

## LEGAL PROTECTION FOR CREDITORS AGAINST THE CRIMINAL ACTS OF EMBEZZLEMENT OF BANKRUPTCY ASSETS BY CORPORATIONS

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**Abstract:** Bankruptcy is a legal mechanism intended to ensure the fair and proportional distribution of a debtor's assets among its creditors in accordance with the principle of *pari passu prorata parte*. However, in practice, corporate debtors frequently commit the criminal act of embezzlement of bankruptcy assets by concealing, transferring, or reducing the value of assets that should form part of the bankruptcy estate. Such actions not only harm creditors as rightful beneficiaries but also undermine legal certainty and the effectiveness of bankruptcy law enforcement in Indonesia. This research aims to analyze the legal framework governing the criminal act of embezzlement of bankruptcy assets by corporations, examine the extent of legal certainty available to creditors, and formulate an ideal model of legal protection for creditors as victims. This study employs a normative juridical method with statutory, conceptual, and case approaches. The findings indicate a legal vacuum in procedural law concerning the criminal liability of corporations for embezzlement of bankruptcy assets. Additionally, there exists regulatory disharmony between the Criminal Code, the Bankruptcy and PKPU Law, and Supreme Court Regulation (PERMA) No. 13 of 2016 regarding the prosecution of corporate crime. Therefore, legal reform is necessary through strengthened regulations, integration of criminal asset forfeiture into the bankruptcy estate process, and the consistent enforcement of corporate criminal liability doctrines to ensure effective legal protection for creditors.

**Keywords:** Bankruptcy, Corporation, Embezzlement, Legal Protection, Creditors, Bankruptcy Estate

### Introduction

The 1997 monetary crisis had a significant impact on the legal and economic structure of Indonesia, particularly in the field of bankruptcy law. Bankruptcy, as a legal instrument, functions to ensure the fair and proportional distribution of a debtor's assets to creditors. The increase in bankruptcy cases during the post-reform era was also accompanied by a rise in various forms of corporate crime, including economic crimes committed through increasingly complex *modus operandi* in line with technological advancements.<sup>1</sup>

The development of corporations in the era of globalization resembles a double-edged sword: on the one hand, corporations contribute to national economic development, while on the other hand, they create opportunities for various legal violations. The recognition of corporations as subjects of criminal law has become essential, considering that the losses caused by corporate crimes are often far greater than those resulting from individual offenses. Nevertheless, the

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<sup>1</sup> Puslitbang Hukum dan Peradilan, "Interpretasi Tentang Makna Utang Jatuh Tempo Dalam Perkara Kepailitan" Jakarta, 2013, hlm. 23.

implementation of corporate criminal liability in Indonesia continues to face obstacles due to the absence of a specific criminal procedural law governing corporations as defendants.

In order to address this legal vacuum, the Supreme Court issued Supreme Court Regulation (PERMA) No. 13 of 2016 concerning Procedures for Handling Criminal Cases Involving Corporations. This regulation provides guidance for law enforcement officials in determining corporate criminal liability and strengthens the effectiveness of law enforcement against corporate crimes. The urgency of imposing criminal sanctions on corporations becomes increasingly apparent when the profits obtained by corporations and the losses suffered by the public reach a level that cannot be adequately addressed solely through civil sanctions are applied.<sup>2</sup>

On the other hand, the development of bankruptcy law through Law No. 37 of 2004 has strengthened mechanisms for resolving debt-related disputes. The principles of *paritas creditorium* and *pari passu prorata parte*, which form the foundation of bankruptcy law, affirm that all assets of the debtor constitute a collective guarantee for all creditors. The curator, as the party responsible for managing and liquidating the bankruptcy estate, plays a crucial role in ensuring the realization of justice in bankruptcy proceedings. However, in practice, criminal acts frequently occur during the bankruptcy process, including the embezzlement of bankruptcy assets by corporations.<sup>3</sup>

Bankruptcy constitutes a general seizure over all assets of the debtor for the benefit of all creditors. The objective of bankruptcy is the distribution of the debtor's assets by the curator to all creditors while taking into account their respective rights.<sup>4</sup> Bankruptcy law plays a vital role in commercial activities, as it provides legal certainty and protection in debt-related relationships among business actors. As a legal mechanism, bankruptcy serves as a solution for debtors who are no longer capable of fulfilling their financial obligations to creditors.<sup>5</sup>

This legal vacuum creates uncertainty that extends beyond mere technical issues of bankruptcy. World Bank data indicating that the recovery rate of bankruptcy assets in Indonesia is only approximately 11.8% reflects the low effectiveness of bankruptcy mechanisms in protecting creditors.<sup>6</sup> This figure also illustrates the frequent abuse of suspension of debt payment obligations (PKPU) and bankruptcy procedures, particularly when corporate debtors exploit regulatory loopholes to retain assets through concealed embezzlement schemes. Under such circumstances, curators face significant challenges due to the lack of coercive legal instruments to trace assets that were transferred prior to or during the bankruptcy process.

The phenomenon of embezzlement of bankruptcy assets committed by corporations raises serious legal issues, as bankruptcy regulations do not explicitly provide criminal sanctions for such conduct. When such acts fall under general criminal offenses, the authority of the curator becomes limited, and asset seizure cannot be carried out under the Bankruptcy Law. This situation results in a legal vacuum that potentially harms creditors, as assets that should be used to satisfy outstanding debts are instead concealed or transferred by corporate debtors.

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<sup>2</sup> Supreme Court Regulation (PERMA) No. 13 of 2016 on *Procedures for Handling Criminal Cases by Corporations*.

<sup>3</sup> Undang-Undang No. 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang

<sup>4</sup> Fred B.G. Tumbuan, "Pokok-Pokok Undang-Undang Tentaug Kepailitan sebagaimana diubah oleh PERPU No. 1/1998", dalam Rudy Lontoh (ed), *Penyelesaian Utang Melalui Pailit atau Pemndaan Kewajiban Pembayaran Utang*, Bandung : Alumni, 2001, hlm. 125.

<sup>6</sup> Lambok Marisi Jakobus Sidabutar, "Hukum Kepailitan dalam Eksekusi Harta Benda Korporasi sebagai Pembayaran Uang Pengganti", *Jurnal Antikorupsi INTEGRITAS*, Vol 5, No. 2, hlm. 77.

Based on these issues, this research aims to analyze the legal protection afforded to creditors as a result of criminal acts of embezzlement of bankruptcy assets committed by corporations. This study seeks to examine corporate criminal liability within the context of bankruptcy and to assess the effectiveness of existing legal instruments in providing maximum protection for creditors. Accordingly, this research is expected to contribute both academically and practically to the improvement of the criminal law and bankruptcy law systems in Indonesia.

The type of research employed in this study is normative juridical research, which is conducted by examining primary legal materials through the analysis of legal theories, concepts, principles, and statutory regulations relevant to the subject matter. Normative juridical research utilizes a statutory approach (statute approach) as its primary methodological framework.<sup>7</sup>

## **II. LEGAL PROTECTION OF CREDITORS IN RELATION TO THE CRIMINAL OFFENSE OF EMBEZZLEMENT OF BANKRUPTCY ASSETS COMMITTED BY CORPORATIONS**

The embezzlement of bankruptcy assets constitutes one of the most critical issues in bankruptcy practice in Indonesia. Such conduct is commonly carried out by corporate debtors through various methods, including asset concealment, fictitious transactions, transfers of assets to affiliated parties, manipulation of financial statements, and covert sales of assets conducted either before or after a bankruptcy declaration is issued. These practices undermine the principle of transparency and violate the principle of *pari passu prorata parte*, which serves as the foundation for the equitable distribution of bankruptcy assets among creditors.

From a normative perspective, the legal instruments currently available to prosecute perpetrators of embezzlement remain largely dependent on the provisions of the Indonesian Criminal Code (KUHP), particularly Articles 372 and 374 concerning embezzlement and Article 378 concerning fraud. In addition, the *actio pauliana* mechanism under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations may be utilized to annul legal acts of the debtor that are detrimental to creditors. However, these instruments are often considered inadequate, as the Bankruptcy Law does not provide specific criminal provisions addressing embezzlement of bankruptcy assets, resulting in a normative vacuum that weakens legal protection for creditors.

From a theoretical standpoint, legal protection doctrine emphasizes that embezzlement constitutes a violation of the principles of justice and legal certainty, as articulated by Satjipto Rahardjo and Gustav Radbruch. Within modern criminal law doctrine, corporations may be held criminally liable through approaches such as vicarious liability and corporate fault. Accordingly, criminal responsibility is not limited to individual perpetrators but may extend to the legal entity that benefits from the unlawful conduct. Corporate officers, including directors and commissioners, may also be held personally liable where bad faith is established, pursuant to the doctrine of piercing the corporate veil.

The embezzlement of bankruptcy assets directly diminishes the value of the bankruptcy estate (*boedel pailit*), thereby preventing creditors from receiving optimal repayment. Such losses are not merely material in nature but also give rise to legal uncertainty, erode trust in the bankruptcy system, and potentially generate further disputes. One of the greatest challenges in proving such offenses lies in the fictitious nature of corporations and their complex

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<sup>7</sup> World Bank, "Doing Business 2006: Resolving Insolvency", Washington DC: International Finance Corporation, 2006.

organizational structures, which often obscure the identification of decision-makers or beneficiaries of the embezzlement.

Comparative legal analysis reveals that Indonesia lags significantly behind other jurisdictions in regulating criminal sanctions for embezzlement of bankruptcy assets. Germany explicitly criminalizes such conduct under Article 283 of the German Criminal Code (Strafgesetzbuch), while the Netherlands regulates similar offenses under Articles 341–344 of the Dutch Criminal Code (Wetboek van Strafrecht). These comparative experiences demonstrate that bankruptcy law should not be treated solely as a private law regime but must be reinforced through criminal law instruments to effectively deter corporate fraud.

From the perspective of Islamic law, embezzlement of assets is regarded as a form of deceit that contradicts the principles of justice and honesty. Surah Al-Muthaffifin verses 1–3 explicitly condemn conduct that reduces the rights of others, thereby positioning the embezzlement of bankruptcy assets not only as a violation of positive law but also as a breach of ethical and moral values.

Accordingly, the embezzlement of bankruptcy assets by corporations constitutes an economic crime with systemic implications for creditors and the integrity of the bankruptcy mechanism. Legal reform of the Bankruptcy Law through the introduction of *lex specialis* criminal provisions, enhanced supervision of curators, and the strengthening of corporate criminal liability mechanisms is therefore necessary to ensure effective creditor protection and legal certainty.

Issues relating to bankruptcy and the suspension of debt payment obligations generally arise from debtor–creditor relationships originating from loan agreements or other legal obligations. As noted by Man Suparman Sastrawidjaja, legal problems emerge when a debtor fails to fulfill payment obligations as agreed<sup>8</sup>. Article 1 paragraph (6) of the Bankruptcy Law defines debt as an obligation measurable in monetary terms that gives rise to a right of claim for creditors. This definition is further expanded by Kartini Muljadi, who argues that debt encompasses all forms of obligations owed by the debtor, whether to give or to perform something.<sup>9</sup>

Legal protection for creditors under Indonesian bankruptcy law includes preventive mechanisms such as the Suspension of Debt Payment Obligations (PKPU), as regulated under Article 222 of the Bankruptcy Law, as well as settlement mechanisms through composition plans.<sup>13</sup> Creditors must nevertheless prove the formal and material existence of their claims to establish legal standing. In this regard, Munir Fuady emphasizes that creditors in bankruptcy law possess collective legal rights that must be protected through the management and liquidation of the bankruptcy estate.<sup>10</sup> This collective nature of bankruptcy law, as affirmed by Loebby Loqman, aims to prevent unhealthy competition among creditors and ensure distributive justice.<sup>11</sup>

Conceptually, the embezzlement of bankruptcy assets by corporations constitutes a form of white-collar crime, characterized by the exploitation of legal loopholes and weaknesses in oversight mechanisms. Such practices reflect the presence of moral hazard, where corporate actors engage in opportunistic behavior due to the perceived protection afforded by corporate

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<sup>8</sup> Man Suparman Sastrawidjaja, *Hukum Kepailitan di Indonesia*, Bandung : Mandar Maju, 2006.

<sup>9</sup> Kartini Muljadi & Gunawan Widjaja, *Hukum Perikatan*, Jakarta : Kencana Prenada Media, 2010, hlm.78.

<sup>10</sup> Fuady, Munir. 1998. *Hukum Pailit 1998 Dalam Teori dan Praktik*. Bandung : Penerbit Citra Aditya Bakti, hlm. 13.

<sup>11</sup> Loqman, Loebby, *Kepailitan dan PKPU dalam Teori dan Praktik*, Jakarta: Prenadamedia Group, 2018. hlm. 75.

legal status and deficiencies in law enforcement.<sup>12</sup> Fundamentally, the Indonesian bankruptcy system is designed to provide legal certainty, justice, and balance between the rights of debtors and the interests of creditors through preventive and corrective mechanisms, including *actio pauliana*.<sup>13</sup>

### III. LEGAL CERTAINTY FOR CREDITORS IN THE SETTLEMENT OF BANKRUPTCY ASSETS EMBEZZLED BY CORPORATIONS

Legal protection for creditors in bankruptcy proceedings plays a crucial role in maintaining the integrity of the legal system and preventing injustice in the administration and liquidation of bankruptcy assets. In practice, the embezzlement of bankruptcy assets by corporations constitutes one of the most significant challenges, as such conduct directly harms creditors and frustrates the fundamental objectives of bankruptcy law. This section examines various aspects of legal protection available to creditors, both preventive and repressive in nature, while also elaborating on the legal mechanisms that may be pursued when embezzlement or concealment of assets is committed by corporate debtors.

Creditors are entitled to repayment of debts from the assets of a debtor that has been declared bankrupt. However, this right is frequently obstructed by various forms of embezzlement conducted by corporations, including asset concealment, unauthorized sales, transfers to affiliated parties, or the removal of assets from financial statements. Such conduct constitutes a serious violation, as it diminishes the value of the bankruptcy estate (*boedel pailit*) that should be distributed to creditors in accordance with the principle of *pari passu prorata parte*. This principle emphasizes that bankruptcy assets function as a collective guarantee for all creditors and must be distributed proportionally rather than equally, except where statutory priority rights apply.<sup>14</sup> Accordingly, the embezzlement of assets is not merely a matter of corporate morality but a violation with significant juridical implications.

In addition, the principle of debt collection underscores that a debtor's obligations must be satisfied promptly from the debtor's assets to prevent bad faith conduct, such as concealing or misappropriating assets that legally constitute a general guarantee for creditors.<sup>15</sup> Bankruptcy, as a mechanism for debt recovery through asset liquidation, is therefore primarily focused on the orderly liquidation and settlement of the debtor's assets to satisfy creditor claims.

The Bankruptcy Law defines bankruptcy as a general seizure over all assets of the bankrupt debtor, the administration and liquidation of which are carried out by a curator under the supervision of a supervisory judge.<sup>16</sup> A debtor may be declared bankrupt if it has two or more creditors and fails to fully pay at least one debt that has fallen due and is collectible. A bankruptcy petition may be filed either by the debtor itself or by one or more creditors. This framework provides legal certainty by establishing clear and measurable procedures for the determination of bankruptcy status.

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<sup>12</sup> Sutan Remy Sjahdeini. *Peranan Kurator dalam Kepailitan*. Jakarta: Pustaka Utama Grafiti, 1999, hlm. 201

<sup>13</sup> Joseph E. Stiglitz, *Ekonomi Sektor Publik*, ed. 3, alih bahasa Eddy Ariawan, Jakarta: PT RajaGrafindo Persada, 2000, hlm. 389.

<sup>14</sup> M. Yahya Harahap, *Hukum Kepailitan*, Jakarta: Sinar Grafika, 2011, hlm. 225

<sup>15</sup> Herry Anto Simanjuntak, "Prinsip-Prinsip dalam Hukum Kepailitan Dalam Penyelesaian Utang Debitur Kepada Kreditur", *Jurnal Justitia*, Vol 2 No. 2, (Oktober, 2020), hlm 24.

<sup>16</sup> Rifqanu Nur Fauziah, "Kepailitan dan Akibat Kepailitan Terhadap Kewenangan Debitur Pailit dalam Bidang Hukum Kekayaan", <https://www.djkn.kemenkeu.go.id/artikel/baca//Kepailitan-dan-Akibat-Kepailitan-Terhadap-Kewenangan-Debitur-Pailit-Dalam-Bidang-Hukum-Kekayaan.html> (Senin, 07 Juli 2025).

Legal protection also embodies the notion of safeguarding weaker parties. In this context, legal protection may be understood as protection afforded by law through legal institutions and mechanisms. More broadly, legal protection encompasses all conscious efforts undertaken by individuals or institutions—both governmental and private—to ensure security, control, and the fulfillment of welfare in accordance with fundamental rights as regulated under Law No. 39 of 1999 on Human Rights.<sup>17</sup>

Preventive legal protection is primarily provided through the obligation of the debtor to act honestly and cooperatively toward the curator and the supervisory judge.<sup>18</sup> The Bankruptcy Law grants the curator authority to take control and possession of all debtor assets upon the declaration of bankruptcy. The curator is also empowered to examine the debtor's financial transactions to ensure that no acts detrimental to creditors have been committed. Preventive measures further include the obligation of the debtor to submit all corporate records and documents relevant to the liquidation process. Non-compliance may indicate attempts to conceal assets and may result in further legal consequences.

In addition to preventive protection, repressive legal protection is available when asset embezzlement is proven to have occurred. One of the most significant instruments is *actio pauliana*, which allows creditors or the curator to seek the annulment of legal acts performed by the debtor before or during bankruptcy proceedings if such acts were intended to prejudice creditors. This mechanism enables the recovery of assets improperly transferred and their reintegration into the bankruptcy estate, thereby ensuring that assets intended for creditor repayment are not lost through corporate manipulation.

Another repressive instrument is criminal liability. Although the Bankruptcy Law does not specifically regulate criminal sanctions for the embezzlement of bankruptcy assets, such conduct may still be prosecuted under the Indonesian Criminal Code, particularly Article 372 on embezzlement and Article 378 on fraud. In the corporate context, criminal liability may be imposed based on doctrines such as vicarious liability and strict liability, allowing both the corporation and its management to be held accountable for actions that harm creditors. This approach aligns with modern criminal law developments that recognize corporations as subjects of criminal liability.

Beyond criminal prosecution and *actio pauliana*, creditors are also protected through the authority of the curator to conduct asset inventory, seizure, and sale. The curator functions as the executor of bankruptcy liquidation, and the professionalism and integrity of the curator are therefore decisive in ensuring effective legal protection. Where assets have been transferred to third parties, the curator may initiate civil actions to recover such assets into the bankruptcy estate. This process further underscores the critical role of the supervisory judge in overseeing the curator's performance and ensuring compliance with legal provisions.

The urgency of legal protection for creditors is heightened by the fact that embezzlement of bankruptcy assets is often carried out systematically and involves multiple layers of corporate management. Transparency, accountability, and integrity thus constitute essential pillars in promoting corporate debtor compliance with bankruptcy proceedings. At the same time, creditors are expected to actively monitor the liquidation process by attending creditors' meetings, raising objections to curator reports, and utilizing available legal remedies where irregularities are detected.

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<sup>17</sup> <http://tesishukum.com/pengertian-perlindungan-hukum/>, (Sabtu, 19 April 2025).

<sup>18</sup> Rahayu, <https://repository.uin-suska.ac.id/pdf> diakses (Sabtu, tanggal 19 April 2025).

Legal protection may be characterized as such when it contains the following elements: <sup>19</sup>

1. Protection Provided By The State To Its Citizens;
2. Guarantees Of Legal Certainty;
3. Relevance To Citizens' Rights; And
4. The Existence Of Sanctions Against Violations.

The essence of legal protection for investors is a form of protection that provides assurance to an investor that they will be able to invest their capital under fair conditions with respect to parties related to law, society, and other stakeholders. This protection is particularly important in ensuring access to information regarding market conditions, political and social situations, assets managed by investors, statutory regulations, and other relevant factors.<sup>20</sup>

Legal certainty itself is indispensable for realizing the principle of equality before the law without discrimination.<sup>21</sup> Normatively, legal certainty refers to laws that are formulated and promulgated clearly and consistently, constituting a fundamental element of the rule of law (rechtstaat).<sup>22</sup>

This section further emphasizes that reform of bankruptcy law constitutes an urgent necessity to enhance the effectiveness of creditor protection. The absence of specific criminal provisions within the Bankruptcy Law represents a major factor contributing to weak law enforcement against corporate embezzlement of bankruptcy assets. Accordingly, regulatory reform is required to explicitly introduce criminal sanctions against debtors or corporate officers who engage in asset embezzlement. Strengthening the capacity of curators, enhancing supervisory mechanisms, and simplifying legal procedures are likewise essential to ensure greater legal certainty for creditors.

Overall, this analysis demonstrates that legal protection for creditors in cases of embezzlement of bankruptcy assets by corporations extends beyond civil law mechanisms and necessarily involves administrative and criminal law approaches. The ultimate objective is to ensure that creditor rights are not neglected and that the liquidation process proceeds in a fair, transparent, and accountable manner.

#### **IV. IMPLICATIONS OF THE EMBEZZLEMENT OF BANKRUPTCY ASSETS BY CORPORATIONS ON CREDITOR PROTECTION AND THE BANKRUPTCY PROCESS**

The embezzlement of bankruptcy assets by corporations constitutes one of the most critical challenges within the Indonesian bankruptcy system. This practice not only obstructs the liquidation of the bankruptcy estate (boedel pailit), but also generates extensive legal, economic, and administrative consequences that significantly undermine the effectiveness of legal protection afforded to creditors. Within the national legal framework, corporations are recognized as subjects of criminal law and may be held criminally liable, as reflected in various statutes outside the Indonesian Criminal Code (KUHP), including the Anti-Corruption Law and the Anti-Money Laundering Law. This recognition demonstrates that corporate crimes, including the embezzlement of bankruptcy assets, may be subject to criminal sanctions despite being committed by non-physical legal entities.<sup>23</sup>

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<sup>19</sup> <https://repository.uin-suska.ac.id/pdf>, (Sabtu, 19 April 2025).

<sup>20</sup> *Ibid*

<sup>21</sup> Erik Claes, Wouter Devroe, dan Bert Keirsblick, *Facing the Limits of the Law*, Singapore: Springer, 2009, hlm. 92.

<sup>22</sup> Zainal Asikin, *Mengenal Filsafat Hukum*, Bandung: Pustaka Reka Cipta, 2014, hlm. 46.

<sup>23</sup> Undang - Undang No. 31 Tahun 1999 tentang Tindak Pidana Korupsi

A fundamental issue arising in this context is the fragmentation of regulations governing corporate criminal liability in bankruptcy proceedings. The Bankruptcy Law does not explicitly regulate criminal sanctions against bankrupt debtors who intentionally conceal or transfer bankruptcy assets. This legal vacuum compels law enforcement authorities to rely on general criminal provisions such as Article 372 of the KUHP or other sectoral regulations, thereby creating inconsistencies in law enforcement.<sup>24</sup> In practice, asset embezzlement is often carried out in a planned and systematic manner, involving corporate organs such as directors, commissioners, and even beneficial owners. Accordingly, the doctrines of vicarious liability and corporate fault become essential in establishing corporate involvement as the perpetrator of criminal acts.

In practice, embezzlement of bankruptcy assets is commonly conducted through asset concealment, transfers to affiliated entities, fictitious accounting entries, or covert transfers of assets abroad. These acts are intended to evade seizure and to maintain control of certain assets by the debtor and the corporation. Such conduct directly harms creditors, as it reduces the value of the bankruptcy estate that should be used for debt repayment. Furthermore, these practices generate moral hazard, manifested in the manipulation of financial statements and abuse of authority by corporate management.<sup>25</sup>

From the perspective of asset liquidation, asset embezzlement creates substantial obstacles for curators. Curators frequently encounter limitations in asset tracing, including restricted access to internal corporate documents, weak inter-agency coordination, and jurisdictional challenges when assets are transferred overseas. Asset tracing often entails significant costs, including the use of forensic auditors, asset tracing tools, valuation experts, and cross-border legal consultations, all of which are charged to the bankruptcy estate pursuant to Article 16 of the Bankruptcy Law. As a result, the phenomenon of a “self-consuming estate” may arise, where liquidation costs consume a substantial portion of recovered assets.

Another consequence is the escalation of ancillary disputes that must be addressed by the curator. In many cases, the curator is required to initiate *actio pauliana* proceedings to annul detrimental legal acts, file criminal reports with law enforcement authorities, and submit additional civil claims before the district court. These processes not only prolong bankruptcy proceedings but also delay the fulfillment of creditors’ rights, which are intended to be protected by law. The resulting legal uncertainty further erodes public confidence in the bankruptcy system.

More severe implications arise at the macroeconomic level. When creditors perceive a lack of legal certainty and adequate protection, they may become reluctant to extend financing or credit to business actors in the future. This reluctance may ultimately hinder the flow of investment and financing necessary for national economic growth. Additionally, the embezzlement of bankruptcy assets reflects failures in Good Corporate Governance, thereby diminishing the overall quality of the business climate in Indonesia.<sup>26</sup>

From a theoretical perspective, this phenomenon underscores the necessity for harmonization between bankruptcy law and criminal law. Regulatory reform is imperative to clarify mechanisms for corporate criminal liability in bankruptcy proceedings. Legal protection for creditors cannot rely solely on civil law mechanisms such as *actio pauliana*, but must be reinforced through explicit criminal provisions targeting debtors or corporations that engage in

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<sup>24</sup> Pasal 372 Kitab Undang – Undang Hukum Pidana

<sup>25</sup> Muladi, Sri, dan Abdul Rachman Saleh. *Hukum Kepailitan dan Penundaan Kewajiban Pembayaran Utang*. Jakarta: Sinar Grafika, 2010, hlm. 210

<sup>26</sup> Jonathan R. Macey, *Essentials of Banking Law and Regulation*, New York Aspen Publishers, 2011, hlm. 334.

the embezzlement of bankruptcy assets.<sup>27</sup> Through such integration, the bankruptcy system may function optimally as a fair, effective, and equitable debt resolution mechanism.

Beyond regulatory reform, strengthening the professionalism of curators, enhancing supervisory mechanisms by supervisory judges, and improving coordination among commercial courts, prosecutors, law enforcement agencies, and international institutions are critical elements in preventing and addressing corporate crime in bankruptcy. The application of cross-border asset tracing technologies must also be reinforced to ensure that liquidation processes are not impeded by informational and jurisdictional barriers.

Overall, the embezzlement of bankruptcy assets by corporations constitutes a form of economic crime that threatens the integrity of the bankruptcy system. Its impact extends beyond direct harm to creditors, eroding the principles of justice, legal certainty, and transparency that underpin bankruptcy proceedings. Accordingly, a more comprehensive legal framework is required to ensure that corporations engaging in unlawful conduct are held firmly accountable and that creditors receive appropriate and proportional legal protection.

## V. Conclusion

Legal protection for creditors in bankruptcy proceedings in Indonesia remains inadequate, primarily because Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations does not provide specific criminal provisions targeting corporations that engage in the embezzlement or concealment of bankruptcy assets. As a result, fraudulent conduct may only be prosecuted under general provisions of the Indonesian Criminal Code (KUHP), which creates opportunities for impunity and diminishes the effectiveness of creditor rights enforcement. The case of PKPU No. 35/Pdt.Sus-PKPU/2021/PN.Niaga Medan illustrates this weakness, as asset transfers conducted by the debtor prior to the bankruptcy ruling could not be directly subjected to criminal prosecution, and the curator faced significant difficulties in restoring such assets to the bankruptcy estate (*boedel pailit*). Consequently, legal protection for creditors remains partial and heavily dependent on civil remedies such as *actio pauliana*, as well as the interpretative creativity of law enforcement authorities in applying general criminal provisions.

The absence of comprehensive criminal regulation governing corporate conduct in bankruptcy proceedings also undermines the principle of legal certainty. This condition is reflected in Indonesia's relatively low bankruptcy asset recovery rate, which stands at approximately 11.8% according to World Bank data, indicating the suboptimal performance of asset liquidation processes. Corporate embezzlement of bankruptcy assets not only causes direct legal losses to creditors but also produces broader economic consequences, including diminished investor confidence and the emergence of social injustice. Although Supreme Court Regulation (PERMA) No. 13 of 2016 provides procedural guidance on corporate criminal liability, its provisions have not yet functioned as *lex specialis* within the field of bankruptcy law. Therefore, synchronization between the Bankruptcy Law, the KUHP, and PERMA No. 13 of 2016 is essential to ensure that embezzlement of bankruptcy assets can be effectively prosecuted and that creditor rights are optimally protected.

To enhance legal protection and certainty for creditors in bankruptcy cases, comprehensive reform is required through the revision of Law No. 37 of 2004 to incorporate specific criminal norms explicitly targeting corporations that transfer, conceal, or embezzle bankruptcy estate assets. Such reforms should provide for sanctions including substantial fines, revocation of business licenses, corporate dissolution, and asset forfeiture. Harmonization between the Bankruptcy Law and PERMA No. 13 of 2016 is also necessary to equip commercial court judges

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<sup>27</sup> Rachmadi Usman, *Hukum Kepailitan: Teori dan Praktik*, Jakarta: Sinar Grafika, 2019, hlm. 305.

with a strong legal basis for assessing allegations of corporate crime in bankruptcy proceedings, accompanied by strengthened investigative authority for curators to trace suspicious transactions and report them to law enforcement agencies. Furthermore, the establishment of specialized supervisory units to monitor corporate asset embezzlement practices and to enhance inter-agency coordination is crucial.

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