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The Relevance of the Pari Passu Pro Rata Parte Principle in the Distribution of Bankruptcy Estate Assets Among Concurrent Creditors

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Abstract: This study aims to examine in depth the application of the paripassu prorata partij principle in the distribution of bankruptcy assets to concurrent creditors in the Indonesian bankruptcy legal system. This principle affirms that all concurrent creditors have equal standing and are entitled to a proportional distribution of bankruptcy assets based on the amount of their respective receivables. This principle reflects the spirit of distributive justice in bankruptcy law. However, in practice, the application of this principle often faces obstacles due to the existence of creditors with special rights, such as secured creditors and preferred creditors, who receive priority for payment in accordance with guarantees or statutory provisions. This condition creates an imbalance between theory and practice, and raises the issue of justice for concurrent creditors who are the most disadvantaged parties when bankruptcy assets are insufficient. The method used is a normative juridical method with a statutory, conceptual to analyze the suitability of the application of the paripassu prorata partij principle with the provisions of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, as well as its relevance to the principles of justice and legal certainty. Thus, the paripassu prorata partij principle is not only a normative principle, but also functions effectively in creating a just bankruptcy system, guaranteeing legal protection for all creditors, and strengthening trust in the debt settlement mechanism in the Indonesian legal system.

Keywords: Paripassu Prorata Partij Principle, Bankruptcy Assets, Concurrent Creditor

INTRODUCTION

Bankruptcy is a mechanism in the legal system in Indonesia that is available and used to resolve debt issues between debtors and creditors. In the context of the modern economy, bankruptcy has a strategic purpose, not only as a means to protect the rights of creditors, but also as a tool to manage debtors' assets and liabilities fairly.¹ Arrangements related to bankruptcy are regulated by Law Number 37 of 2004 concerning Bankruptcy and Suspension

¹ Amini, "Bankruptcy Dispute Resolution Procedures by Commercial Courts," *Thengkyang Journal* 9, no. 2 (2024): 1.

of Debt Payment Obligations (UUK-PKPU). This law establishes the legal framework for bankruptcy proceedings conducted by the Commercial Court, which has special authority over bankruptcy disputes and debt restructuring.²

The essence of bankruptcy law is that it functions as a tool or means of collection or settlement of debts between creditors and debtors in a more timely and effective manner than civil procedures in general. However, the current bankruptcy law is considered to fail to provide legal certainty, as shown by the skepticism of the public in the Indonesian legal system, especially the Commercial Court, which handles bankruptcy cases.³ If the declaration of bankruptcy is decided by the Commercial Court, the result is a general confiscation of the debtor's bankruptcy assets, with one or more curators managing and settling the bankruptcy assets to settle the debtor's debts to the creditors or creditors under the supervision of the Supervisory Judge, who is appointed concurrently by the Commercial Court at the time the bankruptcy declaration is pronounced.⁴

In the contemporary world of law and economics, bankruptcy has evolved into a tool for a fairer and more sustainable economic recovery rather than simply being used to control debtors' assets. This development reflects a change in value in the contemporary regulatory system, which begins to consider the interests of all parties, including unsecured creditors or concurrent creditors.⁵ The emergence of a legal framework that no longer places concurrent creditors in a structurally subordinate position is one of the signs of this paradigm shift, which was adopted in the Netherlands, and Japan. This regulation gives concurrent creditors the right to participate in decision-making forums related to bankruptcy assets.⁶ For comparison, the Dutch bankruptcy law, which was then adopted in Indonesia through the influence of *bankruptcy regulations*, opens up opportunities for concurrent creditors based on the *Wet Homologantie Onderhands Akkoord* (WHOA) or *Act On The Confirmation of Private Restructuring Plans*, to be actively involved in the restructuring process until they can submit a restructuring proposal. In addition, the Japanese legal system shows a more methodical and transparent design of concurrent creditor protection based on the legal structure through the *Civil Rehabilitation Law and Corporate Reorganization Law*. The requirement to create a settlement plan that must be approved by the court involving the approval of creditors of all categories, including unsecured creditors, is one of the key components of this system.⁷

However, on the other hand, concurrent creditors are usually the most vulnerable group in the structure of the bankruptcy system in Indonesia. Concurrent creditors are inherently at the bottom of the bankruptcy estate distribution plan due to the absence of collateral or significant privileges held by preferred creditors and separatist creditors. Separatist creditors are given priority based on Articles 55 and 56 of the KPPPU Law, the country's legal system still uses a conservative and hierarchical settlement process, which menempatkan kreditor konkuren pada risiko tersisih dari pembagian harta bundel pailit. Hal ini terlepas dari kenyataan that the concept of *pari passu pro rata partes*, as stipulated in Articles 1131 and 1132 of the

² Hendri Jayadi, *Textbook of Bankruptcy Law and Suspension of Debt Payment Obligations* (Jakarta, n.d.).

³ Ranitya Ganindha, Nadia Chairunnisa Purbo, and Azahlia Umar, "Board of Directors as Individual Guarantors in Bankruptcy in Limited Liability Companies," *Widya Yuridika: Legal Journal* 3, no. 2 (2020): 306.

⁴ D. T Muryati, F Septiandandadi, and E Yulistyowati, "Regulation of Curatorial Responsibility for the Management and Settlement of Bankruptcy Assets in Relation to the Rights of Separatist Creditors," *Journal of Socio-Cultural Dynamics* 19, no. 1 (n.d.): 11–21.

⁵ Ulil Albab, Elisatris Gultom, and Sudaryat, "The Paradox of Concurrent Creditor Protection in Bankruptcy and PKPU Schemes in Indonesia: Comparative Analysis and Distribution Justice Perspectives," *Integrative Perspectives of Social and Science Journal (IPSSJ)* 2, no. 3 (2025): 3719.

⁶ Barry E. Adler, "The Creditors Bargain Revisited," *University of Pennsylvania Law Review* 166, no. 7 (2018): 1856.

⁷ Albab and Gultom, "The Paradox of Concurrent Creditor Protection in Bankruptcy and PKPU Schemes in Indonesia: A Comparative Analysis and Distribution Justice Perspective."

Civil Code, guarantees equal rights for all creditors without preference.⁸ This is where the relevance and urgency of the principle *of pari passu pro rata parte* needs to be studied more deeply to ensure the realization of the principle of justice for creditors in the bankruptcy process.

Formulation

1. How is the principle of *pari passu pro rata parte* in the bankruptcy legal system in Indonesia?
2. How is the relevance of the application of *the principle of pari passu pro rata parte* from John Rawls' theory of justice in the context of concurrent creditor protection?

RESEARCH METHODS

This research uses a normative juridical method with a conceptual approach and a legislative approach. The main data sources come from primary legal materials such as Law Number 37 of 2004 concerning Bankruptcy and PKPU, the Civil Code (Civil Code). Secondary legal materials are in the form of law books, scientific journals, and opinions of economic and bankruptcy law experts. The analysis is carried out in a qualitative deductive **manner**, which is to draw conclusions based on general principles to the principles of applicable bankruptcy law, then relate it to actual practices in Indonesia.

RESULTS AND DISCUSSION

Regulation of the Principle *of Pari Passu Pro Rata Parte* in the Legal System in Indonesia

The word bankruptcy comes from the root word bankruptcy in the Great Indonesian Dictionary (KBBI) bankruptcy is defined as falling (about the company and so on); bankruptcy; falling into poverty,⁹ while bankruptcy is defined as the state or condition of a person or legal entity that is no longer able to pay its obligations (in terms of its debts to the creditor).¹⁰ Based on the K-PKPU Law, bankruptcy is a general confiscation of all assets of a Bankruptcy Debtor whose management and settlement are carried out by the curator under the supervision of the supervisory judge.¹¹ Furthermore, a debtor who has two or more creditors and does not pay in full at least one debt that has become due and can be collected, is declared bankrupt by a court decision, either on his own application or on the application of one or more of his creditors.¹²

Theoretically, bankruptcy is carried out to provide justice and legal certainty to all parties involved. Bankruptcy is considered a legal way to resolve financial matters openly, safely, and under court supervision. However, many problems still arise when implementing them. Most bankruptcy cases take a long time and are expensive, and there is a chance that they are manipulated by irresponsible parties, be it the creditors who act disproportionately or the debtors who are trying to avoid their responsibilities.¹³ Arrangements regarding debt settlement through bankruptcy mechanisms regulated in the Civil Code (Civil Code) have an important role in the national legal system. This provision is closely related to the procedures for

⁸ Irfan Idham, Syahrudin Nawi, and Hamza Baharuddin, "Legal Protection of Concurrent Creditors in Bankruptcy: A Study of Decision Number. 04/Pdt.Sus-Pkpu.Pailit/2018/Pn.Niaga Mks," *Lex Generalis* 1, no. 5 (2020): 749.

⁹ Language Development and Development Agency, "bankrupt," in *Kamus Besar Bahasa Indonesia*, VI, 2016, <https://kbbi.kemdikbud.go.id/entri/pailit>.

¹⁰ Language Development and Development Agency, "bankrupt," in *Kamus Besar Bahasa Indonesia*, VI, 2016, <https://kbbi.kemdikbud.go.id/entri/pailit>.

¹¹ Article 1 number 1

¹² Article 1 number 2

¹³ Kelfin Eka Putra Banu et al., "Juridical Review of the Bankruptcy Mechanism as a Solution to Debt and Receivables Settlement in Indonesia," *Journal of Research of the Social, Political and Humanities Cluster* 4, no. 3 (2025): 887.

settlement and management of debts which are specifically regulated in the realm of civil law. In this context, the Civil Code provides a clear legal basis for the implementation of the bankruptcy process as an instrument for settling debt payment obligations that cannot be fulfilled by debtors, both individuals and legal entities. These rules establish legal procedures involving interested parties, namely creditors and debtors, and give the court the authority to determine bankruptcy status and regulate debt repayment mechanisms in a fair, measurable, and efficient manner.¹⁴

The court rules for bankruptcy to ensure that the debtor's assets, which are often insufficient, can be managed proportionately to meet his obligations to creditors.¹⁵ All assets or assets belonging to the debtor that have been declared bankrupt by the court become part of the bankruptcy estate's assets, which includes both movable and immovable objects owned at the time of the determination of the bankruptcy judgment. In addition to tangible assets, bankruptcy assets also include all the rights and obligations of the debtor that can be valued in money or have economic value. The management of bankruptcy assets is carried out with the main purpose of fulfilling the debtor's obligations to its creditors.¹⁶ This process must be carried out based on the principle of *pari passu pro rata parte*, which is the proportionate and fair distribution of the proceeds of the bankruptcy property to all creditors without any special treatment, except for those who have preferential rights as determined by law. Thus, the management and distribution of bankruptcy assets serves to ensure justice and legal certainty in the settlement of bankruptcy debtors' debts under the supervision of the curator and the court.¹⁷

The principle of *pari passu pro rata parte* means that all assets or assets belonging to the debtor are legally guaranteed for all creditors. This means that since the debtor is declared bankrupt, all the assets he owns, both movable and immovable, become objects that can be used to pay off all obligations to creditors. The distribution of the proceeds from the assets is carried out proportionally, which is in accordance with the amount of each creditor's receivables to the total debts of the debtor. Thus, each creditor has an equal legal status, without any preferential treatment to each other, except for those who have preferential rights under the provisions of the law.¹⁸ Furthermore, the principle of *pari passu pro rata parte* is also a philosophical basis as well as a rationalization of the existence of the bankruptcy legal system itself. Bankruptcy law was established to provide protection for creditors from possible arbitrary actions of debtors who are unable or unwilling to fulfill their obligations. With this principle, the distribution of the assets of bankruptcy debtors can be carried out fairly, openly, and in accordance with applicable legal rules. Therefore, this principle is not only a technical principle in the distribution of bankruptcy assets, but also a conceptual foundation that guarantees the upholding of the principles of justice and equality among creditors in the bankruptcy legal system.¹⁹

¹⁴ Rahmat Eko Prabowo and Tri Eka Saputra, "Settlement of Debtors' Debts to Creditors through Bankruptcy in the Indonesian Legal System," *VIFADA ASSUMPTION JOURNAL of LAW* 2, no. 1 (2024): 19.

¹⁵ Sahlan, "Analysis of the Decision of the Constitutional Court of the Republic of Indonesia Number 23/PUU-XIX/2021 on Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU) on the Justification of Filing Cassation Efforts that Were Previously Not Justified," *Journal of Science Collaborative* 6, no. 9 (2023): 1202.

¹⁶ Tania Puji Andriani et al., "Juridical Analysis of Legal Protection for Debtors and Creditors for Bad Loans in a Credit Agreement (Research Study at BPSK Batam City)," *Journal of Education Religion Humanities and Multidisciplinary* 1, no. 2 (2023): 340.

¹⁷ Surya Ulies Resky Simanjuntak and Dedi Harianto, "Legal Protection of the Interests of Creditors Harmed by the Debtor's Actions in the Form of Actio Pauliana Legal Remedy," *Rio Law Journal* 1, no. 2 (2025): 539.

¹⁸ Rudhy A. Lontoh, Denny Kailimang, and Benny Ponto., *Settlement of Debts and Receivables through Bankruptcy or Postponement of Debt Payment Obligations* (Bandung: Alumni, 2001).

¹⁹ *Ibid.*

The principles of *pari passu pro rata parte*, *creditorium parity*, and *structured prorata* are fundamental principles in debt settlement between debtors and creditors. These three principles affirm that all debtors' assets are common guarantees for creditors and must be distributed fairly and proportionately according to the size of each receivable. As stated by Vollmar, one of the important principles in Dutch civil law states that, "*one of the important principles of Dutch civil law laid down in the baeling, is that the creditor's rights of redress extend to all the movable property of the debtor, both that he has and that he will receive*" which can be interpreted as the right of creditors to demand repayment includes all the debtor's assets, both those that have been owned and those that they will obtain in the future. This view shows that every creditor has an equal right to the debtor's property, without any difference in treatment, unless the law provides otherwise.²⁰

Based on the provisions of Article 1132 of the Civil Code, each creditor has the same right to obtain repayment of his receivables from the debtor's assets. This principle is carried out through two important principles, namely *pari passu* and *pro rata parte*. The principle of *pari passu* means that all creditors are entitled to receive payment together without any precedence, except for those that have been otherwise determined by law. Meanwhile, the *pro rata principle of parties* emphasizes that the distribution of the repayment proceeds is carried out proportionally, in accordance with the ratio of the amount of each receivable to the total debt of the debtor.²¹ Thus, the curator has the authority to implement the provisions as stipulated in Articles 1131 and 1132 of the Civil Code, in order to ensure the grouping and distribution of the debtor's bankruptcy assets to creditors appropriately and in accordance with the law. The implementation must remain guided by the principle of *pari passu pro rata parte*, which emphasizes that all debtors' assets are mutual guarantees for creditors and the proceeds must be distributed proportionally, so that the bankruptcy settlement process can run fairly, balanced, and in accordance with the applicable legal provisions.

The Relevance of the Application of the *Pari Passu Principle of Pro Rata Parties* Reviewed from John Rawls' Theory of Justice in the Context of Concurrent Creditor Protection

John Rawls is known as one of the leading philosophers from the United States who has had a great influence in the fields of philosophy, law, economics, and politics. He became an important figure in the late 20th century thanks to his contribution to the development of the concept of justice which came to be known as the theory of justice as *fairness*. Rawls' thought was heavily influenced by the teachings of three great figures, namely John Locke, Jean-Jacques Rousseau, and Immanuel Kant. From the three, Rawls developed a theory that seeks to affirm that justice is a form of social justice based on the principles of equality and morality in society.²²

According to Rawls, justice can be understood as fairness, which is a condition in which every member of society has equal opportunities to obtain social and economic benefits, while ensuring that those who are less fortunate continue to receive protection and opportunities to improve their lives. This theory emphasizes the importance of establishing social structures and public policies that favor equal distribution of opportunities, not just formal equality. For Rawls, justice can only be realized if the policy-making process is carried out through a fair procedure, because fair results can only be born from a fair process. Thus, Rawls's theory of

²⁰ Prayogo Hindrawan et al., "The Responsibility of Curators in Applying the Principle of *Pari Passu Pro Rata Parte* in the Management and Settlement of Bankruptcy Assets," *Locus Journal of Academic Literature Review* 2, no. 8 (2023): 723.

²¹ *Ibid.*

²² Andra Triyudiana and Neneng Putri Siti Nurhayati, "The Application of the Principle of Justice as Fairness According to John Rawls in Indonesia as a Manifestation of Pancasila," *Das Sollen: Journal of Contemporary Studies of Law and Society*, 2023.

justice became an important basis for the development of legal systems and social policies that upheld the principles of morality, balance of rights, and responsibilities between individuals in a democratic society.²³ Furthermore, social institutions such as law must be designed to create fair *cooperation* between rational and equal individuals and groups. In the study of legal philosophy, Rawls distinguishes between *justice as fairness* and *justice as desert*. Justice as fairness does not judge who is more deserving of certain outcomes, but rather ensures that the basic structure of society is organized in such a way that all parties have equal opportunities to benefit from social cooperation.²⁴

In Indonesian bankruptcy law, the principle of *pari passu pro rata parte* is a fundamental principle in the mechanism for distributing bankruptcy assets to creditors. This principle emphasizes that all concurrent creditors have equal rights to the assets of the bankruptcy debtor, and the distribution of settlement proceeds is carried out proportionally according to the amount of each receivable. This principle has a long history dating back to Roman law and is the main foundation of modern bankruptcy law. However, the application of this principle raises conceptual debates when it is associated with justice theory, especially in the context of concurrent creditors who are often in a weaker position than preferred creditors or separatist creditors.

The position of concurrent creditors is determined not only by the principle of *pari passu*, but also by a legal structure that places separatist and preferential creditors in a position of priority. Under Article 55 of the Bankruptcy Law, separatist creditors such as holders of dependents or mortgagees have the right to execute their own guarantees, while Articles 56–59 provide a mechanism for the exercise of such rights with a certain time limitation. Meanwhile, Article 95 of Law Number 13 of 2003 concerning Manpower gives workers the right of preference for their wages. As a result, once the debtor's assets are used to fulfill those rights, the portion left to concurrent creditors is often very small. This raises questions about the relevance of justice from the principle of *pari passu* for creditors who are the most in need of legal protection. More than that, the principle of *pari passu* also needs to be understood not only as a technical norm, but as a reflection of moral values in economic law.

Therefore, the application of *the principle of pari passu* should not be understood as an award for the "worthiness" of a particular creditor, but as a manifestation of a legal structure that guarantees equality in the distribution of losses due to the debtor's failure. However, for this principle to be effective, affirmative policies are needed to improve structural inequality between creditors, for example through strengthening the role of the state in protecting the interests of small creditors. This also means that the procedure for settling and distributing bankruptcy assets must be transparent, accountable, and can be supervised by all creditors without any conflict of interest. If the procedure does not guarantee a fair outcome for all creditors, then the system fails to meet the Rawlsian principle of justice. In Indonesian practice, curatorial reports and receivables verification processes are often a source of disputes due to information inequality between large and small creditors. Therefore, reform of this mechanism is crucial to ensure that the principle of *pari passu* is truly carried out in the spirit of justice. If the bankruptcy law does not provide sufficient protection to the weak party or in this case the concurrent creditors, then the basic structure cannot be said to be fair. Therefore, the relevance of Rawls's theory to the principle of *pari passu* lies in the need to reconstruct the legal system so that it not only reflects formal equality, but also fights for substantive justice through the protection of the most vulnerable creditors.

²³ Muhammad Taufik, "John Rawls's Philosophy of the Theory of Justice," *Journal of Islamic Studies Mukadimah* 19, no. 1 (2023): 42.

²⁴ Samuel Freeman, *Rawls* (92: Roul¥tledeg, 2007), https://cdn.preterhuman.net/texts/thought_and_writing/philosophy/rawls.pdf.

Indonesia as a country that adheres to the civil law system, the application of *the principle of pari passu* needs to be interpreted progressively. Mere affirmation of formal equality without considering socio-economic impacts is contrary to the principles of social justice as mandated in Pancasila and the 1945 Constitution. Rawls's theory of justice can be an ethical and philosophical framework to strengthen legal protection for concurrent creditors as a manifestation of the fifth precept, "Social justice for all Indonesian people." Thus, the application of the principle *of pari passu* must be directed not only to the aspect of legal certainty, but also distributive justice that provides room for weak creditors to obtain proportionate benefits. In the end, the relevance of the application of the principle *of pari passu pro rata parte* in the perspective of John Rawls's theory of justice confirms that formal equality is not synonymous with substantive justice. Fair bankruptcy law is supposed to accommodate the different conditions of creditors by placing stronger protections for those who are most vulnerable. Through the Rawlsian approach, the principle *of pari passu* can be reconstructed into an instrument of social justice that not only regulates the distribution of bankrupt assets mathematically, but also morally and socially just. Thus, the Indonesian bankruptcy legal system can reflect the legal ideals of Pancasila and the principle of justice as fairness as initiated by Rawls.

CONCLUSION

The application *of the principle of pari passu pro rata parte* in Indonesian bankruptcy law is a concrete form of the principle of formal equality between concurrent creditors in obtaining repayment of their receivables from the assets of the bankruptcy debtor. However, this formal equality is not always in line with substantive justice, especially for small creditors who often bear the greatest losses due to the debtor's limited assets and the priority of preferred creditors and separatists. This inequality shows that the principle *of pari passu* has not fully realized social justice as mandated by the constitution and legal moral values.

Through the lens of John Rawls's theory of justice, the principle needs to be reinterpreted so as to not only emphasize *equal treatment*, but also *fair treatment*. The principle of justice as *fairness* requires that the bankruptcy legal structure pay attention to the weakest position in the system, namely concurrent creditors, by providing more protection through affirmative policies or legal reconstruction that is in their favor. Rawls's *principle of difference* teaches that inequality can only be justified if it provides benefits to the most disadvantaged parties. In this context, bankruptcy law should create a mechanism for the distribution of assets that is not only mathematically proportional, but also socially and morally just.

Thus, the application of the principle *of pari passu pro rata parte* must be developed towards a model that integrates distributive justice and procedural justice. Transparency, accountability, and effective protection of small creditors should be top priorities. The relevance of Rawls's theory confirms that legal justice is not enough to be achieved through formal equality, but must be realized through legal structures that actively improve socio-economic inequality between creditors. Only then can the *principle of pari passu* function not merely as a technical norm in the distribution of bankruptcy assets, but as an instrument of substantive justice that guarantees comprehensive protection for all creditors in the spirit of social justice and humanity.

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