

(Research/Review) Article

Legal Consequences of Debtor Bankruptcy on Recipient Agreements Made Prior to Bankruptcy Based on Law Number 37 of 2004

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Abstract: This study explores the legal consequences of bankruptcy on reciprocal agreements made prior to the debtor's declaration of bankruptcy, as governed by Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations. In the event of bankruptcy, control and management of the debtor's assets are transferred to a curator, which can alter the implementation of reciprocal agreements that have not been fully or partially fulfilled. According to Article 36 of Law No. 37/2004, parties who have agreements with the debtor can request confirmation regarding the continuation of the agreement from the curator within a specified period. If the curator decides not to continue, the agreement is terminated, and the other party has the right to claim compensation and will be recognized as a concurrent creditor. This study also examines the legal protection available to the parties involved, as well as the practical implications for legal and business relationships after a bankruptcy decision is made. The findings demonstrate that bankruptcy significantly affects the performance of reciprocal agreements, necessitating adjustments to the rights and obligations of all parties based on the provisions of the Bankruptcy Law. These adjustments are essential to ensuring justice and legal certainty for all parties involved in such agreements, balancing the interests of creditors, debtors, and other stakeholders. Ultimately, the study emphasizes the importance of understanding the legal framework surrounding bankruptcy and its consequences on ongoing contractual relationships, as well as the need for a fair and transparent process in dealing with claims and obligations post-bankruptcy.

Keywords: Bankruptcy Law, Curator, Debtor Bankruptcy, Legal Consequences, Reciprocal Agreement

Received: Juni

Revised: July 12 2025

Accepted: August 03 2025

Published: August 07 2025

Curr. Ver.: August 07 2025



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1. Introduction

In the current era of globalization, various problems arise in the world of economics, one of which is in the business sector. In carrying out business activities, it is unavoidable that risks may be experienced by business actors. These risks have a direct impact on their ability to fulfill obligations that must be fulfilled. One of the problems that often arises is when the company as a debtor, namely the party that owes, fails to fulfill its obligation to pay off debts to creditors, according to the time that has been mutually agreed upon.

In the legal system in Indonesia, the definition of bankruptcy is regulated in Article 1 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) which states that Bankruptcy is a general seizure of all assets of a bankrupt debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge as regulated in this Law. Based on the meaning of this article, a debtor who is declared bankrupt by a commercial court because he is unable to pay debts that are due and collectible, then the debtor's assets can be confiscated by the court with the aim of helping the bankrupt debtor to pay off his debts to several creditors.

With various problems that arise in Bankruptcy and PKPU, the government made changes to the laws and regulations in the field of bankruptcy and PKPU. Initially, the bankruptcy law applicable in Indonesia came from the law of the Dutch East Indies government, namely Faillissements Verordening S 1905 Number 217 in conjunction with statsblad 1906 Number 348, then replaced by the issuance of a government regulation in lieu

of Law Number 1 of 1998 concerning Bankruptcy which was subsequently formed into Law Number 04 of 1998 concerning Bankruptcy or referred to as the Bankruptcy Law, and further refined by the issuance of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations.

Bankruptcy is a commercial way out of debt problems that are pressing a debtor, where the debtor no longer has the ability to pay the debt to his creditors. So if the debtor is aware of the inability to pay the obligations that have matured, the step of filing a petition for the determination of bankruptcy status against him becomes a possible step or the determination of bankruptcy status by the court against the debtor if later evidence is found that the debtor is indeed no longer able to pay his debts that have matured and can be collected (involuntary petition for bankruptcy).

According to Imran Nating, bankruptcy is a process in which a debtor experiencing financial distress in paying his debts is declared bankrupt by the court due to his inability to pay his debts. The financial difficulties experienced by bankrupt debtors can be caused by several factors, namely poor financial management, excessive debt, poor business planning, and a consumptive lifestyle. Through the Bankruptcy and Suspension of Debt Payment Obligations Law, it is hoped that it will guarantee security and guarantee the interests of the parties concerned. The rights and obligations, duties, and authorities of agencies and personnel involved in debt settlement through the suspension of debt payment obligations and the bankruptcy concerned.

A reciprocal agreement is an agreement made by mutually assigning rights and obligations to both parties making the agreement. For example, a money lending agreement, as regulated in Article 1754 of the Civil Code, in this agreement, rights and obligations are shared by both parties. For example, the lender, as the creditor, is obliged to provide the loan in the form of money or goods and is entitled to receive the loan back along with interest according to the agreed agreement. Meanwhile, the borrower, as the debtor, is obliged to repay the loan along with interest within the agreed time and is entitled to receive the loan according to the agreement.

Based on the provisions of the bankruptcy law, bankruptcy decisions are regulated in Article 2 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) which states that a Debtor who has two or more Creditors and does not pay in full at least one debt that has matured and can be collected, is declared bankrupt by a Court decision, either at his own request or at the request of one or more of his creditors.

According to M. Hadi Shubhan, bankruptcy is a situation in which a debtor is unable to make payments on debts to creditors. This inability to pay is caused by the debtor's financial condition (financial distress) and the debtor's business experiencing a decline. Based on the explanation above, this state of bankruptcy results in a general seizure of all of the debtor's assets, both existing and future, to be used to repay debts proportionally to creditors.

The management and settlement of the bankrupt estate is carried out by a curator under the supervision of a supervising judge, with the primary objective of using the proceeds of the sale to pay all debts proportionally and in accordance with the creditor structure. The curator is responsible for ensuring that the bankruptcy process complies with applicable laws and regulations, ensuring that both the debtor and creditors achieve justice and peace in resolving bankruptcy issues in court.

In business and financial practice, "reciprocal agreements serve as a common legal instrument used to ensure certainty and balance of rights and obligations between creditors and debtors in a mutually agreed-upon agreement." However, when one party, particularly the debtor, is declared bankrupt, arguments arise regarding the continuity and implementation of the agreement. Article 24 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations stipulates that "the debtor shall by law lose his right to control and manage his assets included in the bankruptcy estate, as of the date the bankruptcy declaration decision is issued." This situation has legal implications for reciprocal agreements that have been made before the declaration of bankruptcy, particularly regarding the implementation of the debtor's unfulfilled obligations in paying off his debts that have matured to creditors.

In a reciprocal agreement, where both parties have an obligation to provide something to the other party, both or more parties must fulfill the elements required for a valid agreement, as stipulated in Article 1320 of the Civil Code (KUHPperdata), which states:

1. Their binding agreement
2. Capacity to enter into an agreement
3. A specific subject matter
4. A non-prohibited cause

An agreement entered into by the parties must also comply with Article 1338 of the Civil Code (KUHPerdata), which states:

1. All agreements legally made shall be valid as law for those who make them.
2. Such agreements cannot be revoked except by mutual agreement of both parties, or for reasons declared sufficient by law.
3. Agreements must be executed in good faith.

Therefore, if one of the parties fails to fulfill the requirements in Articles 1320 and 1338, the agreement entered into by the parties may be annulled or rendered null and void. Agreements that may be annulled under the Bankruptcy Law include those entered into less than one year before the bankruptcy declaration, for example, with the intention of benefiting one of the parties.

Based on the legal issues that arise in the context of debtor bankruptcy, the fate of reciprocal agreements made before the bankruptcy decision is made is closely related to the fate of reciprocal agreements made before the bankruptcy decision. In practice, agreements or contracts typically prioritize consensus resolution through mediation and then arbitration in dispute resolution articles. This is often not fully implemented by both parties when a debtor is declared bankrupt.

A suspension of payment (PKPU) is a legal process regulated by Law Number 37 of 2004 concerning Bankruptcy and PKPU, where debtors experiencing financial difficulties can apply to the court for a suspension of debt payments. Furthermore, a PKPU can be defined as a special period of time granted to individuals or company to settle its debts under certain conditions decided through a commercial court to form a general determination regarding how to pay or settle the problem of obligations between parties, either all or part of the obligations or restructuring the agreement. This PKPU is registered when the debtor is unable or is expected to be unable to pay his late obligations because the Bank records liquidation and as a reaction to a bankruptcy application for all its creditors.

In connection with the above-described matter, Sri Rejeki Hartono said, "Bankruptcy institutions provide solutions to the parties if the debtor is in a state of stopping paying/not being able to pay. Bankruptcy institutions prevent/avoid the following two things, both of which are unfair actions and can harm all parties, namely avoiding mass execution by debtors or creditors who prevent fraud by the debtor himself. Based on Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), it functions as the last bastion of legal efforts to force debtors who are financially distressed to negotiate with their creditors in good faith or to accelerate the liquidation of debtor companies that do not fulfill their obligations that are not entitled to receive a debt restructuring

Problems such as the case example that often occurs in Indonesia, namely the case of concurrent credit for two-wheeled motorcycles usually occurs when there is a dispute between creditors over a single collateral object (motorcycle), especially in the context of consumer financing. However, in motorcycle financing practices, financing institutions generally use fiduciary collateral, and the problem arises because of double financing (one motorcycle is pledged to more than one institution). The chronology of the case is consumer A purchased a Honda Vario motorcycle through PT XYZ leasing with a 3-year installment scheme. The motorcycle was used as fiduciary collateral by PT XYZ and officially registered. After one year, consumer A experienced financial difficulties and sold the motorcycle to a third party without the knowledge of the leasing company, even though the installments had not been paid off. PT XYZ sued the motorcycle buyer (third party) because it was considered to own or use goods that were still the object of fiduciary collateral. In the legal process, it was discovered that the motorcycle buyer had pledged the motorcycle to a savings and loan cooperative for a personal loan (without checking the motorcycle's legal status), and the cooperative also registered the motorcycle as collateral. In this case, the cooperative will become a concurrent creditor, meaning they will compete with PT XYZ as a separatist creditor (creditor with fiduciary security rights) and a preferred creditor (creditor with privileges), to obtain rights to the bankrupt debtor's assets. If the bankrupt debtor's assets are insufficient to pay all creditors, the concurrent creditors will receive less payment than other creditors with higher priority. This creates legal uncertainty, especially if the curator's decision

is detrimental to creditors who have acted in good faith. Where creditors have fulfilled their obligations but have not received any performance from the debtor. Questions arise regarding the implementation mechanism and the extent to which the agreement can affect assets in the bankruptcy estate. As a follow-up, it is necessary to conduct research in the form of a thesis entitled "LEGAL CONSEQUENCES OF DEBTOR BANKRUPTCY ON RECIPIENT AGREEMENTS MADE BEFORE BANKRUPTCY BASED ON LAW NUMBER 37 OF 2004", in order to understand and comprehensively examine the legal consequences of this situation, in order to provide legal certainty and justice for the parties involved.

2. Research Method

In writing this journal, the author uses the normative juridical legal writing method, this research method is a research method that focuses on understanding and deepening legal norms, laws and regulations, court decisions and legal issues related to the writing of this journal. This journal research method also uses a library data collection method where literature books, laws and regulations, print and electronic mass media, journals, the internet, articles, research results, written works, and various other written sources. The materials that have been collected are then analyzed using qualitative analysis methods where the results are compiled in the form of scientific works in the form of journals.

3. Results and Discussion

Factors Causing Debtor Bankruptcy in Reciprocal Agreements

A. Statutory Factors

In Indonesia, the legal basis for bankruptcy is regulated in Law No. 37 of 2004 concerning Bankruptcy and PKPU. Article 2 paragraph (1) of this law explicitly states the conditions that must be met for a debtor to be declared bankrupt, namely:

- a) The debtor has two or more creditors
- b) The debtor fails to pay in full at least one debt that is due and payable

These two conditions are cumulative, meaning they must be met simultaneously. If only one of the conditions is met, the debtor cannot be declared bankrupt by the court. The simple proof requirement in Article 2 paragraph (1) can be found in Article 8 paragraph (4) of the KPKPU Law, which states, "A petition for a declaration of bankruptcy must be granted if there are facts or circumstances that simply prove that the requirements for being declared bankrupt as referred to in Article 2 paragraph (1) have been met."

B. Factors According to Experts

According to Jauch and Glueck, the factors causing debtor or company bankruptcy are broadly divided into three categories:

a) General Factors

a Economic Sector

Economic factors contributing to bankruptcy include inflation and deflation in the prices of goods and services, financial policies, and interest rates.

b Social Sector

Social factors significantly influence changes in people's lifestyles, which affect the products and services produced by companies. Other contributing factors include unrest and chaos within the community.

c Technology Sector

The use of information technology also causes company costs to increase, particularly for maintenance and implementation. This increase occurs when the use of information technology is poorly planned by management, the system is not integrated, and the users are unprofessional.

d Government Sector

Government policies can also contribute to bankruptcy, such as changes in subsidy policies for companies and industries, changes in the imposition of tariffs on exports and imports of goods, and new laws and regulations for banking and labor.

b) External Company Factors

- Customer Sector: New companies can identify customer characteristics because it is useful for avoiding customer loss, creating opportunities to find new customers, avoiding declining sales, and preventing customers from switching to competitors.
- Supplier Sector: Suppliers must maintain good cooperation because the power of suppliers to raise prices and reduce profits for their buyers depends on the extent of their relationships with independent traders.
- Competitor Sector: Companies must be competitive because if competitors are more widely accepted by the public, the company will lose customers and reduce its revenue.

c) Internal Company Factors

- a Excessive credit granted to debtors or customers. Bankruptcy can occur due to excessive amounts of credit extended to debtors or customers, which ultimately cannot be repaid on time.
- b Inefficient Management: Many companies fail to achieve their goals due to a lack of management capabilities, skills, experience, adaptability, and initiative. Management inefficiency is reflected in the management's inability to address emerging situations, including:
 - a) Inadequate sales results
 - b) Mistakes in pricing
 - c) Inefficient cost structures
 - d) Excessive investment in fixed assets and inventory
 - e) Lack of working capital
 - f) Unbalanced capital structure
 - g) Inadequate accounting systems and procedures
 - h) Inadequate information systems
- c Abuse of authority is often committed by employees and managers, which is very detrimental and has a significant impact on the company's performance and finances.

Legal Consequences of Debtor Bankruptcy Under Reciprocal Agreements Made Prior to Bankruptcy**A. Legal Consequences of Bankruptcy on the Debtor and the Bankruptcy Assets**

According to Article 1, paragraphs (1) and (5) of Law Number 37 of 2004 concerning Bankruptcy and PKPU, the sanctions clearly state that a debtor declared bankrupt by the court due to inability to pay debts that have matured and are payable will result in the debtor's assets being seized by the court, with the management and settlement being carried out by a Curator under the supervision of a Supervisory Judge, with the aim of assisting the bankrupt debtor in settling its debts to several creditors. This confiscation of the bankrupt debtor's assets is also regulated in Articles 1131 and 1132 of the Civil Code.

Once a bankruptcy decision has been declared by the court, a number of consequences will occur, namely:

- a) All of the bankrupt debtor's assets will be subject to a general conservatorship.
- b) The bankrupt debtor will lose the right to manage and control their own assets.
- c) The bankrupt debtor's assets will be managed and controlled by the Estates Office or a curator for the benefit of all creditors.
- d) The judge's decision will appoint a commissioner judge to lead and oversee the implementation of the bankruptcy proceedings.
- e) Bankruptcy concerns only the assets of the bankrupt debtor and not the bankrupt person.

With the issuance of a bankruptcy declaration, the debtor legally loses the right to control and manage his assets. These assets become the bankruptcy estate and are transferred to the curator (control and management). However, even though the debtor loses these rights, he or she still has the authority to carry out legal actions related to the assets as long as their actions benefit the bankruptcy estate.

Bankruptcy assets are all assets owned by the bankrupt debtor. However, there are several assets that are excluded from bankruptcy assets, namely:

- a) Objects, including animals, that are truly needed by the debtor in connection with their work, equipment, medical equipment used for health, bedding and related equipment used by the debtor and their family, and food supplies for 30 (thirty) days for the debtor and their family members living there, bedding, and daily clothing.
- b) Everything the debtor receives from his/her own work as remuneration for a job or service, such as wages, pension, waiting money, or allowances, to the extent determined by the supervising judge.
- c) Money given to the debtor to fulfill a statutory obligation to provide maintenance.

B. Legal Consequences of Bankruptcy on Reciprocal Agreements

A reciprocal agreement is an agreement in which both parties mutually fulfill their obligations. In a reciprocal (bilateral) agreement, there are always rights and obligations of one party that overlap with the rights and obligations of the other party. The legal consequences of bankruptcy on reciprocal agreements are regulated in Article 36 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), which reads:

- a) If, at the time the bankruptcy declaration is pronounced, there is a reciprocal agreement that has not been or has only been partially fulfilled, the party entering into the agreement with the debtor may request the curator to provide certainty regarding the continuation of the implementation of the agreement within a time period agreed upon by the curator and the party.
- b) If an agreement regarding the time period as referred to in paragraph (1) is not reached, the supervisory judge shall determine that time period.
- c) If within the time period as referred to in paragraphs (1) and (2), the curator does not provide a response or is unwilling to continue implementing the agreement, the agreement shall terminate, and the party referred to in paragraph (1) may claim compensation and will be treated as a concurrent creditor.
- d) If the curator declares its willingness, the curator is required to provide a guarantee of its willingness to implement the agreement.
- e) The provisions referred to in paragraphs (1), (2), (3), and (4) do not apply to agreements that require the debtor to perform the agreed-upon acts themselves.

Furthermore, bankruptcy provisions in reciprocal agreements are regulated in Article 37 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU), which states:

- a) If the agreement referred to in Article 36 stipulates the delivery of commonly traded goods within a specified timeframe, and the party required to deliver the goods is declared bankrupt before the delivery is made, the agreement is terminated upon the issuance of a bankruptcy declaration. If the counterparty suffers losses due to the write-off, they may apply as a concurrent creditor to obtain compensation.
- b) If the bankruptcy estate is affected by the write-off as referred to in paragraph (1), the counterparty is obligated to pay such compensation.

Settlement of Bankrupt Assets

The curator plays a crucial role in the bankruptcy resolution process. The curator is appointed by the Court. The main task is to manage and settle the bankrupt's assets. Article 70 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states that those who can act as curators are as follows: the Estates and Estates Office and other curators.

Another type of curator, as stipulated in Article 70 paragraph (2) letter (a) of the Bankruptcy and Suspension of Debt Payment Obligations (PKPU), reads:

Those who may serve as a curator as referred to in paragraph (1) letter b are:

- a. Individuals domiciled in Indonesia who possess the specialized expertise required to manage and/or settle the bankruptcy estate; and
- b. Registered with the ministry whose scope of duties and responsibilities covers law and regulations.

The Supervisory Judge oversees the liquidation of the bankrupt's assets. The Supervisory Judge is a judge appointed by the Court in a bankruptcy decision or a Decision on Suspension of Debt Payment Obligations, as stipulated in Article 1 paragraph (8) of the Bankruptcy and PKPU Law. The Supervisory Judge is appointed by the Panel of Examining Judges or the Panel of Judges deciding on the PPP case. In principle, the Supervisory Judge is a representative of the court who oversees the management and liquidation of the bankrupt's assets by the Curator. The appointment of the Supervisory Judge is made simultaneously with the pronouncement of the bankruptcy declaration decision.

Article 69 paragraphs (1 and 2) of the Bankruptcy and PKPU Law:

- 1) The Curator's duties include managing and/or settling the bankrupt estate.
- 2) In carrying out their duties, the Curator:
 - a. Is not required to obtain approval from or provide prior notification to the debtor or any of the debtor's organs, although in circumstances outside of bankruptcy, such approval or notification is required.
 - b. May obtain loans from third parties only to increase the value of the bankrupt estate.

Article 24 paragraphs (1 and 2) of the Bankruptcy and PKPU Law:

1. The debtor legally loses the right to control and manage their assets included in the bankrupt estate, as of the date the bankruptcy declaration decision is issued.
2. The date of the decision as referred to in paragraph (1) is calculated from 00:00 local time.

From the various explanations above, the author concludes that the legal consequences of bankruptcy on reciprocal agreements are that when a debtor is declared bankrupt by the court, it has various consequences for the debtor, the bankrupt estate, and agreements made before and after the bankruptcy. One of the main impacts for debtors is the loss of civil rights to manage and administer their assets, the freezing of these rights comes into effect from the time the bankruptcy decision is announced by the court (Commercial Court).

4. Conclusions

Bankruptcy has a direct impact on the implementation of reciprocal agreements made by debtors and creditors before being declared bankrupt. The factor causing the bankruptcy of debtors or companies occurs due to financial difficulties (financial distress), with this condition the debtor is unable to pay or settle his debts to several creditors. After the debtor is declared bankrupt based on the Commercial Court Decision, all management and control of his assets are transferred to the curator under the supervision of the supervisory judge Article 24 and 69 of Law No. 37 of 2004. Reciprocal agreements that have not been fully implemented by one of the parties before the bankruptcy decision have legal consequences that are specifically regulated in Article 36 of Law No. 37 of 2004, namely that the curator with the approval of the supervisory judge has the authority to Continue the implementation of the agreement in the interests of the bankrupt estate or not continue the agreement and allow the other party to become a concurrent creditor for the losses incurred. Counterparties to a reciprocal agreement who have fulfilled their obligations before the debtor is declared bankrupt are entitled to file claims as creditors in the bankruptcy process, in accordance with their legal status (preferred, separated, or concurrent). However, in most cases, they will be considered concurrent creditors, having the lowest priority in the distribution of liquidation proceeds.

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