

## Fair Legal Protection for Bankruptcy Respondent Debtors

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### Abstract

**Introduction:** One of the important principles regulated in the Bankruptcy Law and Postponement of Debt Payment Obligations is the Going Concern Principle, which can enable a business entity or individual to run again even though it has fallen into bankruptcy, in this case the assets belonging to the debtor can be managed by the curator to obtain income as an effort to fulfill the debtor's debts. gradually to creditors.

**Purposes of the Research:** This research aims to analyze just legal protection for debtors who are respondents to bankruptcy in the Bankruptcy Law and Postponement of Debt Payment Obligations.

**Methods of the Research:** The type of research used is normative juridical, examining positive legal norms with the concept of law as it is written in the book, namely by conducting studies of statutory regulations and literature studies.

**Results Main Findings of the Research:** The application of the principle of business continuity in bankruptcy cases and postponing debt payment obligations is within the framework of legal protection for debtors and has a positive impact on increasing the company's economic value which in turn is used to pay debts to its creditors.

**Keywords:** Legal Protection; Fair; Debtor Respondent Bankruptcy.

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## INTRODUCTION

National development is carried out to create a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Development of national law as part of national development is an effort to form legislation as a national legal system, which can guarantee certainty and benefits and fair legal protection, so as to encourage economic growth in sustainable national development.<sup>1</sup> Investment plays an important role in realizing national economic development, both foreign investment and domestic investment are important to accelerate national economic growth, create employment opportunities, regional development, and increase the country's income and foreign exchange. As more and more investors from within and outside the country enter Indonesia, the government needs to restructure investment law to ensure legal certainty for investors interested in investing their capital in Indonesia.

One of the problems that often occurs is related to investment funding which creates debt and receivable relationships between debtors and creditors, in this case banks and other parties. Banks are one of the financial institutions that have an important role in supporting

<sup>1</sup> Robiatul Adawiyah and A. Tulus Sartono, "Perlindungan Hukum Debitor Pada Pinjaman Kredit Dalam Meningkatkan Taraf Hidup," *Masalah-Masalah Hukum* 49, no. 4 (2020): 369–81, <https://doi.org/10.14710/mmh.49.4.2020.369-381>.

the running of the national economy, so the government needs to regulate national banking governance with regulations that guarantee legal certainty and business certainty for business actors who invest their capital in Indonesia.

Regarding the issue of funds for investment, banks are one source that is relied upon for funding to invest in the country. In Article 1 number 2 of Law Number 7 of 1992 as amended by Law Number 10 of 1998 concerning Banking (hereinafter abbreviated to the Banking Law) it is stated that, a bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public. in the form of credit and/or other forms in order to improve people's standard of living. Therefore, the existence of banks is intended to improve people's standard of living through business activities, saving funds, or providing funds to the community in the form of providing business credit in line with the mandate of the 1945 Constitution of the Republic of Indonesia. The role of banks is very important to support and encourage the implementation of national economic development, equalize development and maintain national economic stability. Apart from being able to be used to obtain financial support for entrepreneurs, the banking sector can also improve and expand businesses, and can absorb a lot of workers, as well as being used by the community to meet secondary needs, such as Home Ownership Loans or Warehouse Ownership Credit /Property, known as lending, or Car Ownership Loan/Vehicles. motorized vehicles known as leasing.

Apart from being a financial institution whose main activity is collecting funds from the community and channeling these funds back to the community as well as providing other banking services, banks are also business entities that collect funds from the community in the form of savings and distribute them to the community in the form of credit and/or other forms. in order to improve the standard of living of many people. Banks, apart from being financial institutions, are also economic forces that work based on the trust of the community, by collecting funds from the community in the form of savings and channeling these funds back to the community in the form of credit. The existence of banking credit really helps the availability of funds to finance national economic activities, storage of materials, financing sales credit, transportation of goods, industrial activities, trade and services.<sup>2</sup>The role of credit becomes dominant in a developing country in order to develop national economic potential. The use of credit that runs well and smoothly can develop and increase a country's economic activities. Therefore, the position of the bank becomes very vulnerable due to the provision of credit which contains what is called a "degree of risk", which can be a trigger for bad credit, namely the Debtor cannot fulfill its obligations to the bank as stated in the credit agreement due to certain reasons. Bad credit is uncollectible receivables or credit that has substandard or doubtful criteria because the debtor experiences difficulty in fulfilling obligations to the repayment bank due to certain factors.

In carrying out its business activities, banks apply the prudential principle, which means steps in implementing the prudential principle. In providing credit to debtors, apart from the debtor having collateral which will be used as a mortgage, the bank also has confidence in the debtor in his ability to repay the loan, by carrying out a careful assessment of the character, ability to run the business, business capital, implementation of the collateral and

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<sup>2</sup> Satriak Guntoro et al., "Pengertian, Ruang Lingkup Perbankan, Latar Belakang, Prinsip Dan Sejarah Perbankan Syariah Di Indonesia," *Jurnal Riset Indragiri* 1, no. 3 (2023): 216, <https://doi.org/10.61069/juri.v1i3.39>.

the debtor's business prospects as regulated. Therefore, the debtor's guarantee or collateral is something that is considered very important by the bank. The ideal (good) guarantee according to the criteria for a debtor who is considered worthy of receiving credit by the bank can be seen from: 1) Can easily help obtain credit by parties who need it; 2) Does not weaken the potential or strength of the credit recipient to carry out and continue his business; 3) Providing certainty to creditors in the sense that it is easy to use cash to pay off the debtor's debt.

The importance of collateral for creditors refers to the provisions of Article 1131 of the Civil Code, which states that the general guarantee written in Article 1131 of Book II functions as a support for the obligations regulated in Book III, so that it is a synergy between the two Books to be used as a legal banner in business activities, namely all The debtor's movable and immovable assets, both existing and future, serve as collateral for the debtor's individual obligations. The provisions of Article 1131 of the Civil Code regulate general guarantees, the fulfillment of which is based on the provisions of Article 1132 of the Civil Code, namely that the object becomes a joint guarantee for all people who owe it; The income from the sale of these objects is divided according to balance, namely according to the size of each receivable, unless there are valid reasons for priority among the receivables. Therefore, it can be said that credit collateral that is used as a mortgage will be taken into account by the bank to determine the credit ceiling limit related to the risk of the debtor failing to fulfill its obligations, because it does not provide special privileges to creditors.

Privileged receivables according to Article 1133 of the Civil Code are things that have priority among people with receivables arising from privileges, from pledges and from mortgages. Special rights as regulated in the provisions of Article 1134 of the Civil Code are a right that is given by law to a debtor so that his level is higher than that of other debtors, solely based on the nature of his receivables. In this case, pledges and mortgages are superior to privileges, except in cases where the law provides otherwise. Thus, according to the provisions of Article 1137 of the Civil Code, special rights consist of the rights of the state treasury, auction office, tax office and public bodies established by the government, to take precedence (preferred creditors), the orderly implementation of those rights, and the period of time the rights last. These are regulated in various special laws regarding these matters.

Banks that encumber objects as credit collateral are positioned as preferred creditors, that is, creditors act as collateral holders, where the debtor provides certain assets belonging to the debtor or a third party as collateral for credit repayment to the creditor, giving rise to material rights for the creditor and placing the creditor's position as a preferred creditor. whose debt fulfillment takes precedence over other creditors for the goods encumbered as collateral. Creditors who hold collateral rights, although they have the right to take precedence in repayment of their receivables among other creditors, by auction selling objects encumbered as collateral, to secure their credit when the debtor is unable to pay his debts, can submit a bankruptcy petition to the Commercial Court.

Bankruptcy is a person who is declared bankrupt by a court, and whose assets or inheritance have been designated to pay his debts. According to Ridwan Khairandy, the term bankruptcy used in Indonesia is a translation of *faillissement* (Dutch), and in the legal systems of England and the United States and several countries that follow the common law

tradition it is known as bankruptcy. Bankruptcy is everything related to the event of bankruptcy, namely the debtor has stopped paying his debts by handing over his assets which are used as collateral to be taken care of paying his debts through a curator.

Bankruptcy is regulated in Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (hereinafter abbreviated to the Bankruptcy Law and Postponement of Debt Payment Obligations).<sup>3</sup> Debtors who are in a state of bankruptcy result in the debtor's assets being controlled by the Curator for settlement, supervised by a Supervisory Judge appointed based on the Commercial Judge's determination and Debtors based on a court decision in a state of bankruptcy, the assets of the bankrupt debtor are used to pay off the debts of creditors based on their respective positions. which are divided into 3 (three) groups of creditors, namely Separatist Creditors (Banks), Preferred Creditors (Taxes, Salaries and Employee Severance Pay), and Concurrent Creditors (creditors who do not have special collateral, suppliers, individual and company creditors), which will fighting over the debtor's bankruptcy assets which are managed by the Curator who has been appointed by the Commercial Court.

The implementation of the Bankruptcy Law and Postponement of Debt Payment Obligations consists of several parts that have different aims and objectives, namely: a) The Postponement of Debt Payment Obligations application can end in peace; b) Postponement of Debt Payment Obligations application that ends in bankruptcy if peace is declared failed. With a bankruptcy decision, it applies: (1) For the sake of law and immediately; (2) General confiscation of all assets; (3) Engagements entered into after bankruptcy do not bind the bankruptcy estate, ongoing engagements are declared terminated, unless all obligations of the debtor continue to be settled by the curator; (4) If the Postponement of Debt Payment Obligations application ends in bankruptcy, there will be no further legal action (Inkracht); c) Bankruptcy petition without going through Postponement of Debt Payment Obligations, if the bankruptcy petition is granted by the panel of judges the bankruptcy applicant can still take further legal action (cassation).

One of the important principles regulated in the Bankruptcy Law and Postponement of Debt Payment Obligations is the Going Concern Principle, which can enable a business entity or individual to run again even though it has fallen into bankruptcy, in this case the assets belonging to the debtor can be managed by the curator to obtain income as an effort to fulfill the debtor's debts. gradually to creditors, in the business world, apart from human resources, capital is the main thing. If the business owner has enough money, this money will be used to capitalize his business, meaning that there is no need for other parties to provide funds as capital to run his business. However, along with the dynamics of running a business, sometimes your own money is not enough to finance business development and may not even be able to pay off debtors' debts, especially when the national economy is in a slump, such as the Covid-19 pandemic.<sup>4</sup> Therefore, financial assistance is needed from other parties, such as investors, cessors/other parties.

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<sup>3</sup> Serlika Aprita and Rio Adhitya, "Penerapan 'Asas Keadilan' Dalam Hukum Kepailitan Sebagai Perwujudan Perlindungan Hukum Bagi Debitor," *Jurnal Hukum Media Bhakti* 3, no. 1 (2019): 48, <https://doi.org/10.32501/jhmb.v3i1.44>.

<sup>4</sup> Siska Amalia Ihzra, Marlia Sastro, and Muhibuddin, "Perlindungan Hukum Terhadap Debitor Leasing Dalam Keadaan Memaksa Pandemi Covid-19 (Studi Penelitian PT. Federal International Finance Cabang Pematangsiantar)," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 4, no. 3 (2021): 308–19, <https://doi.org/10.29103/jimfh.v4i3.6346>.



If we refer to specific provisions, the principle of business continuity (going concern principle) has been regulated in the provisions of Article 104, Article 179, Article 180 and Article 181 of the Bankruptcy Law and Postponement of Debt Payment Obligations, which is intended to provide opportunities for debtors and creditors to restructuring the debt repayment of the debtor. This means that if bankruptcy occurs, it will not immediately be settled, because the going concern principle can help revive a company that has been declared bankrupt, so that the continuity of the business can have a positive impact as the best option during the Covid-19 pandemic.

Based on the Bankruptcy Law and Postponement of Debt Payment Obligations, it is emphasized that expert intervention is not required to assess a debtor's business which still has going concern value, whether it can be continued or not. This results in the fate of the bankruptcy debtor's business continuity which has become completely insolvent, being determined by the vote of the majority of concurrent creditors. Concurrent creditors may not want the bankrupt debtor's business to continue, even though the debtor's financial report shows the debtor is solvent and there is a statement from the auditor that the debtor's business is running normally (going concern). Therefore, an arrangement like this does not contradict the meaning of the going concern principle as intended in the Bankruptcy Law and Postponement of Debt Payment Obligations.

According to the perspective of national economic law, the enactment of the Bankruptcy Law and Postponement of Debt Payment Obligations is intended to provide legal protection and guarantee legal certainty in the settlement of debts between creditors and debtors in bankruptcy. The presence of the Bankruptcy Law and Postponement of Debt Payment Obligations is very important in banking law and national economic law in general, to provide legal protection and guarantee legal certainty in resolving debt-receivable relationships on a pro rata basis, because the capital owned by debtors generally comes from various sources of financing/loans. whether from banking, investment, bonds, or other engagements, which give rise to various obligations that can be assessed in terms of the amount of money. It is necessary to develop national legal instruments that provide protection and guarantee legal certainty for debtors fairly in resolving debts and receivables, by prioritizing business continuity (going concern) and guaranteeing reasonable protection for interested parties (stakeholders) in resolving bankruptcy and postponement. debt payment obligations, especially during certain times that hit the world beyond human capabilities, such as during the Covid-19 pandemic outbreak which lasted from 2020 to 2023. Therefore, this research is important to study so that we can analyze more deeply regarding protection fair law for debtors who are respondents to bankruptcy in the Bankruptcy Law and Postponement of Debt Payment Obligations.

## METHODS OF THE RESEARCH

This type of research uses normative juridical, examining positive legal norms with the concept of law as it is written in the book, namely by conducting studies of statutory regulations and literature studies. Normative juridical research is also referred to as doctrinal legal research, namely law is conceptualized as what is written in legislation or law is conceptualized as legal rules or norms which are guidelines for behavior that is considered appropriate in society.

## RESULTS AND DISCUSSION

The term debt refers to the law of engagement in civil law. Debt is every debtor's obligation to every creditor, whether to give something, do something or not do something<sup>5</sup>. The debt referred to in the Bankruptcy Law and Postponement of Debt Payment Obligations is not any obligation from the debtor to the creditor due to an agreement between them, but only as long as the obligation is in the form of an obligation to pay a sum of money, whether an obligation arising from an agreement or by law.

The definition of debt contained in bankruptcy law is an incarnation of the principles contained in Article 1131 and Article 1132 Civil Codenamely that all of the debtor's assets are used as collateral for all his actions<sup>6</sup>. In failure lisement verordenen determines a person's bankruptcy decision in the sense, every debtor who is unable to pay back the debt. Faillissementverordenen does not explicitly regulate the definition of debt, including Law Number 4 of 1998 concerning Bankruptcy which does not provide an understanding of debt. This law determines that a debtor can be declared bankrupt if he does not pay at least one debt that is due and can be collected from creditors, and the unpaid debt is in the form of principal and/or interest.

This means that a bankruptcy petition against the debtor can be made if the debtor does not pay the principal debt or does not pay the interest. New on Bankruptcy Law and Postponement of Debt Payment Obligations, is expressly regulated in Article 1 paragraph (6) which states, debt is an obligation expressed in the amount of money either in Indonesian currency or foreign currency, either directly or which will arise at a later date (contingent), which arises because of an agreement. or law and which the debtor must fulfill and if it is not fulfilled the debtor gives the creditor the right to obtain the fulfillment from the debtor's assets.

The following is requirements for bankruptcy applications as stated in Article 2 Paragraph (1) jo. Article 8 Paragraph (4) of the Bankruptcy and Postponement of Debt Payment Obligations Law, which states:<sup>7</sup> Article 2 paragraph (1) of the Bankruptcy and Postponement of Debt Payment Obligations Law: "A debtor who has two or more creditors and does not pay in full at least one debt which is due and collectible, is declared bankrupt by a court decision, either at his own request or at the request of one or more creditors." Article 8 Paragraph (4) of the Postponement of Debt Payment Obligations Bankruptcy Law: "A request for a bankruptcy declaration must be granted if there are facts or circumstances that are simply proven that the requirements for being declared bankrupt as intended in Article 2 paragraph (1) have been fulfilled."

These conditions indicate that a bankruptcy petition is very easy to submit against a company or business entity, because it is not determined by other conditions. The other conditions referred to concern the condition and ability of the company or business entity as debtor to fulfill its obligations to creditors. This capability can be seen from various aspects, including finances, assets and/or wealth owned by the company. Bankruptcy

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<sup>5</sup> Patricia Caroline Tiodor, Murendah Tjahyani, and Asmaniar, "Pembuktian Wanprestasi Perjanjian Utang Piutang Secara Lisan," *Krisna Law : Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana* 5, no. 1 (2023): 29, <https://doi.org/10.37893/krisnalaw.v5i1.208>.

<sup>6</sup> Ahmad Fadly Haryadi, Nurfaidah Said, and Marwah Marwah, "Perjanjian Utang Piutang Yang Terdapat Klausula Memberatkan," *Widya Yuridika* 6, no. 2 (2023): 283, <https://doi.org/10.31328/wy.v6i2.4245>.

<sup>7</sup> Marihot Janpieter Hutajulu, "Kajian Yuridis Klausula Arbitrase Dalam Perkara Kepailitan," *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019): 185, <https://doi.org/10.24246/jrh.2019.v3.i2.p175-192>.

applications are regulated in Article 2 paragraph (1) of the Bankruptcy Law and Postponement of Debt Payment Obligations, namely: 1) 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 requirement regarding the presence of two or more creditors are known as *concursum creditorium*; 2) The debtor does not pay at least one debt to one of his creditors, and 3) The unpaid debt must have matured and can be collected.

The above statement 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 an obligation that is stated or can be stated in the amount of money either in Indonesian currency or foreign currency, either directly or which will arise at a later date or contingent, which arises due to an agreement or law and which the debtor is obliged to fulfill and if not fulfilled gives the Creditor the right to obtain fulfillment from the Debtor's assets; b) At least one of the debts is due and can be collected. What is meant by debt that has matured or is overdue and can be collected according to the explanation of the Bankruptcy Law is the obligation to pay debt that is overdue either because it has been agreed, because of the acceleration of the collection time as agreed, because of the imposition of sanctions or fines by the authorized agency, or because of a decision by a court, arbitrator or arbitration panel; c) There are 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 repayment can be claimed before the court. The definition of creditor according to Article 1 number 2 of the Bankruptcy Law is a person who has receivables due to an agreement or law whose repayment can be claimed before the court; d) More than one creditor. The main condition for being declared bankrupt is that a debtor has at least 2 (two) creditors and has not paid in full one of his overdue debts. With this bankruptcy decision, it is hoped that the debtor's bankruptcy assets can be used to repay all of the debtor's debts fairly, evenly and in balance.

This requirement is in line with Article 1132 of the Civil Code which determines the regular distribution of all bankruptcy assets to its creditors, which is carried out based on the *pari passu prorata parte* principle. This article determines that it is not required how much receivable a creditor must collect from the debtor concerned, but requires that the debtor have a minimum of debt to two creditors. Bankruptcy is a legal consequence of the provisions of Article 1131 of the Civil Code which is one of the foundations of the Bankruptcy Law. This article states that all movable and immovable property belonging to the debtor, both current and existing, becomes collateral for the debtor's individual obligations.

The argument on this basis indicates that the debtor's assets are collateral for all his debts. General confiscation of all the debtor's assets is then distributed to all creditors in accordance with the order of creditor levels as regulated in the Law. *Going concern*, plays an important role in a bankruptcy application process, especially a decision on a bankruptcy application, 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, as for opinions 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 of getting back on his feet, being able to pay his debts to creditors, if there is sufficient time

and the large number of workers who depend on the company for their fate. concerned. In certain cases the opportunity to continue trying needs to be given to honest debtors and with this decision the interests of creditors and the needs of society can be protected. Article 178 Paragraph (1) of the Bankruptcy and Postponement of Debt Payment Obligations Law states that insolvency occurs if there is no peace and by law the bankruptcy estate is unable to pay all debts that must be paid. Procedurally in positive law, in a bankruptcy process, the bankrupt's assets are deemed to be in a state of inability to pay if: 1) No peace is offered during the verification meeting; or 2) The peace offered has been rejected; or 3) The ratification of the peace agreement has definitely been rejected.

This article only regulates the formalities regarding the bankruptcy declaration, while the substance regarding the state of inability to pay as mentioned in Article 178 Paragraph (1) of the Bankruptcy Law and Postponement of Debt Payment Obligations is not explained. This situation would be different if substantive insolvency (a state of being unable to pay) could be determined. A possible way to do this is with an insolvency test, which is carried out through a going concern audit. The state of incapacity must be defined as an effort to firstly prevent bad faith from the bankruptcy petitioner towards a company which is clearly based on the going concern principle still capable of continuing to operate and secondly to legally protect debtors who still have good faith in resolving their debts so they can carrying on his business.

Bankruptcy law, which aims to liquidate company assets, turns out to be unprofitable for creditors. Countries in Asia should implement corporate rescue in the concept of corporate bankruptcy. This corporate rescue concept can also provide protection for creditor interests in the bankruptcy process. An insolvent company can be bankrupted if the insolvent is only permanent. Bankruptcy company debtors will only use bankruptcy law to liquidate if there is a permanent financial crisis. The results of research on practical beliefs over a certain period of time can solve debt problems. On the other hand, those who believe that the role of creditors in the reorganization of insolvable companies (corporate rescue concept) is a more useful tool. The tendency for creditors to use Postponement of Debt Payment Obligations because solvent debtors do not pay their debts can also be linked to the business continuity principle adopted by the Bankruptcy Law and Postponement of Debt Payment Obligations to prioritize Postponement of Debt Payment Obligations which has a spirit of peace and bankruptcy is the ultimum remedium if peaceful efforts cannot be implemented. On the other hand, if Postponement of Debt Payment Obligations is used in bad faith, Postponement of Debt Payment Obligations can become an instrument to speed up the debtor's bankruptcy. Therefore, Postponement of Debt Payment Obligations is not yet fully an instrument for implementing corporate rescue as a concept in resolving corporate debts.

Meanwhile, the principle of business continuity is the same as corporate rescue and different from Postponement of Debt Payment Obligations, but this principle is not a legal norm in the formulation of the articles of the Bankruptcy Law and Postponement of Debt Payment Obligations. The principle of business continuity is a legal principle or principle that is formulated broadly and is the basis for bankruptcy law norms and postponing debt payment obligations. The application of the principle of business continuity is not limited to the normed text, but has a broad meaning which also includes the entire process of passing a bankruptcy decision and postponing debt payment obligations.



The application of the principle of business continuity in bankruptcy can be observed in Article 179-Article 184 of the Bankruptcy Law and Postponement of Debt Payment Obligations. In the Bankruptcy Law and Postponement of Debt Payment Obligations, there are two steps for carrying out a going concern. After the bankruptcy decision as regulated in Article 104 paragraphs (1) and (2) of the Bankruptcy Law and Postponement of Debt Payment Obligations, in essence it says that when the debtor's business has been declared bankrupt, the law still provides an opportunity for the curator to go concern/continue the bankrupt debtor's business. The principle of business continuity as stated in the General Explanation of the Bankruptcy Law and Postponement of Debt Payment Obligations allows debtors to fulfill their debt obligations to creditors in stages through the business management process carried out by the curator. This norm has been regulated in Article 104 paragraph (1) and paragraph (2) of the Bankruptcy Law and Postponement of Debt Payment Obligations which aims if the continuity of certain businesses is carried out by the curator, of course it will benefit the bankruptcy estate which is at risk of being executed first by separatist creditors.

## CONCLUSION

The principle of business continuity is a legal principle or principle that is formulated broadly and is the basis for bankruptcy law norms and postponing debt payment obligations. The application of the principle of business continuity is not limited to the normed text, but has a broad meaning which also includes the entire process of passing a bankruptcy decision and postponing debt payment obligations. The application of the principle of business continuity in bankruptcy cases and postponing debt payment obligations is within the framework of legal protection for debtors and has a positive impact on increasing the company's economic value which in turn is used to pay debts to its creditors.

## REFERENCES

- Adawiyah, Robiatul, and A. Tulus Sartono. "Perlindungan Hukum Debitor Pada Pinjaman Kredit Dalam Meningkatkan Taraf Hidup." *Masalah-Masalah Hukum* 49, no. 4 (2020): 369-81. <https://doi.org/10.14710/mmh.49.4.2020.369-381>.
- Aprita, Serlika, and Rio Adhitya. "Penerapan 'Asas Keadilan' Dalam Hukum Kepailitan Sebagai Perwujudan Perlindungan Hukum Bagi Debitor." *Jurnal Hukum Media Bhakti* 3, no. 1 (2019): 48. <https://doi.org/10.32501/jhmb.v3i1.44>.
- Haryadi, Ahmad Fadly, Nurfaidah Said, and Marwah Marwah. "Perjanjian Utang Piutang Yang Terdapat Klausula Memberatkan." *Widya Yuridika* 6, no. 2 (2023): 283. <https://doi.org/10.31328/wy.v6i2.4245>.
- Hutajulu, Marihot Janpieter. "Kajian Yuridis Klausula Arbitrase Dalam Perkara Kepailitan." *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019): 185. <https://doi.org/10.24246/jrh.2019.v3.i2.p175-192>.
- Ihzra, Siska Amalia, Marlia Sastro, and Muhibuddin. "Perlindungan Hukum Terhadap Debitor Leasing Dalam Keadaan Memaksa Pandemi Covid-19 (Studi Penelitian PT. Federal International Finance Cabang Pematangsiantar)." *Jurnal Ilmiah Mahasiswa*

*Fakultas Hukum Universitas Malikussaleh* 4, no. 3 (2021): 308–19.  
<https://doi.org/10.29103/jimfh.v4i3.6346>.

Patricia Caroline Tiodor, Murendah Tjahyani, and Asmaniar. “Pembuktian Wanprestasi Perjanjian Utang Piutang Secara Lisan.” *Krisna Law : Jurnal Mahasiswa Fakultas Hukum Universitas Krisnadwipayana* 5, no. 1 (2023): 29.  
<https://doi.org/10.37893/krisnalaw.v5i1.208>.

Satriak Guntoro, Nurnasrina, Heri Sunandar, and Hendro Lisa. “Pengertian, Ruang Lingkup Perbankan, Latar Belakang, Prinsip Dan Sejarah Perbankan Syariah Di Indonesia.” *Jurnal Riset Indragiri* 1, no. 3 (2023): 216.  
<https://doi.org/10.61069/juri.v1i3.39>.

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