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Legal Protection for Concurrent Creditors Reviewed from the Principle of Business Continuity and the Principle of Justice

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Abstract

This article discusses legal protection for concurrent creditors in bankruptcy proceedings by reviewing the application of the going concern principle and the principle of fairness. Bankruptcy is a condition that requires the management of debtor assets to ensure payment of debts to creditors. However, concurrent creditors are often in a disadvantageous position in terms of payment priority, thus requiring special legal protection. The going concern principle provides an opportunity for companies to continue operating and increase the value of assets in order to optimize payments to concurrent creditors. Meanwhile, the principle of fairness ensures a fair and proportional distribution among all creditors without any arbitrary actions. Through this analysis, the article concludes that the application of both principles can improve protection for concurrent creditors and create a fairer bankruptcy process. Recommendations include improving regulations to clarify creditor protection mechanisms, stricter supervision of the implementation of the principle of fairness, and optimizing the application of the going concern principle to increase the value of assets for concurrent creditors.

Keywords: Concurrent Creditors, Legal Protection, Business Continuity.

Introduction

Business activities or businesses are always growing along with increasing human needs. To run the business, capital plays an important role in supporting business activities. The company's desire to continue to grow causes an increasing need for additional business capital. To achieve this, one of the ways taken by business actors is to borrow capital from creditors with the consequence of returning business capital according to the time period previously agreed by both parties. [1]The progress of a company's business will determine the smooth return of capital loans, while the decline of a business gives rise to conditions that hinder the return of capital, or

[1] *The Suffering of Prapti Rahayu, Introduction to Bankruptcy Law, (Bangka Belitung: UPBB Press), 2012, p. 8.*

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even cannot pay off the loan (default). Debt is not only interpreted as the inability of the debtor to pay a sum of money in the form of a loan agreement, but can also be in other agreements arising from other agreements or from transactions that provide conditions for payment. The debt repayment process does not always run well and smoothly, often the financial condition of business actors is at the lowest point of their ability to pay debts, so that they reach a state of stopping paying. [2] Every business that has the status of a legal entity and not a legal entity can experience bankruptcy or bankruptcy.[3]

Bankruptcy according to Article 1 number 1 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations defines bankruptcy as a general seizure of all assets of a bankrupt debtor whose management and settlement are carried out by a curator under the supervision of a supervising judge as regulated in the Bankruptcy Law. Bankruptcy as an effort to fulfill obligations to creditors due to the debtor being unable to be responsible for payment of a debt, cannot be implemented without a basis or is not based on certain conditions that allow creditors to request a bankruptcy petition against the debtor.[4]

The main conditions that are the starting point for submitting a bankruptcy application are regulated in the articles of the Bankruptcy Law, namely: Article 2 Paragraph (1) of the Bankruptcy Law*: " 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."*

This provision can be understood as follows: The debtor against whom the application is submitted must have at least two creditors or in other words must have more than one creditor, the debtor has not paid at least one debt to one of his creditors, and the unpaid debt must have matured and be collectible. The requirement is that there must be at least 2 (two) creditors, Article 2 paragraph 1 of the Bankruptcy Law allows a debtor to be declared bankrupt if the debtor has at least 2 (two) creditors, the requirement regarding the requirement for two or more creditors is known as *concursus creditorium* . [5]The statement above can be explained in detail as follows:

a. Existence of Debt The definition of Debt according to Article 1 number 6 of the Bankruptcy Law is:
   "Obligations which are expressed or can be expressed in amounts of money in either Indonesian or foreign currency, whether directly or which will arise at a later date or are contingent, which arise due to an agreement or law and which are obliged to be fulfilled by the debtor and if not fulfillment gives the creditor the right to obtain fulfillment from the debtor's assets."
b. At least one of the debts is due and collectible.

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[2] *Maruli Simalango, curator at Maruli Law Firm, the principle of going concern in Indonesian bankruptcy law, the principle of going concern in Indonesian bankruptcy law by <http://www.hukumonline.com>.*

[3] *Rai Mantili, Putu Eka, and Trisna Dewi, Protection of Concurrent Creditors in Bankruptcy Law, Access Journal, 2020, XII .*

[4] *Maruli Simalango, Op.cit*

[5]*Ibid*

What is meant by debt that has matured or fallen due and can be collected according to the explanation of the Bankruptcy Law is the obligation to pay debt that has fallen due, either because it has been agreed upon, because of the acceleration of the collection time as agreed upon, because of the imposition of sanctions or fines by the authorized agency, or due to a court decision, arbitrator, or arbitration panel.

c. The existence of Debtors and Creditors.
   The definition of a Debtor according to Article 1 Number 3 of the Bankruptcy Law is a person who has a debt due to an agreement or law whose payment can be collected in court. The definition of a creditor according to Article 1 number 2 of the Bankruptcy Law is a person who has a receivable due to an agreement or law whose payment can be collected in court.
d. More than one creditor.
   The main requirement to be declared bankrupt is that a debtor has at least 2 (two) creditors and has not paid off one of his debts that has matured . With the bankruptcy decision, it is hoped that the debtor's bankrupt assets can be used to repay all of the debtor's debts fairly, evenly and in a balanced manner.

To be declared bankrupt, generally the bankruptcy laws that apply in this world make insolvency a condition that must be met, namely a condition where the debtor's obligations are greater than the value of all his assets. The debtor's condition is considered to be in a state of being unable to pay all his debts. Insolvency is actually the heart of bankruptcy. [6]In Indonesia, the Bankruptcy Law and PKPU do not even make insolvency a condition as a basis for being declared bankrupt. On the contrary, insolvency will only be determined after the debtor is declared bankrupt. Bankruptcy does not immediately give the curator the authority to liquidate the bankrupt's assets. Based on bankruptcy law in Indonesia, general confiscation does not have executorial power before insolvency.[7] The debtor's insolvency will only be found after the debtor is declared bankrupt by the Commercial Court. Uniquely, bankruptcy is not determined by the Commercial Court, but is a condition that arises by law *as* a result of the following conditions:

a. If by the end of the receivables verification meeting the debtor has not offered a peace plan to pay his debts; or
b. The peace plan offered by the debtor is not approved by the majority of concurrent creditors; or
c. The Commercial Court refused to ratify the settlement that had been approved by the concurrent creditors and the decision had permanent legal force.

If there is one of the above conditions, then based on Article 178 paragraph (1) of the Bankruptcy and PKPU Law, by law the bankrupt estate is in an insolvent state. An insolvent state by law gives an executorial title to the general seizure of the bankrupt estate where the curator can start selling the bankrupt estate. The insolvent state also ends the *stay state* on the parate

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[6] *Elyta Ras Ginting, Bankruptcy Law Bankruptcy Theory, Book I, (Jakarta, PT. Cahaya Prima Sentosa), 2018, p.52*

[7] *Ibid,* p.54

execution rights over the bankrupt estate which is the guarantee of its receivables for the settlement of its receivables as if there had been no bankruptcy of the debtor. And according to Article 59 paragraph (1) and paragraph (2) of the Bankruptcy and PKPU Law, the Separatist Creditor can carry out the execution within a maximum period of 2 (two) months after the start of the insolvency state, and after the period as referred to in paragraph (1) has passed, the Curator must demand the surrender of the collateral object to be sold publicly, without reducing the rights of the creditor holding the right to the proceeds from the sale of the collateral.

After a bankruptcy decision is made, the curator has the authority to manage and settle the debtor's assets. The authority exercised by the curator in managing and settling the debtor's assets is under the supervision of the supervising judge. The curator can immediately manage and settle the bankrupt's assets even if a cassation or judicial review (PK) is filed. This is because the bankruptcy decision is immediate or *Uitvoorbaar bij voorraad* , which means that the decision can be implemented first even though a legal effort has been filed. The important role of the curator is followed by adequate skills where the curator at least has expertise in the field of civil law, expertise in the field of bankruptcy, basic expertise related to economics and finance, and expertise in the field of management. Therefore, how to manage a company that has its own characteristics in a condition that has been declared bankrupt is a challenge for curators.[8]

In the condition of insolvent bankrupt assets, the separatist creditor has the right to sell the debtor's assets that are collateral for his receivables, and after he takes the payment for himself, the remaining sales (if any) will become the rights of the concurrent creditor. Meanwhile, the preferred creditor will automatically be paid by the separatist creditor from the sales price of the goods. For example, land tax or sales tax and auction fees are directly deducted from the price of the goods. After that, the net sales proceeds (after deducting the preferred costs) are used to pay off the receivables of the separatist creditor. If there is a remaining sales price of the goods, it will be used as payment for the receivables of the concurrent creditor. [9]This shows that payments to concurrent creditors have no certainty which results in the concurrent creditor experiencing losses. For this reason, legal protection is needed for concurrent creditors so that their rights can be paid.

The position of creditors in bankruptcy is closely related to legal protection. Etymologically, legal protection consists of two syllables, namely Protection and law. In the Great Dictionary of the Indonesian Language, protection is defined as (1) a place of shelter, (2) things (actions and so on), (3) processes, methods, actions to protect. The law functions as a protection of human interests, so that human interests are protected, the law must be implemented professionally. This means that protection is an action or deed carried out in certain ways according to applicable laws or regulations. Legal protection is the right of every citizen, and on the other hand, legal protection is an obligation for the state itself, therefore the state is obliged

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[8]*Dinna Fiddaniah, Implementation of Going Concern Implementation, by the Curator Team of PT. Star Prima (In Bankruptcy), Journal of Land Science, Politics and Indonesian Law, Vol. 1, No. 2 April 2024, p. 108*

[9]*Elyta Ras Ginting. Opcit, p. 58*

to provide legal protection to its citizens. [10]Protection of creditors is very important, especially in the context of concurrent creditors. Concurrent creditors are those who have the same demands on the debtor when the debtor experiences financial difficulties or goes bankrupt [11]. In the legal system in Indonesia, concurrent creditors often face challenges in obtaining their rights, especially in the context of existing legal regulations that do not fully guarantee the sustainability of the creditor's business.

Legal protection reviewed from the Principle of Business Continuity (Going concern), is the principle of the continuity of an entity (business entity). Going concern indicates that an entity (business entity) is considered to be able to maintain its business activities in the long term, will not be liquidated in the short term. Evidence of the potential and ability to survive a business entity or company included in the category, is proven in the form of an auditor's report as a party that has the competence to assess whether a company can properly carry out its business or is eligible for bankruptcy. Erman Rajagukguk, gave his opinion on how going concern plays an important role in a bankruptcy application process, especially a bankruptcy application decision, even though it has fulfilled the requirements for a bankruptcy application as regulated in Article 2 Paragraph (1) in conjunction with Article 8 Paragraph (4) of the Bankruptcy Law, the commercial court judge should consider the condition of the debtor, the opinion of Erman Rajagukguk is as follows: " *The judge needs to consider the condition of the Debtor in deciding a bankruptcy case, when the Debtor in question still has hope to rise again, is able to pay his debts to the Creditor, if there is sufficient time and a large number of workers who depend on their fate on the company in question. In certain cases, the opportunity to continue trying needs to be given to honest Debtors and with that decision, the interests of the Creditor and the needs of the community can be protected."*[12]

Meanwhile, legal protection reviewed from the principle of justice in Bankruptcy Law contains the understanding that provisions regarding bankruptcy can fulfill the sense of justice for interested parties, namely creditors, debtors and stakeholders. This principle of justice is intended to prevent the occurrence of arbitrary actions by debtors who seek payment of their respective bills to debtors, without regard to other creditors. Associated with the granting of fresh start status, individual bankrupt debtors who have good intentions and are unable can be given another chance to try again without being burdened with the remaining debt in the past. This is based on the concept of social justice that in the socio-economic field there is a principle of freedom for everyone to seek their essential life needs. These life needs refer to the nature of humans as physical and spiritual beings, individual-social beings and personal-religious beings. Freedom to live means freedom to obtain the right to life, the right to obtain what is needed to live based on the results of their efforts in accordance with human dignity and honor, and freedom from fear. It is hoped that with the enforcement of the law with a vision of justice in the

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[10] *Rai Mantili, Putu Eka, and Trisna Dewi, Opcit*

[11] *Purnamasari, D. (2018). "Concurrent Creditors in the Perspective of Bankruptcy Law". Journal of Law and Economics, Vol. 3, No. 1, pp. 22-35.*

[12]*Simalango, Opcit*

Indonesian Bankruptcy Law, a sense of justice can be fulfilled not only for creditors and debtors but also stakeholders, because the purpose of the Bankruptcy Law is not to bankrupt as many bankrupt debtors as possible, but as a last resort so that bankrupt debtors are not able to continue being chased by debts throughout their lives, and for bankrupt debtors who are unable to afford to be restored to their good name and the return of civil rights, so that the debtor can try again and continue his life which will also have an impact on the smooth running of the business world and economic growth and the development of national development.[13]

Based on the above, the following problems can be put forward in this article: How do the Principle of Business Continuity and the Principle of Justice Influence Legal Protection for Concurrent Creditors?

Method

The methodology used in writing this research is a normative legal methodology. The normative legal research method is a library legal research conducted by examining library materials or secondary data alone. This research was conducted in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject of legal protection for concurrent creditors reviewed from the principle of business continuity and the principle of justice.

Result and Discussion

Of going concern is one of the legal principles in Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. As a legal principle stipulated in a statutory regulation, the principle of going concern has gone through an ethical assessment process by the legislators. Thus, the principle of going concern is actually the result of the embodiment of human thought which must be the essence in resolving debt disputes through bankruptcy and suspension of payments. Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, especially in the general explanation, does not mention in detail the meaning of the principle of going concern. In the general explanation, it is briefly stated that prospective debtor companies are still being carried out. Ethical assessment of the principle of going concern at least has the weight of benefit for life together, especially in the scope of business activities. The continuity of business activities is expected to have a positive impact on company owners, workers, suppliers, society and the state.[14]

The principle of *going concern* is a characteristic of modern bankruptcy law that fills the gap in the provisions for debt recharge *and* fresh *start* for debtors in the Bankruptcy Law and

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[13] *Agus Surono and Sonyendah, Application of the Principle of Justice in Settlement of Bankruptcy Cases (www.hukumonline.com)*

[14] *Catur Irianto, High Court Judge of Pekan Baru High Court, Application of the Principle of Business Continuity in Settlement of Bankruptcy Cases and Suspension of Debt Payment Obligations (PKPU)*

PKPU. Based on the principle of going concern, bankruptcy as a general seizure of the debtor's assets does not immediately stop the operation of the debtor's business which still has going concern status. The principle of going concern can even be applied by the curator immediately after the bankruptcy decision is pronounced, as contained in Article 104 of the Bankruptcy Law and PKPU. Starting from the time the debtor is declared bankrupt, the Bankruptcy Law and PKPU authorizes the curator to continue the debtor's business operations. [15]The authority granted by Article 104 of the Bankruptcy Law and PKPU to the curator to continue the debtor's business is aimed at increasing the value of the bankrupt's assets. The curator's policy to continue the debtor's business to operate as usual is also supported by other provisions such as Article 56 paragraph (3) and Article 69 paragraph (2) letter b of the Bankruptcy and PKPU Law, namely that the curator can sell the bankrupt's movable assets in the form of inventory goods even though the goods have the status of collateral and even though the bankrupt's assets are not yet insolvent. The curator is also given the authority to make fresh loans from third parties in order to continue the bankrupt debtor's business.[16]

Going concern principle refers to the assumption that a company will continue to operate and continue its business for a long period of time. This principle is important in normal situations because it ensures that the company strives to maintain stability, adapt, and utilize assets to maintain operations. However, in the context of bankruptcy, this principle is tested and it is necessary to consider whether the company still has prospects to continue its operations.

In the bankruptcy process, the principle of going concern serves to assess whether a company in financial difficulties has the potential for recovery or needs to be liquidated. If the company is considered able to survive and recover through debt restructuring or reorganization, then going concern can be used as a basis for maintaining the company's operations and optimizing returns for creditors, including concurrent creditors.

One of the bankruptcy theories, namely the Creditor' Bargain Theory, is a theoretical basis that has influenced the development of bankruptcy law. This theory was first proposed by Thomas H. Jackson in the early 1980s and followed by Robert E. Scott and Doughlas G. Baird. Bargain theory was born as an answer to the *commonpool problem* caused by the injustice of the practice of the principle of creditor priority rights (debt-collective system.) Creditor priority rights are based on the principle *of who gets what from a bankrupt debtor* and is the embodiment of the principle of distributive justice *(suum cuique tribuere).* Jackson considered this system only benefits creditors who are aggressive in acting quickly to execute their rights from the debtor's assets. Therefore, creditors who are not aggressive or are slower to execute their debtor's assets will bear the risk of not getting paid. This condition is called the commonpool problem or grab race or creditor run problem which is the main reason for the birth of creditors' bargain theory.

Jackson insists that debt collection practices based on *collecting debt* and liquidating bankrupt assets are ineffective and costly. On the other hand, creditors cannot always obtain maximum payment for their receivables only by liquidating bankrupt assets. In fact, it is not

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[15]*Elyta Ras Ginting, Loc.cit, pp. 71-72*
[16]*Ibid*

uncommon for a debtor to be declared bankrupt and none of the debtor's assets can be executed to pay off their debts. This condition is called commonpool, which is a situation where the accumulated creditors' bills cannot be paid from the existing bankrupt assets because the debtor's obligations are greater than the value of his assets. To avoid this *common pool condition*, the efficiency of managing and settling bankrupt assets must be increased with the main focus on increasing or accumulating the value of bankrupt assets while simultaneously reducing bankruptcy costs in the best way agreed upon by the creditors. For this purpose, bankruptcy law as an instrument for collective debt payment or collectivized debt collection device should ideally be aimed at providing maximum payment to each creditor by making the best efforts that can be applied to bankrupt assets *(the 'best use of the common pool).* The best effort can be achieved by bargaining interests between fellow creditors *(creditor's bargaining).* In this way, creditors agree to determine the best way to be taken to increase the value of bankrupt assets. According to Jackson, *the commonpool* problem can be avoided by bargaining agreements between creditors and debtors in choosing the ways they will take voluntarily to pay debts after the debtor has been declared bankrupt. In order to increase the acquisition value of bankrupt assets, Jackson stated that there are 4 (four) best ways (the best use) that can be taken, namely as follows.

- Reducing bankruptcy costs.
- Streamline the administration of bankrupt assets management and settlement.
- Increase the overall value of the debtor's assets.
- Utilizing collective procedures for the benefit of all creditors, including creditors whose payments are guaranteed (separate creditors and preferred creditors).

According to Jackson, these four things can be done by mutual agreement between creditors and debtors using a procedure he calls *a compulsory collective bankruptcy procedure*. In increasing the acquisition of the value of bankrupt assets in a mutually agreed manner, creditors are expected to act as if they are the *sole owners of the bankrupt assets* and try to find ways to increase the value of the bankrupt assets. Agreements to increase the value of bankrupt assets can be taken in various ways such as liquidation, continuing the debtor's business *(going concern)* or carrying out debt reorganization. Whatever method is taken, as long as it is an agreement of the creditors, the goal is only one, namely to maximize the value of the bankrupt assets and the method taken is the result of an agreement of the creditors.[17]

Factors Affecting the Success of the Implementation of the Going Concern Principle Overall, the success of the implementation of the Going Concern Principle is the result of various complex factors, both internal and external. Companies need to conduct a thorough evaluation of their financial condition and have a strong plan to address any problems that may arise in order to ensure the continuity of their operations. The success of the implementation of the Going Concern Principle *in* a company is influenced by a number of factors that must be considered and managed properly. These factors can affect the company's ability to continue as a sustainable business. The following is a detailed explanation and examples of factors that affect the success of the implementation of the going concern principle:

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[17] *Ibid*

a. Current financial condition; This factor includes the current financial condition of the company. If the company is experiencing significant losses, has outstanding debts, or is facing significant financial difficulties, this may raise doubts about the company's ability to survive. Example: An e-commerce company is experiencing significant losses due to a sharp decline in revenue during the COVID-19 pandemic, and its debts are due without timely payments.
b. Future prospects; The company's ability to generate revenue and make a profit in the future is a key consideration. Management needs to make realistic business projections and detail plans to restore the company's financial condition. Example: A manufacturing company faces stiff competition but has a strategy of expanding into global markets that will help increase revenue in the future.
c. Restructuring plan; If a company is experiencing financial difficulties, it is important to have a strong restructuring plan that supports the Principle of Business Continuity. This plan should include actions such as cost cutting, selling unproductive assets, or changing business strategies. Example: A transportation company submitted a restructuring plan that included reducing its fleet size and cutting ties with unprofitable routes.
d. Creditor support; In many cases, the success of the Going Concern Principle depends on the support of creditors. Creditors who are willing to work with a company to defer payments or offer better credit terms can help a company out of financial trouble. Example: A bank that has a loan to a company agrees to defer payments and lower interest rates during the restructuring period.
e. Capital ownership; Additional capital or new investment can help a company overcome financial difficulties. The ability to attract investors or obtain external funding can strengthen the possibility of success. Example: A startup company facing financial problems gets investment from venture capital to develop its product.
f. Government regulations and policies; Government regulations and policies, such as tax incentives or economic stimulus, can have a significant impact on a company's ability to be sustainable. Example: The government issued an economic stimulus program during the economic downturn to help companies maintain their operations.
g. Management quality; The ability of management to identify problems, plan restructuring, and manage the company through difficult times is an important factor. The quality of leadership and execution of plans greatly influences success. Example: Companies that have a management team experienced in dealing with financial crises have a greater chance of success.
h. Industry development; External factors such as industry development, market trends, or technological changes can also affect the success of the Business Continuity Principle. Companies must be able to adapt to these changes. Example: Companies operating in industries that experience significant growth such as information technology can more easily recover their financial condition.
i. Pandemics and economic crises; Unexpected events such as the COVID-19 pandemic or economic crises can have a major impact on companies. A company's ability to respond and adapt in emergency situations is key to survival. Example: Many companies that survived the

impact of the COVID-19 pandemic have responded quickly by shifting their business models online or producing products that were in demand during the pandemic.

j. Debt level; The amount of debt a company has also affects the success of the Business Continuity Principle. Excessive debt can make a company more vulnerable to financial stress. For example: A company with a high level of debt may have difficulty paying interest and principal on its debt, which can threaten the sustainability of operations.

The Principle of Justice implies that the provisions regarding bankruptcy can fulfill the sense of justice for the interested parties. This principle of justice prevents the arbitrariness of the debtor who seeks payment of their respective bills to the debtor, without regard to other creditors. The principle of justice referred to in the Bankruptcy and PKPU Laws is justice for all parties related to the debtor's bankruptcy. This means that justice is not only aimed at creditors alone, but also at debtors and third parties affected or related to the debtor's bankruptcy. For example, the debtor's workers or other third parties. This principle of justice aims to prevent the arbitrariness of creditors who have a direct interest in the bankrupt's assets, therefore the Bankruptcy and PKPU Laws regulate equal treatment in *the* debt payment process carried out through bankruptcy or PKPU.[18]

The principle of fairness in bankruptcy aims to ensure that the rights of all parties involved in this process are treated fairly, including concurrent creditors, preferential creditors, employees, shareholders and other parties. This principle of fairness includes:

1. Distribution: The rights of concurrent creditors must be fulfilled according to their role and contribution, although usually preferential creditors and secured creditors (creditors with security) have higher priority.
2. Equal Treatment: This principle also includes equal treatment for creditors in the same class, which means that concurrent creditors are treated equally without any of them gaining more advantages.

This principle of fairness is very important to ensure that no party is disproportionately disadvantaged. In practice, this principle is applied by following the priority order set out in the bankruptcy laws of various jurisdictions, where preferred and secured creditors will come first, followed by concurrent creditors. In the bankruptcy process, concurrent creditors are in a lower position compared to preferred and secured creditors who have liens or security rights. Therefore, concurrent creditors often get lower priority in terms of debt repayment.

Legal protection for unsecured creditors in bankruptcy proceedings usually involves efforts to ensure that the company's assets are distributed fairly and that there is no disproportionate arrangement between preferred and unsecured creditors. Bankruptcy laws in various countries usually provide that after the company's liquid assets have been used to pay off obligations to secured and preferred creditors, the remaining assets must be distributed to unsecured creditors in proportion.

The three elements above are closely related in the context of bankruptcy and serve to ensure that the bankruptcy process is carried out in a way that not only maintains the company's

[18] *Ibid*

chances of survival, but also fairly fulfills the rights of concurrent creditors. Here are some ways in which the principles of business continuity and fairness play a role in protecting the rights of concurrent creditors:

1. **Restructuring Opportunities to Maintain Business Continuity**
   In bankruptcy proceedings, the principle of going concern allows a company to undertake restructuring or reorganization to avoid liquidation. In this restructuring, the company seeks to continue its operations, thus potentially generating cash flow that can be used to pay off debts to concurrent creditors. The principle of fairness in this context helps ensure that the restructuring process is carried out by considering the rights of concurrent creditors, who may receive payments in installments from the results of ongoing operations.
2. **Fair and Proportional Distribution of Assets**
   The principle of equity ensures that concurrent creditors will receive a portion of the assets remaining after preferential creditors have been satisfied. Although they are of lower priority, the principle of equity still ensures that concurrent creditors receive a fair proportion. If the going concern allows the company to continue operating and making a profit, then concurrent creditors may be able to obtain a better repayment than if the company were to be liquidated immediately.
3. **Optimizing Asset Value in Business Continuity**
   If a company is liquidated directly, the company's assets are often sold at a value far below market value, which has a negative impact on concurrent creditors. However, if the company is a going concern through restructuring, the company's assets can be optimized to generate higher value. In this case, the principle of equity ensures that the value generated from the continued operation will also be distributed fairly to concurrent creditors.
4. **Reducing the Risk of Unfair Debt Avoidance**
   In some cases, companies may try to avoid paying concurrent creditors by transferring assets to certain parties. The principle of fairness in this case protects the rights of concurrent creditors by ensuring that any actions that could potentially harm them, such as unauthorized transfers of assets, can be prevented or reversed. A fair bankruptcy process ensures that decisions taken take into account the rights of concurrent creditors and do not provide unfair advantages to other parties.
5. **Minimizing Losses for All Parties Involved**
   The going concern principle allows a company to maintain operations, which can have a positive impact on all parties. Meanwhile, the principle of fairness ensures that concurrent creditors still get their rights in the bankruptcy process. If the company is able to survive, concurrent creditors have the potential to get paid from future cash flows, compared to relying solely on liquidation proceeds which may be very low.
6. **Supervision by the Court to Ensure Compliance with the Principles of Justice**
   In many legal systems, the court will oversee the bankruptcy process to ensure that any decisions made are in accordance with the principles of fairness. For example, if the continuation of the company is considered more beneficial to all parties, the court may approve a restructuring rather than a liquidation. At the same time, the court will ensure that

the protection of concurrent creditors is prioritized and that they are treated fairly during the restructuring process.

Maintaining the sustainability of a business is not an easy matter. By understanding the various obstacles that may arise, entrepreneurs can be better prepared to face challenges and take the right steps to overcome them. The success of a business depends greatly on how its owner is able to anticipate, plan, and adapt to various situations, both expected and unexpected. With the right steps and perseverance, various obstacles that exist can be faced and become opportunities to develop better.

In the context of bankruptcy, the curator plays an important role in managing the assets and operations of the bankrupt company with the aim of achieving the best outcome for creditors and other stakeholders. One approach that is often considered by curators is the principle of going concern, which means efforts to keep the company operating even in a state of bankruptcy. This going concern aims to ensure that the company continues to generate value and reduce the negative impact of direct dissolution or sale of the company's assets.

The following are some key considerations for a curator to determine whether the going concern principle should be applied in the bankruptcy process:

1. **Potential Asset Value**
   One of the most important considerations for a receiver is an evaluation of the potential value of the company's assets in operation, compared to an immediate liquidation. If the company has the potential to generate greater value through going concern, the receiver may be more inclined to maintain operations. For example, a company with long-term contracts or loyal clients may have greater value if it can continue operating, compared to a quick sale of its individual assets.
2. **Company Operational Capabilities**
   The curator must also assess the extent to which the company has adequate infrastructure, systems and management team to continue its operations in the short to medium term. If the company has efficient human resources, facilities and procedures, there is potential for the company to generate profits even under the curator's control. Conversely, if the company is already in a disorganized state, or if its assets have been overly depreciated, then the application of the going concern principle will be difficult to implement.
3. **Creditors' Needs and Expectations**
   The receivership approach also often takes into account the needs and expectations of the creditors. If most creditors are hoping to obtain short-term results through liquidation, then going concern may not be the primary choice. Conversely, if creditors are more interested in maximum results, then going concern may be a more appropriate strategy, with the expectation that the value of the company's assets and profits can be restored over time, so that creditors can obtain a better return.
4. **Business and Market Prospects**
   Business continuity also depends heavily on the business prospects and market conditions of the sector in which the company operates. The curator will evaluate whether the company is operating in a market that still has sufficient demand, or whether the market it is entering is

actually experiencing a sharp decline. If there are growth prospects or stable demand, this can support efforts to implement the principle of business continuity, conversely if business prospects weaken, this can accelerate the decision to liquidate the company.

5. **Capital Structure and Financing**

   Business continuity usually requires capital injections or temporary financing to ensure the company's operations run smoothly. Therefore, the curator must consider whether the company has access to additional funding sources or whether there are investors interested in helping the company through this difficult time. In some cases, the company can apply for post-petition financing to finance day-to-day operating needs.

   a) **Social and Economic Interests**

      Sometimes, the receiver must also consider the social and economic impact of continuing the business of the bankrupt company, especially if the company is a significant employer in a particular area. By continuing to operate the company, there is a hope of preserving jobs, making an economic contribution, and reducing the social impact that might occur if the company were to be completely terminated. This consideration usually applies to large companies that have a broad economic impact.

   b) **Reputation and Business Relationships**

      Going concern may be considered by the receiver if the company still has a good reputation or strong business relationships with clients and suppliers. In situations where the company still has the trust of clients and suppliers, and still has valuable contracts, going concern may make more sense, as non-financial assets such as reputation and relationships can provide more value than simply liquidating physical assets.

   c) **Rehabilitation or Restructuring Plan**

      If the company has a realistic and feasible restructuring plan, the receiver may choose to go ahead as a going concern. This plan may include cost-cutting measures, changes in business strategy, or leadership changes that could restore profitability. The success of this plan depends largely on the support of management and creditors.

   d) **Legal Aspects**

      In some jurisdictions, the going concern principle may have a legal basis that allows or even requires a receiver to consider this option before deciding on liquidation. In certain legal systems, a company that still has the ability to operate is required to maintain its business activities during the restructuring or rehabilitation process.

   e) **Bankruptcy Costs**

      Bankruptcy also involves costs, including legal fees, operating costs during the bankruptcy process, and the curator's fee. If the business continuity is expected to generate more revenue than these costs, then the curator is more likely to maintain the company's business operations. However, if these costs exceed the revenue generated, the business continuity will be more difficult to achieve.

   f) **Benefits for Minority Shareholders**

      In some cases, the receiver also considers the interests of minority shareholders. Although creditors are the top priority in bankruptcy, business continuity may provide better

benefits to shareholders if the company's assets can be more valuable in the long term. This will certainly be carefully considered by the receiver.

g) **Challenges of Liquidating Certain Assets**

Some types of assets may be difficult to sell in a short period of time or may have little value in liquidation. For example, assets such as patents, trademarks, or specialized equipment in a particular industry may not be attractive to buyers in an immediate liquidation. The receiver will need to consider whether these assets could provide greater value to creditors if used in the ongoing operations of the company.

h) **Existence of a Party Wishing to Purchase Part of an Asset or Operation**

In some cases, a bankrupt company may attract interest from potential buyers who wish to purchase part or all of the company's operations. If there is such interest, the receiver may explore the option of selling the company as a going concern, which will usually yield higher proceeds than a straight liquidation.

While there are many factors that support business sustainability, there are also certain challenges in implementing this principle. Some of the main challenges include:

1) Operational Fund Limitations: The curator needs to ensure that operational funds are sufficient, especially if creditors or third parties are unwilling to provide additional loans.
2) Loss of Consumer and Supplier Trust: In bankruptcy situations, a company's reputation often suffers, and this can result in a loss of trust from consumers and suppliers.
3) Managerial Challenges: The receiver may need to manage the company under difficult conditions, including dealing with a management team that is demotivated or inexperienced in handling restructuring.
4) Legal Risk: If any creditors feel aggrieved, they may sue the receiver or reject the decision to continue operations.

As for other challenges in implementing the principle of business continuity, curators also need to anticipate obstacles that affect business continuity is something that is often faced by business actors, both small, medium, and large scale. Realizing these obstacles is very important so that a business can grow and achieve the expected target. Here are some of the main obstacles that often hinder business continuity, as follows:

1. **Insufficient Capital**

Capital is one of the crucial aspects in starting and developing a business. When the capital owned is insufficient, many challenges can arise, ranging from difficulty paying for operations, lack of raw material stock, to the inability to face market competition. Some entrepreneurs often have difficulty getting loans or investments due to lack of experience, poor credit history, or a business model that is considered less promising by investors, so that business owners can look for other financing alternatives, such as looking for investors or venture capital, utilizing bank loans with more flexible terms, or even utilizing fintech peer-to-peer lending. Good budgeting and planning for capital use are also very important so that existing capital can be utilized optimally.

2. **Lack of Market Understanding**
   Understanding the market is an important aspect to determine whether the products or services offered are in accordance with consumer needs. Many businesses fail because their owners do not understand the conditions and characteristics of the target market. This understanding includes customer preferences, competitor strengths, to changes in trends and needs in the market, so the need to conduct market research before starting a business is a wise step. This includes surveys of potential customers, competitor analysis, and monitoring emerging trends. Business owners should also be willing to make adjustments to products or services according to the development of market needs.
3. **Less Effective Management**
   Poor management is often the leading cause of business failure. This can include inability to manage human resources, finances, or operational management. Poor decision-making, lack of coordination between teams, or ineffective leadership styles can lead to internal instability that ultimately disrupts business continuity. Therefore, it is necessary to create a clear organizational structure and implement an effective management system is the key to managing a business well. Business owners can take advantage of the management technology that is currently widely available, ranging from financial management software to team collaboration platforms. In addition, good leadership and the ability to communicate and delegate tasks will increase team efficiency and productivity.
4. **Tight Competition**
   Competition in the business world is something that cannot be avoided. Whether on a small or large scale, competition is often a significant challenge. Competition can come from new, more innovative businesses or even from large companies that have more resources. If a business is unable to adapt or provide unique added value, they will have difficulty competing. Therefore, the need to find *a Unique Selling Proposition* (USP) or product uniqueness is one way to survive the competition. Business owners must understand what can make their products or services different and attractive in the eyes of consumers. In addition, entrepreneurs can carry out continuous innovation and follow the latest trends to stay relevant in the market.
5. **Technology Challenges.**
   Technology is developing very rapidly, and this has a major impact on the business world. For some businesses, adapting to technology is an obstacle, both in terms of cost and understanding the technology. Many traditional businesses are ultimately left behind because they are unable to keep up with digital developments. For this reason, investment in technology is a must in today's digital era. There is no need to invest heavily, but implementing basic technology such as a Point of Sale (POS) system for retail businesses or using social media as a marketing medium can be a good start. Business owners can also attend training and seminars related to the latest technology in business.
6. **Lack of Human Resource Skills**
   Unskilled human resources (HR) can be an obstacle in running a business. Employees who are not competent in their fields or do not have a good work ethic can cause decreased

productivity, poor customer service, and consumer dissatisfaction which ultimately harms the business. For this reason, a selective recruitment process is needed and investment in employee training is very important. Training to improve skills and work motivation will have a positive impact on productivity and service quality. In addition, creating a work environment that supports the personal and professional development of employees will also help increase their loyalty to the company.

7. **Poor Financial Management**

   Poor financial management is one of the main reasons for business failure. Uncontrolled spending, lack of proper record keeping, or lack of financial planning can lead to major losses. Many entrepreneurs experience cash flow difficulties because they do not have a good understanding of how to manage their finances wisely. Therefore, the need to create a clear and detailed financial plan is very important. Business owners must record all income and expenses carefully, prepare a realistic budget, and routinely conduct financial evaluations. If necessary, you can consider using the services of an accountant or using accounting software that can help in managing business finances.

8. **Economic Crisis and Other External Factors**

   External factors such as economic crises, changes in government regulations, or natural disasters can also affect business continuity. These factors are often beyond the control of business owners, but their impact can be significant. For example, during the COVID-19 pandemic, many businesses were forced to close due to social restrictions and decreased purchasing power. Therefore, business owners need to prepare risk mitigation strategies, such as having emergency funds for unexpected situations or preparing a flexible business plan. Maintaining good relationships with suppliers, customers, and other external parties is also important for businesses to survive in difficult situations.

9. **Lack of Innovation**

   The business world is very dynamic, and companies that are stagnant or do not innovate tend to have difficulty surviving in the long term. Innovation can be in the form of product development, service improvements, or even changes in business models. Without innovation, a business can become irrelevant and lose market share. Therefore, the need to follow industry trends and continue to find ways to improve products or services is key to staying competitive. Business owners can conduct research on customer needs and feedback, follow technological developments, and collaborate with others to create new ideas.

10. **Lack of Focus on Customer Service**

    Poor customer service is one of the factors that can make customers switch to competitors. If customers feel unappreciated or receive inadequate service, they will look for other alternatives that are more satisfying. Dissatisfied customers can have a negative impact on business, especially if they share their bad experiences with others. Therefore, the need to focus on customer satisfaction is very important in maintaining loyalty and getting positive recommendations. Employee training to improve customer service skills, quick response to complaints, and attention to customer needs are some steps that can be taken to provide the best service.

In the bankruptcy process, the role of the curator is to manage and implement the settlement of the bankrupt estate for the benefit of all creditors involved. In this context, to implement the principle of going concern, the curator can collaborate with other parties or experts in certain fields. This is generally done if additional competencies are needed to ensure the sustainability and proper management of the bankrupt estate. The following is a more detailed explanation of the legal aspects, advantages, challenges, and limitations of cooperation between curators and external parties in the context of the principle of going concern.

1. **Legal Basis and Authority of the Curator**

   In the Bankruptcy Law in Indonesia, the curator is given quite broad authority to carry out his duties. The curator must act in good faith, prioritize the interests of all creditors, and maintain the optimal value of the bankrupt estate. This authority includes asset management, debt settlement, and asset sales if necessary. Basically, the curator has the freedom to choose the method that is considered best in achieving these goals. However, even though curators have autonomy in carrying out their duties, they must still comply with certain procedures, including reporting any actions taken to the commercial court or relevant parties. This means that cooperation with third parties or experts must be carried out transparently and with careful consideration. If such steps are deemed crucial to support the continuity of a business that is in the process of bankruptcy, the curator can argue that it is in the best interests of all parties.

2. **Principle of Business Continuity in Bankruptcy**

   The going concern principle is an accounting and management concept in which a business entity is assumed to continue operating in the future and will not experience liquidation or termination. In the context of bankruptcy, this principle is very relevant, especially if there is still the possibility of business restructuring or gradual asset sales to maintain the value of the business. In practice, there are several reasons why this principle is applied to bankrupt companies:

   a) **Maintaining Business Value:** When a business continues to operate, the value of assets can be more stable than if it were to be liquidated immediately. If the business were to be closed immediately, there is a high chance that the selling value of the assets would drop drastically.
   b) **Maintaining Jobs and Business Relationships:** Many parties have an interest in keeping a company running, such as employees, business partners, and customers. If the company can be saved through restructuring, the impact will be more positive for all parties.
   c) **Increased Value for Creditors:** If the company continues to operate, the value generated from business operations can help pay off some of the debt. This is certainly more beneficial for creditors than closing the business immediately.

3. **Collaboration with Third Parties or Experts**

   There are several reasons why a curator may need to engage other parties or experts in certain fields in implementing the principles of business continuity:

a) **Limited Expertise:** Curators have expertise in managing insolvency, but may not have specific expertise in certain areas, such as operational management, corporate finance, or marketing. Engaging experts will help optimize company management.
b) **Business Restructuring Strategy:** Some bankruptcy cases require complex restructuring strategies and require a deep understanding of the industry. In these situations, industry experts or financial consultants can help develop appropriate strategies to maintain business continuity.
c) **Increasing Investor or Business Partner Confidence:** Collaboration with experts or consultants can also increase the trust of stakeholders, including investors or other business partners. This can support business restructuring efforts or even encourage the interest of new investors.

4. **Procedures for Cooperation between Curators and Third Parties**

In order for this collaboration to run effectively and in accordance with the law, there are several procedures that the curator needs to pay attention to:

a) **Court or Supervisory Approval:** In some cases, especially if the collaboration involves large costs or contracts that have a significant impact on the bankrupt estate, the receiver may need to obtain approval from the court or supervisory authority. This approval is important to maintain transparency and accountability in the receiver's actions.
b) **Transparency to Creditors:** The receiver must be transparent in making decisions to work with third parties. In some cases, the receiver may need to notify creditors of this collaboration, especially if there are costs involved or the decision has the potential to impact the resolution process.
c) **Clear Contract Preparation:** Before working together, the curator must prepare a clear work contract with the third party or expert to be collaborated. This contract includes the scope of tasks, costs, duration of cooperation, and the responsibilities of each party. A clear contract reduces the potential for disputes later on.
d) **Periodic Reporting:** During the cooperation, the curator needs to make periodic reports on the progress of the business to the court or creditors. This shows that the curator is acting transparently and considering the interests of all parties.

5. **Benefits of Curator Cooperation with Third Parties**

Cooperation between curators and third parties in the context of business continuity can provide various benefits, including:

a) **Optimizing the Value of Bankrupt Assets:** By engaging experts in certain fields, curators can get advice or input to increase the value of the company's assets. For example, marketing experts can help increase sales or expand the market.
b) **Efficiency of Business Management:** With the help of experts, company management can run more efficiently and in a focused manner, so that the bankruptcy resolution process becomes faster and the results are maximized.
c) **Increasing Business Recovery Chances:** In some cases, the help of a financial expert or consultant can create an effective recovery plan so that the company can get back on its feet, even after the bankruptcy process is complete.

6. **Challenges and Risks of Cooperation with Third Parties**
   Despite the many benefits, this collaboration also brings several challenges and risks that need to be considered:
   a) **Additional Costs:** Engaging an expert or consultant means additional costs that need to be taken out of the bankruptcy estate. This can be problematic if these costs actually reduce the value of the bankruptcy estate that should be distributed to creditors.
   b) **Potential Conflict of Interest:** If the third party involved has a particular relationship with the curator or other parties in bankruptcy, then a potential conflict of interest may arise. Therefore, the curator must ensure that the parties they collaborate with are independent.
   c) **Risk of Failure:** Even with the involvement of experts, there is no guarantee that the business will continue to be successful. If the implemented strategy fails, the value of the bankrupt estate may decrease or even disappear.
7. **Limitations of Cooperation and Responsibility of the Curator**
   a) In every action, the curator must consider the existing limitations in order to remain responsible and not exceed his authority. Some limitations that must be considered are:
   b) **Legal Limitations:** The curator must ensure that this cooperation complies with legal provisions and does not violate creditors' rights.
   c) **Supervision from the Court:** The curator remains under the supervision of the court or an appointed supervisory party. This prevents the curator from taking actions that are detrimental to creditors or violate the principle of transparency.
   d) **Accountability to Creditors:** The curator is accountable to the creditors for any action taken, including if it involves a third party. Therefore, cooperation must be carried out carefully and taking into account the interests of the

Closing

Legal protection for concurrent creditors involves several important aspects, such as ensuring fair distribution of assets, reducing the risk of unfair debt avoidance, and ensuring court supervision in every restructuring or liquidation process. The lower position of concurrent creditors requires stricter regulations to protect their rights in the bankruptcy process. The influence of the principle of business continuity provides space for companies to recover and continue operating so that concurrent creditors have the opportunity to receive payment. Meanwhile, the principle of justice stipulates that the distribution of proceeds from the sale of company assets is carried out proportionally, so that no creditor feels disadvantaged. Thus, these two principles play a key role in protecting the interests of concurrent creditors in bankruptcy.

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