

LEGAL CONSEQUENCES OF BANKRUPTCY ON INDIVIDUAL DEBTORS' RIGHTS AND ASSETS IN INDONESIA

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Abstract

This study aims to analyze the impact of bankruptcy on the personal rights of individual debtors, including restrictions on freedom of legal action, as well as consequences for property that falls into bankruptcy. Bankruptcy is a legal process that provides a mechanism for debt settlement for debtors who are unable to pay their debts to creditors. In the context of individual debtors, bankruptcy has significant legal implications for both civil rights and control over their assets. The research method employed is a normative juridical approach, utilizing a legislative framework and examining court decisions. The results show that since the bankruptcy declaration decision was issued, the right to manage and control all of the debtor's assets has passed to the curator under the supervision of the supervisory judge. Additionally, individual debtors may face restrictions on their freedom in various aspects of socio-economic life, including access to banking and business activities. Therefore, it is necessary to strike a balance between the interests of creditors and the fundamental rights of individual debtors, especially in the context of post-bankruptcy social recovery and reintegration.

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Introduction

In the Indonesian legal system, bankruptcy applies not only to companies or business entities but also to individuals. Debtors who are individuals, namely those unable to pay their debts, can file for bankruptcy through the creditor's commercial court process. In Law Number 37 of 2004, which regulates Bankruptcy and Suspension of Debt Payment Obligations or Penundaan Kewajiban Pembayaran Utang (PKPU), this regulation does not provide significantly different treatment for debtors who are legally formed as legal entities or individuals (Apriyanto & Raspita, 2024). Individual debtors tend to differ from legal entity debtors of business entities because they do not have a separation of personal and business property. So that if declared bankrupt, all of the debtor's assets can be used to pay off debts (Bachri et al., 2021).

Bankruptcy is a legal instrument used to resolve debts and receivables between debtors and creditors, collectively, with the implementation supervised by the court. In practice, bankruptcy not only impacts corporations but can also be imposed on individual debtors, that is, individuals who have debts and are unable to pay them when they mature. The determination of bankruptcy status for individual debtors has significant legal implications, both for their rights as citizens and for the control and management of their assets (Retnaningsih & Ikwansyah, 2017).

In the Indonesian legal system, Law Number 37 of 2004 concerning Kepailitan dan Penundaan Kewajiban Pembayaran Utang is the primary legal basis for regulating the bankruptcy mechanism, including for individual debtors. However, this arrangement raises various legal issues, particularly regarding the protection of the debtor's fundamental rights, including the right to residence, the right to work, and the right to access legal protection. Additionally, during the bankruptcy process, all of the debtor's assets become part of a bankruptcy estate, which the curator controls, and then used to pay creditors' debts (Sangkai, 2022). This raises questions about the limits of control over individual debtors' assets and how the principles of justice and proportionality are enforced in practice.

The urgency of this study lies in the need to critically examine how bankruptcy affects the legal position and socio-economic conditions of individual debtors. With an increasing number of individuals entangled in debt, understanding the impact of bankruptcy is crucial not only from the perspective of procedural law but also from the standpoint of human rights protection (Adriyanti et al., 2021). Therefore, this paper aims to analyze the implications of bankruptcy on the rights and control of individual debtors' property by reviewing applicable positive legal norms, judicial practices, and normative and sociological juridical approaches.

Previous research has shown that Kurnia Toha and Sonyendah Retnaningsih propose 'debt forgiveness' as a new concept in Indonesian bankruptcy law, which is a legal institution that functions as a means of alleviating the burden on debtors through the elimination of remaining debts, so that after bankruptcy proceedings end, creditors obtain the right to execute

their rights over the debtor's property (Toha & Retnaningsih, 2020). Robert et al. state that the rational choice for the Indonesian government in implementing debt repayment policies for individual debtors through debt forgiveness is primarily to protect honest but unfortunate individual debtors (Robert et al., 2022). Putu Eka Trisna Dewi analyses Article 23 of Law Number 37 of 2004 regarding the involvement of spouses in bankruptcy due to the consolidation of joint assets. However, if divorce occurs and the joint assets have not been divided, reference must be made to Law No. 1 of 1974 on Marriage and the Civil Code (Dewi, 2023). Michael D. Sousa found that the stigma surrounding personal bankruptcy has increased over time by tracking the number of consumer bankruptcy filings each year. The bankruptcy process from a social perspective should be a reference for creating fair regulations (Sousa, 2017).

Research Method

The research method used is a normative juridical method, which is an approach that focuses on the study of applicable laws and regulations, legal doctrines, and legal principles (Negara, 2023) relevant to the issue of personal debtor bankruptcy. This study analyzes the provisions in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, and evaluates the extent of legal protection provided to personal debtors within the bankruptcy legal system in Indonesia. This approach is also supported by comparative studies of legal systems in other countries, such as the United States, that already have protection and rehabilitation mechanisms for individual debtors. In addition, a conceptual analysis of the principles of justice, human rights protection, and the principle of proportionality in law is conducted to assess whether existing regulations have ensured substantive justice for personal debtors. Secondary data in the form of legal literature, court decisions, scientific journals, and related regulations are the primary materials for analyzing legal inequality and the urgency of regulatory reform in the national bankruptcy system

Results and Discussions

Legal Rules Regarding Bankruptcy of Individual Debtors

In the legal system in Indonesia, the main law that regulates bankruptcy is Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Article 2 paragraph (1) of this law explains that debtors who have two or more creditors and do not pay at least one debt that is due and collectible can be declared bankrupt through a commercial court decision. Individual debtors, unlike companies or business entities, do not separate between their wealth and the wealth of their business. All assets owned by the debtor, whether related to debt or not, will be considered bankruptcy assets that can be used to pay off debts to creditors (Gifford & Atack, 2019). In practice, this means that residential houses, personal vehicles, and work tools used to earn a living can be confiscated. The law on bankruptcy does authorize the trustee to determine the assets that must be regulated, but there are no clear provisions to protect the basic living needs of private debtors (Rachmasariningrum, 2020).

The injustice in this treatment shows that our positive law is still more focused on protecting the interests of creditors and has not given balanced attention to the survival of the debtor (Atkinson, 2020). However, in modern legal theory, protection for the weaker party must be part of the justice that is upheld in every legal product (Wacks, 2021). Personal debtors who experience bankruptcy should not necessarily be considered worthy of losing all rights to their

property. The state must ensure that the law does not harm individuals structurally, especially in economic situations that are not entirely caused by personal error.

Furthermore, Law No. 37 of 2004 also does not detail the method of recovery or rehabilitation for personal debtors after bankruptcy (Robert et al., 2022). In contrast to the legal system in some other countries, such as the United States, which applies the principle of “starting fresh” through Chapter 7 and Chapter 13 of the Bankruptcy Code, where bankrupt individuals are still protected in the right to life like citizens. Indonesia does not yet have a clear scheme to restore the legal and social capacity of debtors after bankruptcy. As a result, many individuals who go bankrupt lose not only assets but also the opportunity to rise economically and socially.

From the existing regulations, it is clear that bankruptcy against personal debtors is still a matter that requires more attention from policymakers. Amendments to the Bankruptcy Law are needed to introduce minimum protection norms for personal debtors, especially regarding the types of assets that cannot be seized and the procedure for restoring the debtor's legal status after the process is completed. Without these changes, bankruptcy law will continue to be a serious threat to individuals experiencing financial crises, rather than being a fair solution for all parties (Listokin & Mun, 2018).

Once a debtor individual is declared bankrupt by the court, all assets he or she legally owns become the property of the curator (Tryandari, 2021). The curator is responsible for recording, managing, and settling the property so that it can be used to pay debts to creditors. The legal consequences of this condition are enormous, especially for debtor individuals who do not separate personal assets from business assets. This results in almost all assets owned, whether making money or not, which are luxurious or important, at risk of being confiscated and sold.

In practice, the most important impact of bankruptcy status is the loss of the right to control and manage property. Individuals who are in debt no longer have control over the house where they live, cars, savings, and even the equipment used to earn their daily income (Argyle et al., 2021). There are no clear rules in Law No. 37 of 2004 regarding the types of assets that should be protected during the settlement process, such as a single house or personal belongings necessary for living. The absence of this rule causes individuals who are in debt to be very vulnerable to losing everything they have, even to the point that it threatens their physical and mental survival. In fact, from a human rights point of view, everyone has the right to housing, work tools, and guarantees of a decent life. When the legal process eliminates access to these resources, the state indirectly complicates the conditions experienced by individuals who are in debt. This impact is felt not only by the debtor but also by the families they depend on, who are often economically and psychologically affected by the seizure and sale of assets (Tektona & Handoko, 2022).

Another important legal impact is the loss of access to freedom of contract (Block, 2019). Individuals who are or have experienced bankruptcy often find it difficult to return to normal economic life. They have difficulty opening bank accounts, getting loans, and even in some cases, having difficulty finding work due to bankruptcy records. Although the bankruptcy period may end after settlement, these stigmas and access restrictions do not necessarily disappear. This shows that the legal impact of bankruptcy is not only temporary but can have a long-term effect on a person's survival.

This condition shows that the bankruptcy legal system in Indonesia has not provided sufficient protection for the basic rights of individuals who are in debt. When a person is in a very bad economic situation, the law should serve as a protector, not as a tool to further impoverish or stop the opportunity to rise. Therefore, there is a need for clear legal reforms

that set limits on non-confiscated property, as well as ways to gradually restore economic rights to individuals who have completed bankruptcy proceedings (Blazy & Stef, 2020).

Social Stigma and Barriers After Bankruptcy

In addition to losing property and the right to wealth, individuals who are declared bankrupt must also face very severe social and mental impacts. In our society, bankruptcy is still considered a disgrace or moral failure, not just part of the economic turnaround. People who go bankrupt are often seen as irresponsible, unable to manage their finances, or even considered to have defrauded lenders. The reality can be much more complicated as many bankruptcies occur due to global economic pressures, pandemics, or unavoidable business losses (Tektona & Handoko, 2022).

This stigma makes it difficult for individuals who have completed the bankruptcy process to return to normal functioning in society. They can lose the trust of business partners, find it difficult to get a place to live, and even experience rejection from the surrounding environment. In the long run, this condition can have a serious impact on the individual's mental health and self-confidence (Lawrence et al., 2024). Some of them feel alienated and lose motivation to get up, even though legally they are no longer in bankruptcy status after completing the property settlement process.

Obstacles also arise in administrative and economic forms. A person who has ever been bankrupt will face many difficulties when accessing official financial services, such as loans from banks, credit cards, or even opening a new account (Arcuri & Levratto, 2020). In the banking system, a record of bankruptcy is often considered a sign of high risk, so financial institutions tend to reject applications from the individual. In addition, some companies also consider "once broke" status when hiring employees, especially for positions related to finance or management.

Sadly, in Law No. 37 of 2004, there are no provisions regarding reputation restoration or social rehabilitation for bankrupt individuals. The only formal measurement is the status of "Completion of the bankruptcy period" after the entire settlement process is completed. However, there is no social or legal security that after that individuals can live normally again without experiencing discrimination. This is in contrast to some countries that provide specific protections for individuals after bankruptcy, including through public education to reduce stigma and regulations to protect against discrimination based on bankruptcy records (Tajti, 2018).

In an ideal society, bankruptcy should be seen as a legitimate legal process, not a social punishment. The state through its regulations should not only help settle debts but also ensure that once the process is complete, individuals have the opportunity to improve their lives without being labeled negatively (Kliestik et al., 2017). Therefore, it is very important to encourage regulations that not only focus on the asset settlement process, but also pay attention to social recovery schemes, economic reintegration, and protection against the stigma attached to bankruptcy status (Chin et al., 2019).

In the Indonesian legal system, the assets of individual debtors have a very important position in the context of bankruptcy, especially in explaining what happens to the assets when the debtor goes bankrupt (Saija & Sudiarawan, 2021). Individual debtor property is all forms of wealth owned by individuals, both in the form of movable and immovable objects, which can be used as objects of execution to pay their debts. As a subject of law, individual debtors have the right to manage and control their assets as long as there is no bankruptcy. However, when an individual debtor is declared bankrupt, there are restrictions on the right to control and manage his property, which leads to the process of fulfilling debt obligations through auctions or asset sales.

In general, the legal effect on the assets of individual debtors in bankruptcy cases is that all assets owned by the debtor become objects of execution that can be divided among creditors based on the order of priority that applies according to Bankruptcy Law Article 32 of Law No. 37 of 2004 concerning Bankruptcy states that after the debtor is declared bankrupt, all assets owned by the debtor, both those that existed at the time the bankruptcy judgment was rendered and the assets obtained afterward, will be included in the list of bankruptcy assets. This aims to pay off the debtor's debt obligations to existing creditors, with a mechanism that has been regulated in bankruptcy law.

In addition, Indonesian law also provides special provisions related to the settlement of debts and receivables of individual debtors that cannot be resolved through bankruptcy procedures. For example, debtors who have difficulty paying debts can apply for peace with creditors (suspension of payments) as a measure to restructure their debts and avoid liquidation of the bankruptcy property. Nonetheless, in certain situations, creditors' right to obtain payments remains a top priority in bankruptcy law (Kanda & Levmore, 2022).

Overall, the legal consequences of the assets of individual debtors in the context of bankruptcy greatly affect the debtor's business continuity and the rights of third parties related to the assets. Bankruptcy is a legal step that leads to the dissolution of part or all of the debtor's wealth to be distributed to creditors according to their priorities (Ellias & Stark, 2020). Therefore, in dealing with bankruptcy proceedings, the debtor must pay attention to the rights and obligations he has, as well as the legal impact of bankruptcy on the assets he owns.

The liability of individual debtors in bankruptcy is one of the most important legal issues in understanding the implications of bankruptcy on debtors' rights and assets, especially in the context of bankruptcy law that is developing in Indonesia. Individual debtors, as stipulated in the Civil Code and the Bankruptcy Law, have personal responsibility for the debts they have. However, with the existence of the Job Creation Law which regulates Individual Companies, the dynamics regarding the responsibility of individual debtors in bankruptcy have become more complex. This liability relates not only to the debtor's assets but also to how the debtor's legal position relates to the bankruptcy itself (Ni Kadek Winda Nandayani & Ariana, 2024).

In the Indonesian bankruptcy legal system, the individual debtor, who in this case is an individual, has a personal responsibility for an unrepayable liability. This means, that when bankruptcy occurs, all of the debtor's assets can be used as collateral or objects to fulfill his debt obligations. The bankruptcy process begins with an application from the debtor or creditor submitted to the commercial court, and if the court grants the application, then all of the debtor's assets will go into the bankruptcy estate managed by the curator to be distributed to creditors (Muhammad Dzaky et al., 2023). The liability of the individual debtor in bankruptcy has far-reaching implications, especially with the debtor's rights. One of the things that needs to be understood is that although the debtor's assets can be used as an object of fulfilling obligations, certain types of assets can still be protected by law. For example, according to bankruptcy law, there are some assets that cannot be confiscated, such as assets that are necessary for the survival of the debtor and his or her family. In addition, in practice, the curator plays a role in managing the bankruptcy estate and distributing existing assets based on applicable regulations.

However, in the context of individual debtors, one of the fundamental differences between them and business entities is that the personal liability of individual debtors is unlimited. This raises legal questions about the extent to which an individual can be burdened by debts that are beyond his financial means. If in company law, liability is limited to the amount of capital deposited in the company, then in the case of individual debtors, there is no such

restriction, so the risk faced by the debtor is greater, especially if the debt he has is much greater than the amount of available wealth (Ramadhania, 2023).

The liability of an individual debtor in bankruptcy also includes the obligation to disclose all information related to the assets and debts he or she has. One of the main tasks of debtors in the bankruptcy process is transparency in financial reporting and the assets owned. If the debtor fails to do this, then he can be sanctioned or even criminalized, considering that bankruptcy must go through a legal and fair procedure for all parties involved, including creditors. Honesty in asset disclosure is essential to ensure that the distribution of assets in the bankruptcy process is carried out proportionately to existing rights (Darling et al., 2018).

The implications of the responsibility of individual debtors in bankruptcy also have an impact on the sustainability of the business being run. In some cases, individual debtors who experience bankruptcy may choose to close their business and start over, although this is not without risk (Mayr et al., 2021). Bankruptcy law provides an opportunity for debtors to apply for business rehabilitation, but this requires approval from creditors and the court. This decision of course depends heavily on the specific situation of the debtor and their ability to demonstrate good prospects in the business they are running.

Legally, Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (Bankruptcy Law) does not explicitly contain provisions for the protection of the rights of individual debtors' families. However, in practice, the implementation of bankruptcy against individual debtors cannot be separated from the norms of civil law, family law, and human rights guaranteed by the Constitution. Individual bankruptcy means that the debtor's entire estate, including property acquired during the marriage, can be seized and made into a bankruptcy estate by the curator. This is where the big problem lies: how to fairly distinguish between the debtor's personal property and the joint family's property, including the property of his or her spouse or children that should not be the object of bankruptcy.

According to Articles 1131 and 1132 of the Civil Code, all movable and immovable goods of the debtor, both existing and future ones, are collateral for his debts. In this context, if the individual debtor is the head of the family, then the property that he or she owns with the spouse during the marriage period, especially in the joint property system (without a property separation agreement), will also be confiscated. This means that couples who are not involved in debt also bear the consequences of the bankruptcy. This situation certainly causes injustice for family members who do not have legal involvement in these debts but must lose their property because it is considered a legal entity with the debtor.

One of the main rights threatened in the bankruptcy of an individual debtor is the right to residence. In many cases, the dwelling house occupied by the debtor and his or her family becomes the object of confiscation and is auctioned off as part of the bankruptcy bond. This has a tremendous social impact, especially for children and debtor spouses. The right to residence is part of human rights guaranteed by Article 28H paragraph (1) of the 1945 Constitution, which states that everyone has the right to live a prosperous life in birth and mind, to live, and to have a good and healthy living environment. Therefore, even though the Bankruptcy Law is *lex specialis*, it is still necessary to consider the principle of proportionality and protection of the basic rights of the debtor's family.

From a juridical perspective, the principle of substantive justice and protection of the innocent needs to be prioritized. In this case, the debtor spouse who does not legally participate in the debt agreement should have the right to file an objection to the seizure of the joint property. The commercial court and the curator must be careful in sorting and assessing which assets really belong to the debtor and which should be excluded because they are directly related to the needs of the family. In some cases, the Supreme Court through its jurisprudence has

begun to point a more humane direction of protection with the interests of the debtor's family in mind, although it has not yet become a systematic and uniform practice in all commercial courts (Muhtar et al., 2023).

Conclusion

Bankruptcy of individual debtors in the Indonesian legal system has complex and profound legal implications, both for civil rights and control over debtors' property. In contrast to legal entities that have a separation of assets, individuals who are declared bankrupt must bear all the consequences of bankruptcy personally, including loss of control over property, restrictions on freedom of legal action, and post-bankruptcy social and economic barriers. Law No. 37 of 2004 has not adequately regulated the protection of the basic rights of individual debtors, such as the right to housing, work tools, and decent survival. In addition, the absence of post-bankruptcy social and economic rehabilitation mechanisms exacerbates stigma and discrimination against debtors, as well as causes psychological and social impacts on debtors' families, including spouses and children. The main contributions made in this study are the development and promotion of the fields of economic law and human rights in the interest of social and economic justice for individual debtors. The investigation suffers from limitations as it relied only on a normative approach and did not engage in observation of society to obtain empirical data that could support the formation of a more just and applicable policy.

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