

Research Article

Justice in the Administration and Settlement of Bankruptcy Estate by Auction in Relation to the Recovery of Creditors' Claims

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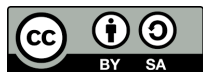
Abstract: This study aims to examine the aspect of justice in the administration and settlement of bankrupt assets by the Curator, particularly concerning the repayment of receivables to creditors in the context of auction minutes issued by the KPKNL Samarinda. The research adopts a normative juridical method, legislation approach and conceptual approach, and is connected to a case study approach focusing on the auction process in the bankruptcy case of PT Karebet Mas Indonesia (in bankruptcy). The results of this study indicate that the Curator, in administering and settling unsold bankrupt assets, may proceed with a private sale (underhand sale) with the approval of the supervising judge, based on a limit value obtained from an independent appraiser's valuation, provided that at least two public auctions have been conducted without success. The distribution of assets to creditors must observe the principle of *pari passu pro rata*, which ensures equal treatment according to their respective priorities. In the event that the settlement process of the bankrupt estate has been declared completed, yet the creditors have not received full repayment of their claims, the general provisions under Article 1131 of the Indonesian Civil Code shall apply, namely that all of the debtor's assets constitute collateral for the fulfillment of their debts. This study recommends an amendment to Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, to regulate in a detailed, specific, and comprehensive manner the requirements for the underhand sale of bankrupt assets by the Curator. Such regulation is necessary to ensure justice and legal certainty for bankrupt debtors and creditors, particularly regarding the repayment of claims for concurrent creditors..

Keywords: Administration and Settlement, Creditor, Curator, Debtor, Justice.

1. Introduction

In the context of the renewal of the state legal system, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law) is present as an element of efforts to realise a just and prosperous community based on the values of Pancasila and the 1945 Constitution. This renewal emphasises the formation of a comprehensive legal order, including the creation of new regulations that are vital for the progress of the economic sector. The resulting regulatory products are expected to be able to provide guarantees, order, implementation, and legal protection based on equality and truth. However, reality shows that there is still an imbalance in the relationship between creditors and debtors, where relatively loose bankruptcy requirements can harm the Debtor's position, as stated in the study on the urgency of re-drafting bankruptcy law to realise distributive and corrective justice.

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Regulations related to Bankruptcy and suspension of debt repayment obligations serve as fundamental legal instruments that have a strategic role in maintaining the balance of the financial system and strengthening the foundation of a country's economic growth. This policy is a protection mechanism for debtors and creditors and a vital component in the modern investment ecosystem by creating legal certainty for all economic actors. The practical implementation of these legal instruments can prevent the domino effect of the financial crisis while maintaining a business climate conducive to sustainable development. Previously, these regulations were regulated in the Bankruptcy Law (Faillissements-verordenen Staatsblad 1905:217 juncto Staatsblad 1906:348). However, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Repayment Obligations still faces various challenges, such as the lack of an effective debt restructuring mechanism and legal uncertainty that can hamper the company's reorganisation process. The suspension of debt payment obligations (PKPU) aims to provide an opportunity for debtors experiencing financial difficulties to prepare a payment plan approved by creditors. However, this process is often unsuccessful due to failure to reach an agreement. The principle of business continuity is also an essential consideration in this process, although current law does not provide clear indicators to assess the sustainability of the Debtor's business.

Bankruptcy is a situation in which all the assets of the Bankrupt Debtor are under public supervision and seizure after a decision of the Commercial Court (Simanjuntak, 2008). Bankruptcy regulations are made because there are often struggles over bankrupt assets, where the Debtor's assets are usually insufficient to meet obligations to all Creditors. Therefore, bankruptcy regulations also regulate the priority of payments to Creditors (Sjahdeini, 2009:6). Bankruptcy results in a public seizure of the assets of the bankrupt Debtor. The Curator is responsible for managing and selling these assets, with supervision from the supervising judge, as mandated by the law governing Bankruptcy.

Bankruptcy describes a situation where a debtor cannot pay off debts to creditors, often due to severe financial difficulties resulting from declining business performance. In this situation, the Debtor may file for Bankruptcy to resolve their debt problems. The bankruptcy process may involve liquidating assets to pay creditors or restructuring debt so the company can continue operating. Bankruptcy impacts the financial aspect and can affect the company's reputation, employee morale, and stakeholder relationships (Subhan, 2009:1).

Bankruptcy is a risk that haunts anyone, regardless of social status or type of business entity. Individuals and corporations have no guarantee of immunity from financial difficulties that lead to Bankruptcy. Even famous figures and giant companies can experience a similar fate. Charles J. Tabb in (Ginting, 2018:1) states that:

Table 1

No.	JENIS KENDARAAN	SPESIFIKASI	NILAI LIMIT	UANG JAMINAN
1.	Dump Truck Volvo	No. Rangka : YV2JSO2ES8A671893	Rp. 602.853.000	Rp. 120.570.600
2.	Dump Truck Volvo	No. Rangka : YV2JSO2E59A689344	Rp. 314.412.000	Rp. 62.882.400
3.	Dump Truck Volvo	No. Rangka : YV2JSO2E2BA675691	Rp. 590.747.000	Rp. 118.149.400
4.	Dump Truck Volvo	No. Rangka : YV2JSO2E49A689464	Rp. 551.262.000	Rp. 110.252.400
5.	Dump Truck Volvo	No. Rangka : YV2JSO2E38A676702	Rp. 551.262.000	Rp. 110.252.400
6.	Dump Truck Volvo	No. Rangka : YV2JSO2E79A689393	Rp. 551.262.000	Rp. 110.252.400
7.	Dump Truck Volvo	No. Rangka : YV2JSO2E98A675669	Rp. 393.347.000	Rp. 78.669.400
8.	Dump Truck Volvo	No. Rangka : YV2JSO2E88A674388	Rp. 472.287.000	Rp. 94.457.400
9.	Dump Truck Volvo	No. Rangka : YV2JSO2E49A689349	Rp. 432.816.000	Rp. 86.563.200
10.	Dump Truck Volvo	No. Rangka : YV2JSO2E09A689431	Rp. 393.347.000	Rp. 78.669.400

“Bankruptcy has become a central feature in our society, touching the lives of almost everyone.”

Bankruptcy is an unavoidable social phenomenon in social life, affecting almost every individual and legal entity. As part of the normal economic cycle, Bankruptcy has a negative impact and can also be a driver of innovation and investment if viewed positively. Bankruptcy law, which functions as a debt collection mechanism and allows debtors to start over financially, should apply to all legal subjects, individuals, and legal entities. The bankruptcy process reflects significant moral and social decisions, especially regarding keeping promises and reciprocity, which are the basis of a free and responsible society. In addition, social behaviour leading to Bankruptcy shows a distinctive pattern of social action, which affects all types of obligations (Ginting, 2018:1). The objectives of bankruptcy law, according to Stefan Albrecht Riesenfeld, as written for the Encyclopaedia Britannica (Sjahdeini, 2009:3), are:

“Bankruptcy laws were enacted to provide and govern an orderly and equitable liquidation of the estates of insolvent debtors.”

Furthermore, in Riesenfeld's statement in (Sjahdeini, 2009:3), it is explained:

“Because in the past bankruptcy was coupled with the loss of civil rights and imposition of penalties upon fraudulent debtors, the designation bankrupt came to be associated with dishonesty, casting a stigma on persons who were declared bankrupts.”

Based on Articles 1131 and 1132 of the Civil Code, Bankruptcy law in Indonesia aims to regulate the reasonable distribution of insolvent debtor assets among creditors. This is necessary because when the Debtor's debt exceeds the value of his assets, the sale of assets is insufficient to pay off all debts. Without clear rules, creditors can compete to seize the Debtor's assets, so bankruptcy law is present to prevent this and ensure proportional distribution (Sjahdeini, 2009:5).

Article 1131 of the Civil Code stipulates:

“All of the Debtor's assets, both movable and immovable, both existing and future, are collateral for all of his obligations.”

About Bankruptcy, the obligation referred to in Article 1131 of the Civil Code is a debt agreement (credit agreement). Meanwhile, Article 1132 of the Civil Code determines (Sjahdeini, 2009:5):

“All of the Debtor's assets become joint collateral for all of his Creditors; the proceeds from the sale of all of the Debtor's assets are divided according to balance, namely according to the size of the Creditor's receivables, unless there are legitimate reasons among the Creditors for priority.”

In the banking world, the term "according to balance, namely according to the size of the Creditor's receivables," refers to a fair (proportional) distribution based on each Creditor's receivables. This proportionality is termed "pro rata," which comes from Latin. When the Curator liquidates the bankrupt Debtor's assets, the sale proceeds will be distributed to all Creditors proportionally according to the amount of their receivables (Sjahdeini, 2009:5).

Based on Article 2, paragraph (1) of the Bankruptcy Law, the conditions for a Debtor to be declared bankrupt are:

“A debtor who has two or more creditors and does not pay in full at least one debt that has matured and is collectible, is declared bankrupt by a court decision, either at his own request or at the request of one or more of his creditors.”

Under Article 8, paragraph (4) of the Bankruptcy Law, the court must grant a bankruptcy petition if the existing facts or circumstances prove that all the bankruptcy criteria stated in Article 2, paragraph (1) of the Bankruptcy Law have been met.

Based on the legal framework governing Bankruptcy, a party declared bankrupt through a judicial decision loses the legal capacity to manage or control assets bound by Bankruptcy. The mechanism for administering these assets is then transferred to a curator, either from the Estates Office or an officially appointed certified legal practitioner, who must carry out the liquidation or restructuring of assets under a structural supervision mechanism by the relevant judicial authority. The Curator's duties include managing and resolving bankrupt assets to maximise the value of these assets for the benefit of creditors. However, curators often face legal and operational challenges, including potential lawsuits from third parties and inadequate legal protection.

After the commercial court declares a company in Indonesia bankrupt, a curator and a supervisory judge will be appointed. The Curator is responsible for managing the company's assets. With the bankruptcy decision, the debtor company no longer has the right to manage its assets under general confiscation. The Curator will liquidate the company's assets and distribute the proceeds to creditors (Sjahdeini, 2009:305).

In this normative research, one of the references used is the settlement or sale carried out by the Curator Team of PT Karebet Mas Indonesia (In Bankruptcy) through an auction mechanism at the State Assets and Auction Service Office (KPKNL) Samarinda, where previously PT Karebet Mas Indonesia had been declared bankrupt based on Decision No. 38/Pdt.Sus-PKPU/2022/PN.Niaga.Sby dated December 19, 2022, at the Commercial Court at the Surabaya District Court.

The Curator Team of PT Karebet Mas Indonesia (In Bankruptcy), namely Sahat Poltak Siallagan, S.H., M.H., and Ruth Oktavia P, S.H., who were appointed and designated based on Decision No. 38/Pdt.Sus-PKPU/2022/PN.Niaga.Sby dated December 19, 2022, conducted an auction of bankruptcy assets from the Bankrupt Debtor, namely PT Karebet Mas Indonesia (In Bankruptcy) based on Letter Number: S-1447/KNL.1302/2023 concerning the Determination of the Auction Schedule on September 25, 2023, using closed bidding, held on Wednesday, October 4, 2023 at 15.00 WIB server time or 16.00 WITA with the auction venue at the State Assets and Auction Service Office (KPKNL) Samarinda, against:

The auction of 10 (ten) Volvo Dump Trucks belonging to PT Karebet Mas Indonesia (In Bankrupt) on Wednesday, October 4, 2023 at 15.00 WIB server time or 16.00 WITA at the Samarinda State Asset and Auction Service Office (KPKNL) was not submitted by anyone as per Copy of Auction Minutes Number 410/61/2023 dated October 4, 2023.

The Curator Team of PT Karebet Mas Indonesia (In Bankruptcy), namely Sahat Poltak Siallagan, S.H., M.H., and Ruth Oktavia P, S.H., again carried out a second auction of 10 (ten) Volvo Dump Trucks owned by PT Karebet Mas Indonesia (In Bankruptcy) based on Letter Number: S-1759/KNL.1302/2023 concerning the Determination of the Auction Schedule on November 6, 2023 using closed bidding, held on Wednesday, November 15, 2023, with a bidding deadline of 13.30 WIB server time or 14.30 WITA with the auction venue at the State Assets and Auction Service Office (KPKNL) Samarinda. However, for the second auction conducted by the Curator Team of PT Karebet Mas Indonesia (In Bankruptcy), no one submitted a bid as per the Copy of Auction Minutes Number 410/61/2023 dated November 15, 2023.

Furthermore, the Curator Team of PT Karebet Mas Indonesia (In Bankrupt) again carried out the third auction of 10 (ten) Volvo Dump Trucks based on Letter Number: S-667/KNL.1302/2024 concerning the Determination of the Auction Schedule on April 2, 2024 using closed bidding, held on Monday, April 29, 2024, with a bidding deadline of 13.50 WIB server time or 14.50 WITA with the auction venue at the State Assets and Auction Service Office (KPKNL) Samarinda. However, for the third auction conducted by the Curator Team of PT Karebet Mas Indonesia (In Bankrupt), no one submitted a bid as per Copy of Auction Minutes Number 145/1302/2024-01 dated April 29, 2024.

Based on the descriptions and legal basis above, and considering the importance of the management and settlement of bankrupt assets carried out by the CuratorCurator, the author in this study is interested in conducting research with a Thesis entitled: "Aspects of Justice in the Management and Settlement of Bankrupt Assets Related to the Return of Creditors' Receivables (Study: Auction Minutes for the Sale of Bankrupt Assets Issued by the Samarinda KPKNL)" which the author will describe and analyze in detail, comprehensively, completely and leading to the problem topic in order to answer the legal issue.

Based on the research context that has been explained, the primary focus in formulating the study questions of this study is first, how are the actions of managing and settling bankrupt assets carried out by the CuratorCurator when the sale of bankrupt assets through auction, as regulated in the Regulation of the Minister of Finance No. 122 of 2023 concerning Guidelines for the Implementation of Auctions, not sold; and second, how should the management and settlement of bankrupt assets be carried out so that the implementation of the auction can provide justice for creditors, especially regarding the return of creditors' receivables

2. Literature Review

The study of justice in managing and settling bankrupt assets has developed through theoretical and practical approaches involving the principles of bankruptcy law, legal certainty, and asset distribution mechanisms. Aristotle's theory of justice, which emphasises proportional equality (*pro rata*), is the philosophical basis for distributing bankrupt assets to creditors. This concept is reinforced by Articles 1131 and 1132 of the Civil Code, which guarantee all of the Debtor's assets as collateral for debt, while the principle of *pari passu pro rata parte* ensures proportional distribution according to the amount of the claim

(Darmodiharjo & Sidharta, 1995:138). John Rawls added the perspective of justice as fairness through the principle of greatest equal liberty, which demands the protection of fundamental freedoms before the distribution of resources, relevant to the protection of creditor and debtor rights in the bankruptcy process (Moho, 2013).

The development of bankruptcy law in Indonesia from *Faillissements-verordening* (1905) to Law No. 37 of 2004 shows an effort to harmonise distributive and restorative justice. Modern laws include the principles of balance, business continuity, and legal integration, although the practice is still faced with challenges such as legal uncertainty in debt restructuring and payment priorities. Previous studies have discussed the auction mechanism as an instrument for asset liquidation. However, they are limited to procedural analysis without integrating the concrete justice dimension for concurrent creditors, which is often overlooked in the payment hierarchy.

In Bankruptcy, the Curator plays a central role as the bankrupt estate's administrator under the supervision of the supervising judge. This authority is regulated in Articles 16 and 69 of the Bankruptcy Law, including asset security, liquidation through auction, and distribution of sales proceeds by legal provisions. However, selling unsold assets creates a legal dilemma, because the Bankruptcy Law does not explicitly regulate underhanded sale procedures after two failed auctions. This creates a legal loophole that can harm concurrent creditors, especially when the asset limit value is determined based on an independent assessment without adequate transparency mechanisms.

The case study of PT Karebet Mas Indonesia (In Bankrupt) reveals the complexity of implementing the principle of justice in practice. Three unsold Volvo dump truck auctions indicate a gap between PMK No. 122/2023 on auctions and market realities. Determining the limit value based on independent asset valuation ensures compliance with the principle of legal certainty. However, on the other hand, the lack of market participation in closed bidding weakens the expected principles of competition and transparency. These findings indicate the need for bankruptcy law reform to accommodate alternative sales mechanisms that consider real market value while maintaining the principle of distributive justice.

This study strengthens the argument that justice in Bankruptcy depends on procedural accuracy and the legal courage to adapt to economic dynamics. The main challenge lies in the balance between protecting vulnerable concurrent creditors and the need to optimise asset value through a competitive auction mechanism. This study also highlights the importance of integrating the principle of restorative justice in the process of debt verification and distribution of auction proceeds, especially when the bankrupt's assets are insufficient to pay off all receivables, as stipulated in Article 1131 of the Civil Code (Santoso et al., 2023). Thus, this study seeks to fill the theoretical and practical gaps through a holistic analysis of the interaction of legal principles, technical regulations, and substantive justice in Bankruptcy..

3. Research Methods

The literature on bankruptcy estate management in Indonesia emphasises the importance of justice and legal certainty in bankruptcy mechanisms. Normative legal studies show that Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations is the primary basis for ensuring the distribution of proceeds from the settlement of bankruptcy estates proportionally by the *pari passu pro rata parte* principle. In this context, the Curator has full authority to administer and sell the Debtor's assets through auction or private sale, as stipulated in the Regulation of the Minister of Finance No. 122 of 2023. However, the literature also identifies legal uncertainties when auctions fail, including ambiguity in the priority of payment of tax debts and workers' wages, which has the potential to trigger disputes between concurrent and preferred creditors.

Doctrinal analysis highlights that despite adequate regulations, the implementation of curator duties often faces practical obstacles, such as low buyer interest in auctions and a lack of transparency in asset valuation. A case study of PT Karebet Mas Indonesia (In Bankrupt) revealed that the Curator faced a dilemma between fulfilling auction procedures and maximising the value of bankrupt assets, especially when two public auctions were unsuccessful. Secondary literature, such as law journals and reference books, reinforces that legal protection for curators is still limited, thus triggering the risk of *ultra vires* actions that can potentially reduce justice for creditors. The research gap is seen in the lack of studies on the underhanded sale mechanism after a failed auction and its impact on the rights of concurrent creditors.

This study integrates normative, conceptual, and case approaches to analyse the complexity of bankruptcy law (Rosidi et al., 2024). Using primary data from auction documents, auction minutes, and laws and regulations, this study verifies the implementation of the Minister of Finance Regulation No. 122 of 2023 in practice. The descriptive qualitative approach allows researchers to identify patterns of legal uncertainty and propose legal solutions based on the principles of proportionality and legality. Tertiary literature, such as court decisions and legal practitioner reports, strengthens the analysis of concrete legal precedents, such as the Surabaya Commercial Court Decision No. 38/Pdt.Sus-PKPU/2022/PN.Niaga.Sby, which provides insight into the dynamics of bankruptcy implementation at the judicial level. Thus, this study strengthens the theoretical basis and provides operational recommendations to improve efficiency and fairness in managing bankrupt assets

4. Discussion

Management and Settlement of Bankrupt Assets Carried Out by the Curator at KPKNL Samarinda

In the bankruptcy process, a crucial entity plays a vital role, namely the Curator. This institution is the administrator and settler of bankrupt assets by legal provisions. According to Vollmar, the Curator is legally authorised to manage and settle bankrupt assets. In each bankruptcy decision, the court is required to appoint a curator who is responsible for managing and transferring the assets of the bankrupt Debtor under the supervision of the supervising judge (Subhan, 2009:108).

Based on Article 16, paragraph (1) of the Bankruptcy Law, the Curator has full authority to manage and settle bankrupt assets since the bankruptcy decision was pronounced, even if there is an attempt at cassation or judicial review. Article 69 paragraph (1) of the same law strengthens the position of the Curator as the primary executor of bankrupt asset management (Subhan, 2009:108).

When the court decides on bankruptcy status, the Debtor loses the legal right to manage or transfer their assets. This authority is wholly transferred to the Curator, who acts as a legal administrator under the supervision of the supervising judge. The Curator must carry out all legal actions related to the bankrupt estate, including management and transfer, by established procedures.

The Curator guarantees the fairness of the bankruptcy process, ensuring that the bankrupt Debtor's assets are managed transparently and according to applicable legal principles. This authority includes supervising, securing, and distributing bankrupt assets to creditors according to the priority order stipulated in the law.

A curator must distance himself from a conflict of interest and maintain absolute neutrality in his duties. This position requires independence due to the significant legal authority inherent in the Curator in managing bankruptcy assets. The principle of impartiality is a crucial foundation, where the Curator is not permitted to show bias towards creditors who collect rights or debtors who are in debt. The single orientation that must be upheld is compliance with applicable legal principles and judicial mechanisms, so that the integrity of the bankruptcy process is maintained (Subhan, 2009:108).

In the stages of managing the assets of a company declared bankrupt, there is the potential for various legal incidents to arise, which can have an impact on the process of administration and liquidation of bankrupt assets, including (Ginting, 2019:138):

1. Bankruptcy Canceled

The end of Bankruptcy can occur if the Supreme Court cancels the bankruptcy decision through a cassation or judicial review mechanism. This cancellation has implications for the termination of the general seizure of bankrupt assets and the restoration of the Debtor's rights to manage their assets, since the cancellation decision has permanent legal force, without further determination from the commercial court. Consequently, the Curator loses his authority in managing the bankrupt estate and must provide an accountability report to the Debtor before the supervising judge and hand over all assets and documents managed during the bankruptcy process (Ginting, 2019:138).

2. Bankruptcy Revoked

After recording the assets of the company declared bankrupt, the Curator realised that the number of assets was minimal, and it was estimated that it would not be enough to cover the costs of the bankruptcy process. Faced with this situation, the Curator must submit a report on the condition of the assets to the supervising judge. Furthermore, the supervising

judge will provide a recommendation to the commercial court so that the Debtor's bankruptcy status is cancelled with clear reasons. If the commercial court grants the cancellation of the Bankruptcy, the Curator will be dismissed, and the settlement task will be considered complete. The clerk of the commercial court will announce the bankruptcy registration for cancellation of the Bankruptcy through the State Gazette of the Republic of Indonesia and at least two daily newspapers (Ginting, 2019:139).

3. Bankruptcy Ends Due to Peace

After the peace agreement proposal from the party declared bankrupt is approved by the lenders and the commercial court has legally ratified the agreement, the Debtor's bankruptcy status automatically ends. With the completion of this Bankruptcy, the Debtor's right to manage his assets returns to its original state, and all general seizures of the Debtor's assets are automatically revoked based on applicable legal provisions (Ginting, 2019:139).

4. Debtor's Bankruptcy Reopened

Termination of the Debtor's Bankruptcy through a peace agreement can be annulled if it is proven that the Debtor is negligent in implementing the points of the agreement. In such a situation, a creditor has the right to file a cancellation of the peace. The legal implication of the cancellation of the peace is the reopening of the Debtor's bankruptcy process. The court's verdict that cancels the peace and reactivates bankruptcy results in the Debtor's assets being unable to pay debts at that time (Ginting, 2019:140).

If the Debtor's Bankruptcy is reopened, the authority to manage and settle the bankrupt estate lies with the Curator appointed in the peace decision, effective from the announcement of the decision to cancel the peace. The Curator can start liquidating the bankrupt estate after verifying all bills that arise before the bankruptcy process is restarted (Ginting, 2019:140).

5. Insolvent Bankrupt Estate

Insolvency in the management of bankrupt assets can arise due to several things, such as the absence of a peace proposal from the Debtor, rejection of the proposal by creditors or the commercial court, or the absence of peace efforts and termination of the Debtor's business decided by the Creditor or Curator. This insolvent status initiates the process of settling or liquidating all bankrupt assets. Creditors with collateral rights can execute the assets within two months of the insolvency being determined, and the Curator will sell the bankrupt assets based on the provisions of Article 185 of the Bankruptcy Law (Ginting, 2019:141).

Managing and resolving bankrupt assets is a crucial component in the bankruptcy mechanism for individuals and legal entities. Its complexity is reflected in the allocation of significant articles in the Bankruptcy Law, where 138 of the 308 articles are directed at the governance of bankrupt assets. This stage involves a series of systematic steps by the Curator, as provided by the law (Ginting, 2019:141).

The procedure begins with the publication of the bankruptcy status through two national and local print media, which the supervising judge determines, and the preparation of the first creditor meeting. At the same time, the Curator is required to protect movable assets such as jewellery, cash funds, and documents of economic value. If necessary, an application for asset sealing is submitted to the court to prevent misuse.

A notary or private records the bankrupt assets within two days after the bankruptcy decision, inviting the creditor committee as witnesses. This stage is regulated explicitly in Article 100, paragraph (1) of the Bankruptcy Law. Furthermore, the Curator prepares a Temporary Debt List based on the receivables submitted by creditors, by Article 116, which regulates initial verification through a meeting between the Debtor and Creditor.

The Interim Debt List is published in the commercial court registry for free public access, although hard copies can be requested for a fee. If the Debtor submits a composition proposal, the document is submitted to the court and distributed to the members of the creditors' committee for comment at a special meeting. A going concern permit is submitted to the creditors' committee or the supervising judge if the committee has not been formed. This process demonstrates a strict hierarchy in the management of bankruptcy assets, combining aspects of publication, legal protection, and coordination with creditors to ensure transparency and fairness for all parties involved.

The orderly management and settlement of bankrupt assets is based on the provisions of Article 25 of the Bankruptcy Law, which the Curator must follow if the Curator plans to take action on the bankrupt assets. Article 25 of the Bankruptcy Law regulates:

“All debtor obligations issued after the bankruptcy declaration decision can no longer be paid from the bankrupt estate, unless the obligations benefit the bankrupt estate..”

Managing bankrupt assets that occur in Bankruptcy involves a series of legal steps related to managing the Debtor's assets that have been declared bankrupt. The Curator holds the leading authority in this process, appointed through a bankruptcy decision as a manager and settler of bankrupt assets. The first step the Curator must take is to secure the bankrupt assets, because the legal basis for Bankruptcy lies in collecting all the Debtor's assets to fulfil obligations to creditors (Sjahdeini, 2009:375).

To achieve this goal, the Curator must immediately collect and protect the Debtor's assets that are in general confiscation status. After ensuring the security of the assets, the following steps include recording the bankrupt estate either by a notary or privately, as well as efforts to optimise the value of assets and minimise the costs of the bankruptcy process to avoid increasing the financial burden on the bankrupt estate.

Based on the provisions of Article 178 paragraph (1) of the Bankruptcy Law, if the receivables verification meeting (debt verification) does not produce an acceptable peace plan or the ratification of the peace plan is rejected by the commercial court after obtaining permanent legal force. The bankrupt assets are automatically declared insolvent and must be subject to general confiscation. In this condition, the Curator must liquidate the bankrupt assets through a sales process, the final legal action to fulfill the Debtor's debt.

The management of bankrupt assets is a strict legal mechanism. Each stage must comply with the procedures set out in the Bankruptcy Law to ensure that creditors' rights are protected. The principles of justice carry out the bankruptcy process. Liquidation not only involves the sale of assets but also requires strategic considerations to maximise the selling value and minimise potential losses for related parties.

Based on the provisions of Article 184 of the Bankruptcy Law, the Curator is obliged to immediately begin the process of liquidating assets without requiring the Debtor's consent in two main situations. First, if the Debtor's company management proposal is not submitted within the time limit set by the laws and regulations, or the submitted proposal is rejected by the authorities. Second, when the ongoing company management process is officially terminated, even though the company continues to operate, the Curator is authorised to sell assets that are not essential to the continuity of business operations. However, through a special determination, the Supervisory Judge can determine the Debtor's ownership of necessities such as household furniture, medical equipment, or specific office equipment.

The settlement process in this context refers to the mechanism for converting all bankruptcy assets into liquid form to meet debt payment obligations. The official explanation in Article 16, paragraph (1) of the Bankruptcy Law emphasises that the essence of settlement lies in transforming the economic value of assets into legal means of payment through an open sales mechanism. This implementation must pay attention to the principle of proportionality, where the Curator is obliged to ensure that each sales transaction is carried out through a transparent mechanism and prioritises the highest economic value for the interests of Creditors. This procedure is a vital legal instrument in balancing the rights of the interested parties while maintaining the integrity of the bankruptcy process.

In addition to the regulations contained in Article 184 paragraph (1) of the Bankruptcy Law, it is also necessary to pay attention to the provisions contained in Article 69 paragraph (2) of the same law. This article stipulates that a Curator has two important freedoms in their obligations. First, the Curator is not obliged to obtain permission or provide initial notification to the Debtor or one of the Debtor's organs. However, such approval or notification requirements are mandatory in everyday situations outside Bankruptcy. Second, the Curator is given the authority to withdraw loan funds from third-party entities, provided such actions are carried out solely to increase the value of assets in the bankrupt estate. These two provisions provide operational freedom for the Curator to carry out his function of managing the bankrupt estate effectively.

In the framework of implementing Bankruptcy, Article 185, paragraph (1) of the bankruptcy law stipulates an asset sale mechanism involving a public auction procedure according to the criteria stipulated in the laws and regulations. This sale must be carried out by considering the special provisions in Article 183 paragraphs (2) and (3) of the Bankruptcy Law, which regulate the technical requirements for its implementation. If the auction process does not produce results, Article 185 paragraph (2) of the Bankruptcy Law provides an alternative option: a private sale with written approval from the supervising judge. This option is considered because some assets have special characteristics that make it difficult to obtain fair market value or potential buyers through conventional auction mechanisms. For assets that cannot be sold through auction or private sale, Article 185 paragraph (3) of the Bankruptcy Law authorises the Curator to determine the final settlement steps after obtaining

approval from the supervising judge. This mechanism is designed to ensure transparency and fairness in handling bankruptcy assets, while maintaining the integrity of the bankruptcy legal process (Sjahdeini, 2009:376).

The Curator must liquidate bankrupt assets based on the provisions contained in the Bankruptcy Law. Deviations from the established procedures can be categorized as unlawful if they result in material losses, thereby opening the perpetrator to civil liability through applicable legal mechanisms. The mechanism for settling bankrupt assets is divided into three main phases: the preparation stage before the execution of liquidation, the implementation of formal liquidation, and post-completion evaluation of the liquidation process. The operational stages regulated in detail in the laws and regulations include asset inventory, creditor verification, distribution of liquidation proceeds, and final administrative settlement. The implementation of each stage must refer to the principle of prudence and legal compliance to prevent potential disputes in the future (Ginting, 2019:190).

In managing bankrupt assets, the Curator must evaluate their market or liquidation value by utilising the services of an appraiser or a special team. This stage aims to determine accurate price parameters before continuing the liquidation process. Furthermore, preparations for the general sale of bankrupt assets are carried out through coordination with official agencies such as the State Assets and Auction Service Office (KPKNL) or through the pre-auction stage with the assistance of the Auction House.

The sale of bankrupt assets is generally a top priority, as stipulated in the principles of bankruptcy law. If this method is ineffective, liquidation can be carried out privately (underhanded) as an alternative. After the sale process, the Curator is responsible for compiling and publishing a distribution list of the sale proceeds, which includes allocating funds to creditors according to the verified debt. Debt payments to creditors are carried out based on the type and nature of receivables listed in the distribution list, after obtaining approval from the supervisory judge and obtaining permanent legal force.

According to Abuyazid's analysis, public sale of bankrupt assets is considered safer and has a lower risk, especially for large-scale assets involving many parties. Within the framework of the Bankruptcy Law, liquidation through public sale does not require permission from the supervisory judge, but is based on legal provisions that require the Curator to carry out the settlement and sale of assets without the Debtor's consent. This applies when the bankrupt Debtor's business is stopped operating (going concern). Public sale is considered the optimal solution in liquidating bankrupt assets in part or whole, while implementing the principles of justice and balance that are the foundation of bankruptcy law.

At the final stage, the Curator must submit a final report covering all activities of managing the bankrupt estate, including the sales mechanism, distribution of proceeds, and payment of debts to creditors. This report is evidence of the Curator's legal accountability in carrying out the mandate by the provisions of Law Number 37 of 2004 (Ginting, 2019:191).

According to Abuyazid's analysis, auction sales are the most effective method because of four crucial complementary factors (Bustomi, 2014). First, the neutrality of the process is guaranteed through an open mechanism that eliminates differences in treatment between participants. This condition guarantees equal rights and obligations of all parties involved, thus ensuring fair implementation without bias. Second, the competitive dynamics of bargaining ensure realistic market prices. Free competition between bidders creates adequate price pressure based on the real value of the auction object while fulfilling the seller's interests. Third, internal supervision is integrated into the auction system through process transparency. Early announcements and open implementation allow participants to file objections through the vetting mechanism before the auction, thus minimizing the potential for detrimental violations. Finally, the legality of the transaction is guaranteed through a valid legal document in the form of an auction report. This document serves as written evidence that strengthens the legal position of the buyer to obtain ownership rights and serves as proof of the implementation of a valid procedure for the seller.

Article 185 paragraph (1) of the Bankruptcy Law explicitly stipulates that the Curator's settlement of bankrupt assets must be sold publicly or by auction by the procedures determined in statutory regulations. In this case study, the Curator Team of PT Karebet Mas Indonesia (In Bankruptcy), namely Sahat Poltak Siallagan, S.H., M.H., and Ruth Oktavia P, S.H., who were appointed and designated based on Decision No. 38/Pdt.Sus-PKPU/2022/PN.Niaga.Sby dated December 19, 2022, conducted a sale through auction of the bankrupt assets of PT Karebet Mas Indonesia (In Bankruptcy), against:

Table 2

No.	JENIS KENDARAAN	SPESIFIKASI	NILAI LIMIT	UANG JAMINAN
1.	Dump Truck Volvo	No. Rangka : YV2JSO2ES8A671893	Rp. 602.853.000	Rp. 120.570.600
2.	Dump Truck Volvo	No. Rangka : YV2JSO2E59A689344	Rp. 314.412.000	Rp. 62.882.400
3.	Dump Truck Volvo	No. Rangka : YV2JSO2E2BA675691	Rp. 590.747.000	Rp. 118.149.400
4.	Dump Truck Volvo	No. Rangka : YV2JSO2E49A689464	Rp. 551.262.000	Rp. 110.252.400
5.	Dump Truck Volvo	No. Rangka : YV2JSO2E38A676702	Rp. 551.262.000	Rp. 110.252.400
6.	Dump Truck Volvo	No. Rangka : YV2JSO2E79A689393	Rp. 551.262.000	Rp. 110.252.400
7.	Dump Truck Volvo	No. Rangka : YV2JSO2E98A675669	Rp. 393.347.000	Rp. 78.669.400
8.	Dump Truck Volvo	No. Rangka : YV2JSO2E88A674388	Rp. 472.287.000	Rp. 94.457.400
9.	Dump Truck Volvo	No. Rangka : YV2JSO2E49A689349	Rp. 432.816.000	Rp. 86.563.200
10.	Dump Truck Volvo	No. Rangka : YV2JSO2E09A689431	Rp. 393.347.000	Rp. 78.669.400

The sale through auction conducted by the Curator Team of PT Karebet Mas Indonesia (In Bankruptcy) through the State Assets and Auction Service Office (KPKNL) Samarinda, namely as follows:

- Letter Number: S-1447/KNL.1302/2023 concerning the Determination of the Auction Schedule on September 25, 2023, using closed bidding, held on Wednesday, October 4, 2023 at 15.00 WIB server time or 16.00 WITA with the auction venue at the State Assets and Auction Service Office (KPKNL) Samarinda;
- Letter Number: S-1759/KNL.1302/2023 concerning the Determination of the Auction Schedule on November 6, 2023 using closed bidding, held on Wednesday, November 15, 2023, with a bidding deadline of 13.30 WIB server time or 14.30 WITA with the auction venue at the State Assets and Auction Service Office (KPKNL) Samarinda;
- Letter Number: S-667/KNL.1302/2024 concerning the Determination of the Auction Schedule on April 2, 2024 using closed bidding, held on Monday, April 29, 2024, with a bidding deadline of 13.50 WIB server time or 14.50 WITA with the auction venue at the State Assets and Auction Service Office (KPKNL) Samarinda.

All sales through auction have been carried out as per Auction Minutes Number 410/61/2023, dated October 4, 2023; Auction Minutes Number 410/61/2023, dated November 15, 2023; and Auction Minutes Number 145/1302/2024-01, dated April 9, 2024.

Although 10 (ten) Volvo Dump Trucks belonging to PT Karebet Mas Indonesia (in Bankruptcy) were sold through auction on October 4, 2023, and re-auctioned on November 15, 2023, and April 29, 2024, at the Samarinda State Asset and Auction Service Office (KPKNL), no one submitted a bid for the sale.

Article 1 paragraph (15) of PMK Number 122/2023 explains that an auction without a bid is an auction where there is no appointment of a buyer because there is no deposit/submission of auction bid security, there is no bid, or there is no bid that meets the requirements. Article 185, paragraph (2) of the Bankruptcy Law stipulates:

“In the event that a public sale as referred to in paragraph (1) is not achieved, a private sale may be carried out with the permission of the Supervising Judge.”

This is also in line with point 17.2 concerning the Sale of Bankrupt Assets in the Decree of the Chief Justice of the Republic of Indonesia Number: 109/KMA/SK/IV/2020 concerning the Enforcement of the Bankruptcy Case Settlement Guidelines and Suspension of Debt Payment Obligations in point 17.2 concerning the Sale of Bankrupt Assets (KMA No. 109/2020), which explains:

“In the event that a public sale/auction is not achieved, then a private sale is carried out by the Curator with the permission of the Supervising Judge (Article 185 paragraph (2) of the PKPU Law) after a public sale has been carried out at least 2 (two) times, proven by auction minutes.”

The sale of bankruptcy assets through a non-public mechanism (*ultimum remedium*) is the final option the Bankruptcy Curator can implement when open sale efforts through auction fail to achieve optimal results. This procedure can only be carried out after obtaining formal approval from the supervising judge supervising the bankruptcy process, as mandated in the applicable legal framework (Ginting, 2019:217).

From a legal economic perspective, these private transactions do not inherently mean the disposal of assets at below-market value. Empirical data shows that this mechanism provides higher legal certainty for buyers, given that the direct negotiation process allows for thorough verification of the asset's legal status and physical condition. As Elijana points out, this practice generally involves buyers who have conducted strict due diligence, so the transaction will only be finalized when the asset is free of disputes. Non-public mechanisms have proven more efficient regarding transaction costs because they avoid the administrative burden of auctions, such as publication costs, auction services, and income tax deductions usually charged on the final price. This cost efficiency often makes private transaction prices more competitive than conventional auction mechanisms.

However, the potential for deviation in determining the transaction value remains a significant challenge. To mitigate the risk of price manipulation, regulations require that the transaction value not be below the last appraisal figure conducted by an independent appraiser. The negotiation process must also consider temporal factors by setting a realistic transaction deadline to prevent asset retention practices. From a bankruptcy law perspective, the essence of this mechanism should be oriented towards optimizing the liquidation value of assets for the collective benefit of creditors, not as an instrument to enrich certain parties (Ginting, 2019: 217).

The Curator carries out the procedure for selling bankrupt assets privately after reporting to the supervisory board that the sale efforts through public auction have not yielded results. In his report, the Curator must attach an official document issued by the Auction Officer, including "No Interested Parties," as evidence of the failure to achieve buyer interest. In addition, intensive coordination is required between the Curator and the Debtor, creditors, and the creditor committee to fulfill the principles of openness and publication. If the supervisory board considers that there are strong reasons justifying the sale not through an open auction procedure, then written permission can be given through an official determination. This process ensures that the mechanism for selling bankrupt assets continues to fulfill the principle of transparency even though it is private (Ginting, 2019:218).

Suppose the actions of managing and settling bankrupt assets carried out by the Curator through auction based on PMK Number 122/2023 are not sold after a minimum of 2 (two) sales. In that case, the Curator can sell bankrupt assets privately as per Article 185 paragraph (2) of the Bankruptcy Law by referring to the limit value obtained from the assessment results carried out by an independent appraiser as referred to in number 17.2.8. Concerning the Sale of Bankrupt Assets in KMA No. 109/2020, which explains:

"The sale of bankrupt assets under hand is carried out based on an assessment by a certified appraiser, taking the highest price between the market price and the liquidation price."

Management and Settlement of Bankrupt Estates Related to the Return of Creditors' Receivables in the Implementation of Auctions That Provide Justice for Creditors

In the context of Bankruptcy, several crucial legal principles that apply include creditor equality, proportional balanced distribution, proportional structured distribution, debt collection, the principle of debt existence, and the principle of debt collection. These principles underlie the settlement of financial obligations between the Debtor and the Creditor. Further details regarding each principle will be described below:

1. Creditor Parity

The principle of creditorium parity emphasizes that all assets and wealth of the Debtor, both tangible and intangible, and those currently owned or acquired in the future, must be allocated to fulfill their debt payment obligations. The essence of this principle is justice, because injustice arises if the Debtor has assets but does not pay off their debt to the lender. In this context, although there is no direct relationship between the Debtor's assets and their debt, the law guarantees that the Debtor's assets legally become collateral for their debt obligations to the lender (Subhan, 2009:27).

In practice, this principle cannot be implemented literally, because it will create a sense of injustice. The reason for the emergence of a sense of injustice if this principle is implemented is that, in this principle, creditors have the same position as other creditors. The treatment of creditors in the bankruptcy process must be differentiated based on their

position and condition, including creditors with small or large receivables, and creditors who hold collateral and those who do not. The principle of creditorium parity, which aims to provide fair and balanced treatment among creditors, often faces challenges in its implementation. For example, in Indonesia's bankruptcy context, concurrent creditors often have difficulty obtaining their rights due to the complexity and bureaucratic nature of the bankruptcy process.

The principle of *pari passu pro rata parte*, stipulated in the Civil Code and the Bankruptcy Law, emphasizes that all creditors must be treated equally in the distribution of a bankrupt debtor's assets. However, in practice, creditors with material security often have higher priority than unsecured creditors, which can lead to unfairness.

Therefore, it is important to synergize the principle of creditorium parity with other principles such as *pari passu pro rata parte* and structured creditors. This can be done by implementing a master credit agreement and collateral sharing agreement to ensure a fair and equal position among creditors. In addition, reforming the bankruptcy legal system can help create a healthier and fairer business climate for all business actors.

Although these principles aim to provide fairness, their implementation requires strict adjustment and supervision to ensure that all creditors, regardless of the size of their receivables or their collateral status, are treated fairly (Subhan, 2009:29).

2. Pari Passo Pro Rata Parte

The principle of *pari passu pro rata parte* is a principle that regulates the distribution of debtor assets to creditors. The Debtor's assets serve as collateral for all creditors, and the distribution must be carried out fairly and equally according to their respective proportions. This means that each Creditor will receive a portion according to the amount of their receivables and their position. According to the law, some creditors are entitled to priority payment. This principle aims to ensure that the distribution of assets is carried out evenly and in line with the established legal regulations (Subhan, 2009:30).

The principle of *pari passu pro rata parte* primarily aims to produce a sense of fairness among creditors by prioritizing the principle of proportionality. This means creditors with larger receivables will receive a larger debt payment allocation from the Debtor, comparable to those with smaller receivables (Subhan, 2009:30).

The Bankruptcy Law contains several crucial principles, as stated in Article 189 paragraphs (4) and (5) and the elaboration of Article 176 letter a, which underlines how significant the protection of the rights of lenders and debtors is during the bankruptcy process. The main objective of this bankruptcy regulation is to maintain harmony between the interests of creditors and debtors, and to ensure that after a bankruptcy decision, the related parties can continue or restart their business activities. This principle also includes the proportional distribution of the Debtor's assets among the creditors, in line with the "*Pari Pasu Prorata Parte*" principle, which mandates that the Debtor's assets become joint collateral for all creditors.

In addition, bankruptcy law provides mechanisms such as *Actio Pauliana* to protect creditors from debtors who attempt to transfer their assets when filing for Bankruptcy. However, this mechanism has several weaknesses, such as differences in judges' perceptions of the Debtor's actions as fraud and the lack of participation from the parties concerned. Therefore, it is important to understand and apply these principles effectively to achieve justice and balance in the bankruptcy process.

3. Structured Pro Rata

In bankruptcy law, the concept of structured pro rata or structured creditors is a system that organizes the grouping and levels of creditors based on their respective positions or classes. This system classifies creditors into three main groups: Preferred, Concurrent, and Separatist Creditors. Preferred Creditors have priority in payment because their type of claim is recognized by law. Concurrent creditors, on the other hand, do not have special privileges or collateral, so the distribution of remaining assets is carried out proportionally after obligations to preferred and subordinate creditors are fulfilled. Meanwhile, Separatist Creditors have collateral in the form of assets belonging to the Debtor and can execute the collateral without being bound by the bankruptcy process. The main objective of this principle is to realize a fair and balanced distribution of assets among all creditors, in line with the principle of "*Pari Passu Prorata Parte*," which emphasizes equality in the distribution of assets.

According to Jerry Hoff, the classification of creditors in bankruptcy law is explained as follows:

- a. Secured Creditors: The protection granted to a creditor in an agreement establishes a robust property right. This right enables the Creditor to enforce the collateral without requiring a court ruling. This process aims to prioritize the settlement of outstanding debts using the proceeds from the sale of the collateral. The authority to enforce without court intervention is called the right of immediate enforcement (Subhan, 2009:32).
- b. Preferred Creditors: The claim is given priority to the selected creditors. The preference issue arises only when multiple creditors and the Debtor's assets cannot cover all their claims (a concursus creditorum). Creditors with priority must present their claims to the receiver for verification, and consequently, they are required to contribute a proportional share of the bankruptcy costs. Priority creditors can be classified into several categories: estate creditors, statutory priority creditors, and creditors with non-statutory priority.
- c. Unsecured Creditors: Any leftover funds from the bankruptcy estate will be allocated to unsecured creditors, as they lack priority and will only be paid after all other creditors have been fully compensated. Unsecured creditors must file their claims with the receiver for verification and are obligated to cover a proportional share of the bankruptcy expenses (Subhan, 2009:32).

Implementation in the case of the Debtor's assets shows that there are three types of creditors who are connected and have an interest in it. The three types are concurrent creditors, creditors with material security rights (often called separatist creditors), and creditors who, according to the law, have a higher position (also known as preferred creditors) (Subhan, 2009:33).

4. Debt Collection

According to Setiawan, bankruptcy law is based on the principle of debt collection law, which emphasizes that Bankruptcy is a collective action in the debt collection process. This principle aims to ensure that the Debtor's debt must be paid off immediately using the assets he owns in order to prevent dishonest actions such as hiding or misusing assets. Douglas G. Baird added that bankruptcy law functions as a collective proceeding instrument, allowing creditors to work together to determine the continuation of the Debtor's business or take other settlement steps (Subhan, 2009:40).

The principle of debt collection emphasizes the importance of prompt debt repayment by the Debtor using his assets. This is to protect the interests of creditors from potential evil actions by debtors that can reduce the value of debt collateral, such as hiding or transferring assets (Subhan, 2009:41).

The principles of debt collection through Bankruptcy underline the importance of material requirements that must be met by a legal entity in order to be declared bankrupt. Moreover, Bankruptcy is an instrument in debt collection. Article 2, paragraph (1) and Article 1, paragraph (1) stipulate that Bankruptcy is an integral part of the debt collection process (Subhan, 2009:81).

5. Debt

In bankruptcy law, the concept of debt plays a crucial role because it is the basis for examining cases. The absence of debt eliminates the essence of Bankruptcy, a legal mechanism to liquidate a debtor's assets to fulfill obligations to creditors (Subhan, 2009:34).

In the context of Bankruptcy in the United States, the term "claim" refers to debt. In bankruptcy law, the Debtor's debt is known as "debt", while the Creditor's bills or receivables are referred to as "claims". Robert L. Jordan defines "claim" in (Subhan, 2009:34) as:

- a. A payment claim, regardless of whether it has become a court decision, with a definite or uncertain value, with a fixed amount or depending on an event, whether it is collectible or not, still in dispute or not, based on law or justice, with or without collateral; or
- b. A party can seek a fair solution if a performance breach entitles them to receive payment. This right exists whether or not a court has formally ruled on the matter. It also applies regardless of the nature of the payment itself, including whether it is certain or uncertain, due or not yet due, disputed or undisputed, or secured by collateral.

6. Debt pooling

The "debt pooling" principle determines the mechanism for dividing a debtor's assets declared bankrupt among his creditors. The Curator will apply the principle of creditorium parity (equality of creditor rights) and the principle of *pari passu pro rata parte* (proportional distribution according to the amount of the bill), and consider the type of Creditor in dividing the assets (Subhan, 2009:40). Black argues that debt pooling is: "Arrangement in which the debtor settles numerous debts by dividing his assets among creditors, who may or may not agree to accept less than is owed; or an arrangement in which the debtor agrees to pay a quantity of money in installments to one creditor in exchange for the creditor forgiving all of his debt" (Subhan, 2009:41).

When a company's assets declared bankrupt are insufficient for the reasons stated in Article 178 paragraph (1) of the Bankruptcy Law, and the Curator has completed the sale of the assets, the supervisory judge will instruct the Curator to make the payment. In this context, the Curator must make a list of fund allocations, which he then submits to the supervisory judge for approval. The approval of the list of fund allocations by the supervisory judge signifies the validation of the total assets that have been disbursed or sold by the Curator, the amount of funds that will be paid and received by creditors with collateral rights who do not execute their collateral, the percentage of debt repayment for creditors without special collateral, and details of the costs of managing bankrupt assets that the Curator has incurred. This also includes the amount and payments creditors will receive with privileges, including the Curator's honorarium and bankruptcy costs (Subhan, 2009:376).

Distributing bankrupt assets is comprehensively regulated in Article 189 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Based on these provisions, the Curator must prepare a detailed distribution document after obtaining approval from the Supervisory Judge. This document must contain complete records of cash inflows and outflows, including the Curator's honorarium, creditor identity, verification of the amount of bills, and allocation of payments to each Creditor.

The Supervisory Judge can determine the allocation proportion for concurrent creditors by applying applicable legal provisions in the distribution mechanism. Regarding payment priorities, paragraph (4) provisions regulate two categories of creditors who receive special priority. First, creditors with privileges whose truth has been verified, even though their privilege status is still being proven. Second, holders of collateral rights, such as pawns, fiduciaries, mortgages, or mortgages, who have not received payment under Article 55.

The payment execution process for these two categories of priority creditors is carried out through the proceeds from the sale of assets that are collateral objects or related to their privileges. Suppose the proceeds from the auction or sale of the assets are insufficient to pay off all priority creditor bills. In that case, the remaining unpaid obligations will be transferred to concurrent creditor bills in accordance with the provisions of paragraph (5). This mechanism guarantees the principle of justice in distributing bankrupt assets while maintaining the priority hierarchy based on the type of Creditor.

Based on the provisions of Article 192, paragraphs (1) and (2) of the Bankruptcy Law, the Distribution List that the supervising judge has approved must be placed in the Court Registry for access by creditors within a period determined by the supervising judge, together with the list's ratification. The process of providing this document and the objection submission period must be informed publicly by the Curator through the mass media, as regulated in Article 15, paragraph (4) of the Bankruptcy Law.

Although the Bankruptcy Law does not explicitly regulate the hierarchy of debt payment priorities, the basic principle applied is *pari passu pro rata* derived from Article 1132 of the Civil Code. This principle emphasizes the distribution of bankrupt assets proportionally according to the amount of each Creditor's receivables, without any preference unless otherwise specified by law.

In their legal analysis, Kartini Muljadi and Gunawan Widjaja explain that the principle of *pari passu* refers to the equality of all creditors in the bankruptcy process. In contrast, *pro rata* refers to a distribution mechanism that considers the ratio of each Creditor's receivables to the total available Debtor's assets. This implementation ensures a fair distribution of assets based on the proportion of claims filed, while preventing the dominance of certain creditors in the settlement process (Muljadi & Widjaja, 2005:2).

The contents of the Distribution List as referred to in Article 189 of the Bankruptcy Law are as follows (Ginting, 2019:365):

- a. Receipts: Receipts are the money the Curator has obtained by selling the bankrupt's assets. According to Huizink, only the net proceeds from the bankrupt's assets that have been realized may be made into a balance in the Distribution List;
- b. Bankruptcy expenses or costs incurred: In the distribution list, general bankruptcy expenses are deducted from the receipts before calculating the amount to be distributed to creditors. In contrast, extraordinary bankruptcy expenses directly reduce the proceeds of the goods concerned;
 - 1) The identity of the creditors and the type of their respective claims;
 - 2) The amount of receivables that have been matched.
 - 3) The amount that must be paid to each Creditor;
 - 4) Payment of receivables from separatist creditors who do not execute their own receivables guarantee;
 - 5) Payments to bankrupt debtors if the Curator uses the bankrupt Debtor's services to help settle the bankrupt's assets;
 - 6) The amount to be paid as living expenses for the bankrupt Debtor and his family (not mandatory);
 - 7) List of household, office furniture, and equipment, and medical equipment used by the Debtor (not mandatory);
 - 8) The percentage amount of payments to preferred creditors.
 - 9) Suppose the proceeds from the sale of goods are sufficient. In that case, the Distribution List also includes payments for interest on the principal debt of the separated creditors that arose after the Debtor was declared bankrupt.
 - 10) The percentage of payment to be received by concurrent creditors, including concurrent claims submitted by separatist creditors due to underpayment of their claims. Interest claims on concurrent creditors' receivables arising after the Debtor is declared bankrupt cannot be matched and therefore cannot be paid
 - 11) The payment amount to creditors whose receivables are recognized conditionally is calculated based on a percentage of the total receivables.
 - 12) Curator's fees and bankruptcy costs.

According to the provisions in Article 193 paragraph (1) of the Bankruptcy Law, if a creditor disagrees with the Distribution List that the Curator has published under Article 192 of the Bankruptcy Law, the Creditor has the right to file an objection to the distribution list. This objection can be filed within the time limit determined by the supervising judge when the list is approved by submitting a letter of objection accompanied by the underlying reasons to the court clerk.

The Distribution List becomes a permanent guideline for the Curator to pay creditors. Huizink even emphasized that the Distribution List is like the Curator's cash book (Ginting, 2019:367). After the announcement period ends and there are no objections to the Distribution List, the Curator has a strong legal basis to make debt payments. The legal basis for the Curator's actions is stated in Article 196, paragraph (4) of the Bankruptcy Law, which regulates the Distribution List, which has executive power:

“Due to the lapse of the time limit as referred to in Article 192, without anyone submitting an objection or the objection having been decided by the Court, the Distribution List becomes binding.”

Payment of bankruptcy debt is considered to have been completed when all creditors have received full payment or when the closing Distribution List is binding. If this happens, the Debtor's Bankruptcy ends by law. However, suppose it turns out that there are still assets of the Debtor that are included in the bankruptcy estate, or there is a certain amount of reserve money that falls into the bankruptcy estate. In that case, the commercial court can order the Curator to settle the bankruptcy estate found and distribute it to creditors who have not been paid in full.

Terminating the Debtor's Bankruptcy due to complete payment or by binding the closing Distribution List does not eliminate the rights of creditors who have not received full payment to execute the Debtor's assets that will exist in the future. The basis for the creditors' rights to execute the Debtor's assets in the future is based on the debt recognition stated in the minutes of the debt verification meeting.

Although the Debtor's Bankruptcy has ended because the payment based on the closing distribution list has legal force, this does not eliminate the right of unsecured creditors to obtain full debt payment. This is as stipulated in Article 204 of the Bankruptcy Law, which regulates:

“Once the closing distribution list becomes binding, the creditors regain the right of execution against the debtor's assets regarding their unpaid receivables.”

Creditors whose receivables have been recognized and still have unpaid bills from the bankrupt estate have a responsibility to actively explore the potential assets of the Debtor that may not have been revealed during the curatorial process. Furthermore, these creditors should continue to monitor the Debtor's financial development, taking into account the possibility of the Debtor's financial condition recovering in the future, which will allow for the payment of its old debts.

The Bankruptcy Law does not provide a debt write-off mechanism for bankrupt parties. Thus, the provisions in Article 1131 and Article 1132 of the Civil Code remain binding, meaning that whenever a debtor acquires assets or wealth in the future, the obligation to pay the debt remains in effect until it is paid off. As long as the debt has not been fully paid off, the execution rights stipulated in Article 204 and Article 205 of the Bankruptcy Law will continue to apply to assets acquired by the Debtor in the future.

5. Conclusion

Considering that the auction sale of bankrupt assets, as regulated in the Minister of Finance Regulation No. 122, is ineffective (as proven in the case of ten Volvo Dump Trucks belonging to PT Karebet Mas Indonesia, which went bankrupt), the Curator has the option of a direct sale underhand. This step requires permission from the supervising judge and is based on an independent appraisal value, as mandated by Article 185 paragraph (2) of the Bankruptcy Law.

In the administration and settlement of a company's assets declared bankrupt, especially in returning funds to lenders through an auction mechanism, justice is upheld by prioritizing the order of priority of receivables by the *pari passu pro rata* principle. The concept of *pari passu pro rata* payment is an implementation of the provisions of Article 1132 of the Civil Code. The Curator is guided by the Distribution List, which is binding in distributing payments to creditors, as stipulated in Article 189 of the Bankruptcy Law. Creditors who disagree with the contents of the Distribution List have the right to file a written objection within the time limit determined by the supervising judge when the list is ratified. Furthermore, after the closing, the Distribution List comes into effect, and there are still creditors who have not received full payment or have not been paid in full. In that case, the provisions of Article 1131 and Article 1132 of the Civil Code remain relevant whenever the Debtor acquires wealth or assets in the future, as long as the Debtor's debt has not been fully paid off, as stipulated in Article 204 in conjunction with Article 205 of the Bankruptcy Law.

References

- [1] A. Bustomi, *Proses Lelang Dalam Kepailitan, Solusi*, vol. 6, no. 3, pp. 491–498, 2014.
- [2] A. Rosidi, M. Zainuddin, and I. Arifiana, “Metode Dalam Penelitian Hukum Normatif Dan Sosiologis (Field Research),” *Journal Law and Government*, vol. 2, no. 1, p. 46, 2024. [Online]. Available: <https://doi.org/10.31764/jlag.v2i1.21606>
- [3] D. Darmodiharjo and Sidharta, *Pokok-Pokok Filasafat Hukum (Apa dan Bagaimana Filsafat Hukum Indonesia)*. Jakarta: PT Gramedia Pustaka Utama, 1995.
- [4] E. R. Ginting, *Hukum Kepailitan Buku Kesatu Teori Kepailitan*. 2018.
- [5] E. R. Ginting, *Hukum Kepailitan Buku Ketiga “Pengurusan dan Pemberesan Harta Pailit”*. Jakarta: Sinar Grafika, 2019.
- [6] H. Moho, “Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan,” *Warta Dharmawangsa*, vol. 13, no. 1, 2013. [Online]. Available: <https://doi.org/10.46576/wdw.v0i59.349>
- [7] K. Muljadi and G. Widjaja, *Hak Istimewa, Gadai, dan Hipotek*. Jakarta: Prenada Media, 2005.
- [8] Keputusan Ketua Mahkamah Agung Republik Indonesia Nomor: 109/KMA/SK/IV/2020 tentang Pemberlakuan Buku Pedoman Penyelesaian Perkara Kepailitan dan Penundaan Kewajiban Pembayaran Utang.
- [9] Kitab Undang-Undang Hukum Perdata.

- [10] M. H. Subhan, *Hukum Kepailitan (Prinsip, Norma, dan Praktik di Peradilan)*, 2nd ed. Jakarta: Penerbit Kencana Prenadamedia Group, 2009.
- [11] Peraturan Bank Indonesia Nomor 14/15/PBI/2012 tentang Penilaian Kualitas Aset Bank Umum.
- [12] Peraturan Menteri Keuangan Nomor 122 Tahun 2023 tentang Petunjuk Pelaksanaan Lelang.
- [13] R. Simanjuntak, "UU Kepailitan Versus Hak-Hak Buruh," *Hukumonline.Com*, 2008. [Online]. Available: <https://www.hukumonline.com/berita/a/uu-kepailitan-versus-hak-hak-buruh-hol19305>
- [14] S. R. Sjahdeini, *Sejarah, Asas, dan Teori Hukum Kepailitan: Memahami Undang-Undang No. 37 Tahun 2004 tentang Kepailitan*. Jakarta: Pustaka Utama Grafiti, 2009.
- [15] S. Santoso, M. R. Saputra, S. Masitah, and S. Amelia, "Unraveling Piracy: Enforcement of Film Copyright in Indonesia's Digital Era," *OPTIMAL Jurnal Ekonomi Dan Manajemen*, vol. 3, no. 1, pp. 333–349, 2023. [Online]. Available: <https://doi.org/10.55606/optimal.v2i1.4456>
- [16] Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.