the philosophy of the nation, the State and the people of Indonesia. Pancasila, with the precepts of social justice for all Indonesian people has been used as a source of UUK-PKPU law by mentioning one of its principles is the Principle of Justice: *"In bankruptcy, the principle of justice contains meaning that the bankruptcy provisions can satisfy need for justice by interested parties."*

This principle of justice is to prevent the occurrence of arbitrariness on the part of collectors who seek payment of their respective bills against the Debtor, regardless of other creditors. With Pancasila as "*Das Sollen*," the bankruptcy practitioners namely Debtors, Debt Guarantors, Creditors, Severance Judges, Supervisory Judge, and Curators, can apply it in the field consequently, according to "*Das Sein*." But it turns out that this is not the case in practice

UUK-PKPU in the field. There has been inequality, irregularity, discrimination in the treatment of UUK-PKPU and other laws related to bankruptcy such as the Civil Code, Law No.9 of 1994 concerning Amendments to Law No.6 of 1983 concerning General Provisions and Tax Procedures, Law No.4 of 1996 concerning Security Right, Law No.13 of 2003 concerning Manpower as "*Das Sollen*" who do not show equal appreciation and treatment and violate the principles of equal rights as fellow creditors to cause material benefits to certain creditors but to the detriment of other creditors with a very large material amount.

There has been 21<sup>st</sup> century where lawmakers only provide legal protection to a certain group of creditors but not to the other groups of creditors, or in other word there has been discrimination against certain creditors from time immemorial to the present. Discrimination against creditors in bankruptcy law has not been avoided by lawmakers due to various factors, as stated above. Therefore, breakthroughs or new paradigm is urgently needed for Concurrent Creditor and for all creditors in bankruptcy.

Differences in the treatment of the Law or discrimination, for example in the Manpower Law regarding Workers' Preferred Creditors, for wage bills which state: "*If a company is declared bankrupt or liquidated based on applicable laws and regulations, then wages and other rights of workers/laborers are debts that take precedence in payment.*" The UUK-PKPU states: "*From the date the bankruptcy declaration judgment is pronounced, the wages owed before or after the bankruptcy declaration judgment is pronounced are debts of the bankrupt's assets.*" So, the wages of labor creditors are debts that is fair but with an exception for the Board of Directors and the Board of Commissioners.

We can see the same or almost the same provision that receivables take precedence over payment to Separatist Creditors, as the Civil Code specifies the right to precedence among creditors based on privileges, liens, and mortgages. The provision of the right of precedence adopted in the Civil Code is further strengthened by the provision of the Right of Security when related to the UUK-PKPU, giving the right of self-execution of Separatist Creditors over the Rights of Security as if bankruptcy had not occurred. Furthermore, we can also see the same or almost the same provision, namely receivables that take precedence in payment to the Creditors of Tax Office Bills, as contained in the Law on General Provisions of Taxation, which states: "*The State has the prior right to tax debts on the property of the Tax Insurer.*" So the Creditor of the Tax Office Bill, on behalf of the State, declares the prior right to tax debt of bankruptcy assets. Concurrent Creditors are commonly referred to as "Competing Creditors". The definition of competing here is to compete with other Concurrent Creditors at the same level to obtain bankruptcy assets proportionally.

This means there are 3 institutions, namely Manpower, Bankings, and Tax of Bill are snatching the bankruptcy assets, and the tight competition has happened among the creditors, there is a physical strength from the Manpower, then the letters of written evidence from Separatist Creditors and the power of state from the Tax Office Bill claims or it may be abuse of power, but they are the same or almost the same claim too, they "must be privileged" or "must be given privileges", then the doctrine of the rights of creditors in bankruptcy is ununified or uncodified but scattered with the types of creditors and in the certain things are also contrary. In The Commercial Court, there were many quarrels or quarrels and it could even be said to be riots due to certain creditors asking the Curator to be paid first.

However, the chaos and anxiety of practitioners in bankruptcy, namely the Panel of Judges, Supervisory Judge, Debtors, Debt Guarantors, Creditors, and Curators, began to be "resolved temporarily" with the Constitutional Court Decision Number 67/PUU-XI/2013, dated September 11, 2014, which decided on the order of creditor ratings. Still, it should be understood that the Constitutional Court decision does not determine whether these creditors get a share of the bankruptcy assets.

Other than Concurrent Creditors have been given high legal protection in a juridical normative manner in an unequivocal legal text where such creditors must be paid in advance by the Curator. But something odd, strange, and very surprising has happened and can be said to be discriminatory because about Concurrent Creditors, no one ignores it, no one cares of them and they are neglected like a biological child who cannot enjoy wealth and facilities in his own home i.e "Bankruptcy House or Bankruptcy Forum" even though the important role of Concurrent Creditors in operating a company activity is exemplified such as Garuda Indonesia Airways (GIA) (In PKPU-Suspension of Debt Payment Obligations) very important and very strategic. We can imagine for a moment and it is true or not if there is no Concurrent Creditors in GIA (In PKPU) who provide many primary instruments to GIA, then GIA *"going concern" and fly high now in the air "flying high" across various continents and various oceans serving its passengers or customers, and benefit in the business of "profit" without Concurrent Creditors?*. Despite the current situation, Concurrent Creditors must not be discouraged. They cannot back down nor run on the spot but must move forward by legally endeavoring to maintain equal rights and legal protection for all creditors. It turns out that for now, there is only one person, alone, namely the "Supervisory Judge," who is to be care of the Concurrent Creditors, as specified in the UUK-PKPU, which states: *"Concurrent Creditors "MUST" be given the share determined by the Supervisory Judge."* Creditors other than Concurrent Creditors have been given legal protection outlined in the text of the legislation. There is even a normative juridical *"over protection"*, whilst the Concurrent Creditors are only protected by themselves, by a person namely the Supervisory Judge whose authorities are limited by the law, or in other words the DPR, Government or State does not care of and does not provide protection for the Concurrent Creditors, even the State, in this case, Creditors the Tax Bill Office large its role to minimize, stunt and negate the rights of Concurrent Creditors or constructive sentences can be mentioned Tax Office or State Bill Creditors should build and improve the welfare of Concurrent Creditors, and not vice versa. In the United Kingdom the Tax Bill Office or State's right, they called it "the Crown Rights" is waived when the

bankruptcy assets is insufficient to pay the Concurrent Creditor, and it has well been followed of many countries in the world.

### **Equal rights should be given to creditors**

Since a human being delivered by her mother to this earth each is in the same condition, naked, crying, and after he has become adult each may get property or even get property in a family that is treated equally by the law called equal rights or the principle of "*equality before the law*". Generally, the principle of "*equality before the law*" is one universal principle by which everyone is subject to the same judicial laws. *Equality before the law* means that all humans are equal and equal before the law. Long before it was implemented in the country's constitution, the concept of *equality before the law* already had a long history (Nadya, 2022).

Several hundred years later, the concept of equality was heard in Greece, in 431 BC, precisely in Pericles' funeral speech. **Thucydides** in his History of the Peloponnesian Wars wrote that the speech said: "*the law provides equal justice to all people in their differences: "If we look at the law, they give equal justice to all people in their differences; if there is no social status, progress in public life will depend on reputation capacity, class considerations should not interfere with achievement; Poverty is also no longer a way, if a person can serve the country, the obscurity of his condition does not hinder him."*

In America, the principle of *equality before the law* was developed and adopted by the state of Nebraska, in 1867. The principle of *equality before the law* was later applied to the flag and seal of Nebraska. Then, in 1948, the United Nations General Assembly in Paris declared The Universal Declaration of Human Rights (UDHR). This document discusses human rights provisions, including *equality before the law*. The Article 7 of the UDHR declares all persons equal before the law and entitled to equal protection of the law without discrimination. The formulation of *equality before the law* in Indonesia is contained in several laws and regulations, namely:

1. *Equality before the law* in the 1945 Constitution states that "*all citizens are equal in the law and the government is obliged to uphold the law without exception.*"<sup>[18]</sup>
2. *Equality before the law* is contained in the Law on Judicial Power, which explains that "*the court must adjudicate according to the law without discriminating against people.*"<sup>[19]</sup>
3. *Equality before the law*, contained in the Code of Criminal Procedure, explained that "*the Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution that upholds human rights and guarantees all citizens equal standing in law and government and is obliged to uphold that law and government with no exception.*"<sup>[20]</sup>
4. *Equality before the law*, contained in the Human Rights Law, explains that "*everyone has the right to recognition, guarantee, protection, and fair legal treatment as well as legal certainty and equal treatment before the law.*"<sup>[21]</sup>
5. **The Human Rights Law** adds that "*everyone is recognized as a natural person who has the right to demand and receive equal treatment and protection by his or her human dignity before the law.*"



Equality of rights is necessary and cannot be usurped by anyone, including the state. Regarding equal rights for fellow creditors in bankruptcy, especially for Concurrent Creditors, the understanding, terms, and rights of Concurrent Creditors are first conveyed. Concurrent Creditors are those whose rights are not secured by collateral.

### **Legal Protection for Concurrent Creditors**

Concurrent Creditors are creditors who do not hold any material guarantees and are not prioritized by laws and regulations so that when the debtor goes bankrupt, the creditor is the one who is harmed (Kale & Dharmakusuma, 2005). When we dig into the nature or substance of insolvency from its principles connected with the prevailing positive law where the substance of bankruptcy is firstly maximizing the bankruptcy assets by collecting them, then sell or auction so that in the form of cash to be further divided or distributed by the Curator to the Creditors determined by the Supervisory Judge in the Register of Distribution of Bankruptcy Assets. However, the most deposed creditors are the most damaged creditors. They are restored very strongly and argumentatively, according to facts, principles, juridical normative, legal theory, and philosophy. Again, the basis for the determination as creditor has been explained above i.e. by determinator, and Concurrent Creditors must fulfill to juridical normatively with the 3<sup>rd</sup> clause of the Article of 1320 of Civil Code.

Theoretically, creditors in bankruptcy should get legal protection to get a share of bankruptcy assets, and in obtaining bankruptcy property, they must fulfill the philosophy of justice. According to Philipus M. Hadjon, there are two kinds of legal protection, namely:

#### 1. Means of Preventive Legal Protection.

In this preventive legal protection, legal subjects can raise objections or opinions before a government decision gets a definitive form. The goal is to prevent disputes from occurring. In Indonesia, there is no specific regulation regarding preventive legal protection.

#### 2. Means of Repressive Legal Protection

Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Court and the Administrative Court in Indonesia is included in this category of legal protection.

The second principle underlying legal protection against government actions is the principle of the rule of law (Hadjon, 1987).

This research presents repressive legal protection to treat the disease of bankruptcy law that has been acute and chronic and long ago which harms Concurrent Creditors worldwide. In the UUK-PKPU, it is stated that Concurrent Creditors "must" be given a portion determined by the Supervisory Judge, due to the Supervisory Judge alone pivots, rests, leans, and is given confidence in the rights of Concurrent Creditors, which in law, it is called "Discretion" or "Discretion" or "Discretion". Wisdom is (1) prudence in saying and acting; (2) freedom of choice and decision-making; (3) freedom to act according to one's judgment. The term authority or authority is equated with "*authority*" in English and "*bevoegdheid*" in Dutch (Abdul, 2016).

## **Regulation of Concurrent Creditor Rights in Other Countries**

Regarding the comparative study, the regulation of concurrent creditor rights in two other countries, namely the United States and Singapore, can be reviewed as follows:

### **1. United States**

In the United States, Concurrent Creditor rights are regulated in the United States Bankruptcy Code. This law stipulates that Concurrent Creditors are entitled to participate in distributing bankruptcy assets. The rights of Concurrent Creditors in the United States can be divided into two, namely (Fatahilah, 2023):

- a. The right to participate in the distribution of insolvent assets. This right allows Concurrent Creditors to file their bills with the insolvency receiver. The insolvency receivership will consider Concurrent Creditors bills for inclusion in the bill list.
- b. The right to precedence. This right gives Concurrent Creditors precedence in the division of bankruptcy assets. Creditors with the right to precedence will get priority in distributing bankruptcy assets.

The rights of Concurrent Creditors in the United States can be limited by several factors, including:

- a. Lack of bankruptcy property. If the bankrupt's assets are insufficient to pay all creditors' bills, the Concurrent Creditor will receive payment proportional to the bill amount.
- b. Selection by debtor. The debtor may pay part or all of the debt to Concurrent Creditors before filing for bankruptcy.
- c. Payment by third parties. Third parties, such as the debtor's family, may pay the debtor's debts before or after the bankruptcy application is filed.

### **2. Singapore**

In Singapore, Concurrent Creditor rights are regulated under the Insolvency, Restructuring, and Dissolution Act. This law stipulates that Concurrent Creditors are entitled to participate in distributing bankruptcy assets. The rights of Concurrent Creditors in Singapore can be divided into two, namely (Gurrea & Luck, 2021):

- a. The right to participate in the distribution of insolvent assets. This right allows Concurrent Creditors to file their bills with the insolvency receiver. The insolvency receivership will consider Concurrent Creditors' bills for inclusion in the bill list.
- b. The right to precedence. This right gives Concurrent Creditors precedence in the division of bankruptcy assets. Creditors with the right to precedence will get priority in distributing bankruptcy assets.

The rights of Concurrent Creditors in Singapore may be limited by several factors, including:

- a. Lack of bankruptcy property. If the bankrupt's assets are insufficient to pay all creditors' bills, the Concurrent Creditor will receive payment proportional to the bill amount.
- b. Selection by debtor. The debtor may pay part or all of the debt to Concurrent Creditors before filing for bankruptcy.
- c. Payment by third parties. Third parties, such as the debtor's family, may pay the debtor's debts before or after the bankruptcy application is filed.

In general, the regulations on the rights of Concurrent Creditors in the United States and Singapore have something in common: both stipulate that Concurrent Creditors are entitled to participate in the distribution of bankruptcy assets. In addition, both also stipulate that Concurrent Creditors can have the privilege of taking precedence in the division of bankruptcy assets. However, there are also some differences, namely that in the United States, the rights of Concurrent Creditors can be limited by other factors, such as selection by the debtor and payment by third parties. In Singapore, the rights of Concurrent Creditors cannot be limited by other factors except the lack of insolvent assets.

Back to the rights of Concurrent Creditors are only guaranteed by a lex general rule guarantee which is stipulated in the Article 1131 of the Civil Code. And regarding the determination or "*determinor*" of a person or entity as a creditor in bankruptcy must be based on the existence of the transaction of goods, money and or service, as a subject certain or a certain thing, as being stated in the 3<sup>rd</sup> clause of the Article of 1320 of Civil Code, which is confirm to **Sudargo Gautama** stated: "*To establish a contract four elements are required:*

1. *The consent of the parties;*
2. *A capacity to contract;*
3. *A subject certain;*
4. *A lawful purpose.*"

With regards the explanation above, it must be said that the Article of 1320 of Civil Code and the Article of 1131 of Civil Code are not sufficient to protect the Concurrent Creditor rights, therefore it is needed a new paradigm to secure Creditor Concurrent rights and all creditor rights in bankruptcy.

### **New Paradigm**

Based on the "determinor", in fact and juridical truth that Workers giving a services, Separatist Creditor lending money with the Security Right, Concurrent Creditor delivering goods, money and or services, instead of Tax Office Bill ontologically is not creditor. The detrimental of Concurrent Creditor now is they are like beggar or beggars on the roadside asking for mercy from passers-by, but they are a truly creditor. Thus, it can be realized what the wise men stated: "many efforts do not succeed, but without efforts nothing succeeds." Because it has been manifested that various laws including UUK-PKPU have discriminated against Concurrent

Creditors, therefore the rights of Concurrent Creditors need to be repositioned and fairly protected, need to be given an honorable position like a creditor or the rights of a legitimate child in one household, need to be defended and restored. It is necessary to restore the rights of Concurrent Creditors by providing new parameters in applicable law, namely the determination of a person or entity as a creditor called "*Determinor*" and by comparing and following the provisions of various countries that have to introduce a new paradigm to protect the Concurrent Creditors rights and to protect all creditors rights in Bankruptcy, with the order of distribution of bankruptcy assets, below:

1. First order: preferred creditors, namely labor wages.
2. Second order: separatist creditors.
3. Third order: workers' preferred creditors for severance pay.
4. Fourth order: the first concurrent creditor who has the transaction with Debtor without collateral;
5. Fifth order: the second creditor concurrent who originally comes from Separatist;
6. Sixth order: the third creditor concurrent who originally comes from the Tax Office Agency Bills.

## CONCLUSION

The results showed that in the context of Bankruptcy Law, and the rights of Concurrent Creditors require a reconstruction to advance the legal system. In this context, steps must be taken to increase Concurrent Creditors understanding and awareness of their rights. In addition, the importance of providing adequate facilities and infrastructure is a key factor in supporting the process. Finally, to effectively enforce the rights of Concurrent Creditors, strengthening law enforcement is needed so that this reconstruction process can be carried out properly in the context of Bankruptcy Law. These measures are expected to improve and improve fairness and efficiency in the existing Bankruptcy Law system with a new paradigm. Last but not least, for strengthening the rights of Concurrent Creditors it is also necessary to establish an institution that protects and guarantees payments to Concurrent Creditors.

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