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Debts That are not Guaranteed by Property Rights
According to Bankruptcy Law and Islamic Law

Risma Nur Arifah & Arman Safril Adam

*Human Rights Without Religions: The Polemic in
Establishing Churches and The Dilemma of
Implementing Human Rights in Aceh Singkil*

Zulfikar Riza Hariz Pohan & Ismail Angkat

The Role of Parents in Parenting from Islamic
Law Perspectives: A Study of Muslim Families in
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Lembaga Penerbitan, Penelitian, dan
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LEGAL PROTECTION OF CONCURRENT CREDITORS FOR THE DEBTS THAT ARE NOT GUARANTEED BY PROPERTY RIGHTS ACCORDING TO BANKRUPTCY LAW AND ISLAMIC LAW

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Abstract: *Bankruptcy is a condition where the debtor is unable to fulfill his obligations to pay debts to creditors. Revision of Law Number 4 of 1998 became Law Number. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations explains that concurrent creditors are creditors who do not hold collateral and who do not have special rights and whose claims are not recognized or recognized conditionally, of course, this causes the position of concurrent creditors to be very vulnerable to getting their rights back on the debt of the bankrupt debtor. This research is a normative research using a statutory approach and a conceptual approach, where in this study the researcher examined the regulations on bankruptcy through the Act and analyzes the concept of legal protection for concurrent creditors.*

The results of the study showed that, first, Law Number 37 of 2004 concerning Bankruptcy and PKPU (Postponement of Debt Payment Obligations) explains that concurrent creditors are conditional creditors and do not have special rights, their position in paying off debtors' debts from the remaining proceeds from the settlement or auction of bankrupt

assets. Second, Islamic law stipulates that the guaranteed of legal protection for creditors is to fulfill debt obligations as regulated in Surah al Baqarah verse 282 based on the principle of al 'adalah.

Keywords: *Concurrent Creditor, Legal Protection, Bankruptcy Law*

INTRODUCTION

Based on Article 11 of Civil Code, it has been defined that the debtor's property is fully is a guarantee for the debt owned, therefore the creditor's external relationship is reflected, 1) the creditor is allowed to take payment from debtor's assets; 2) the debtor's property can be sold as a payment of creditor bills; and 3) the creditor can be only guaranteed by the debtor's property, not a debtor person.(Hukum et al., n.d.)

That provision is considered very fair(Aziz et al., n.d.), regarding that the fulfillment of promise is a moral principle by legislators, whereas when the debtor is not able to fulfill the obligation paying debts, so the creditor tends to get losses, moreover, credit agreement is an engagement that gives rise to individual rights, which are relative and the creditor position is just a concurrent creditor.

In Article 2 Paragraph (1) of Bankruptcy Law, creditor is divided into three types: separatist creditor, preference creditor, and concurrent creditor. The division of creditor in a concept of bankruptcy law is according to the structured creditors or structured prorata principle, which this division is based on the order of priority over sales result of bankruptcy assets. The article 1132 of Civil Code has explained that the debtor's property is collateral with creditor and the sales result of assets will be for sale and divided according to the balance of size of the receivables of each creditor, this is what reflects the principle of *creditorium parity*.(*Kepailitan Suatu Solusi Dalam Memaksimalkan Penagihan Piutang Kreditur* | Slamet | *Lex Jurnalica*, n.d.)

Bankruptcy is considered as a commercial solution in solving debt problem between creditor and debtor, which the debtor is regarded as the party which is unable to pay the debt to creditor, so when the debtor's debt has reached

the due date and must pay the debt, the application of bankruptcy statement becomes something that is possible and the bankruptcy agency is expected to be an effective alternative of settlement of debtor's obligation. (Latukau et al., n.d.)

In the contrary of the previous concept, Islam has further defined the procedures of solving bankruptcy problem, in which the judge will give decision to withhold someone's assets for debt payment need (hijr) and consider also decide the bankrupt debtor in fair and hold the property for the interest of debt settlement. (LUBIS, 2013) As stated in Surah Al-Baqarah verse 280:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۗ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ ۙ ٢٨٠

“And if the debtor is in an straitened circumstance, then (let there be) postponement to (the time of) ease, and remit the debt as almsgiving would be better for you, if you know”

In the law of bankruptcy, actually not creditors have the same position, this is due to the type and nature of each debt: 1) separatist creditor, the creditor who has collateral for material debt (guarantee right), for instance mortgage holder, mortgage, pawning, fiduciary, and many others (Article 55 of Bankruptcy Law); 2) preferred creditor, the creditor who has receivables that are domiciled with the privilege of pawning guarantee, mortgage, and fiduciary guarantee, as it has been regulated in Article 1139 and Article 1149 of Civil Code; 3) concurrent creditor, the creditor who must share with other creditors proportionally according to the bill size comparison, from the result of bankrupt debtor's assets sales who is burdened with collateral right.

Conceptually, the repayment of concurrent creditor's receivables is sufficient from the sales or auction result of bankrupt assets after being taken by separatist and preferred parties. This concurrent creditor does not hold collateral and have special rights, the bill is not approved or it is approved but

conditionally. However, the urgency of protection for either the debtor or creditor (bank) to fulfill fair rights and obligation, and no party is harmed, which the bankrupt debtor can give bad impacts globally.

I Made Teguh Adinata (Adinata & Priyanto, 2004) in his study has stated a different opinion about legal protection for separatist creditor, that collateral property held by separatist creditor is not bankrupt *boedel*, when the debt cannot be covered by collateral property execution, the separatist creditor will collect the rest as a concurrent creditor. In contrast, when it finds more execution of collateral property for separatist creditor, the rest will be returned to the debtor, as it has been regulated in Article 55 of Bankruptcy Law, Article 21 of Mortgage Law, and Article 27 Paragraph 3 of Fiduciary Guarantee Law. Hence, those regulations have strengthened the position of separatist creditor, but on the other hand, Article 56 of Bankruptcy Law has suspended the execution time which brings contradiction with the preliminary article (Article 55 of Bankruptcy Law).

Based on that explanation, the researchers can conclude that even if there are contradictory conditions between Article 55 and Article 56 of Bankruptcy Law, the position of preferred creditor still has the highest position, because the preferred creditor holds property guarantee rights and may have collateral property execution. In contrast, although the concurrent creditor is not a privileged creditor type and does not hold property guarantee rights, the certainty of debt repayment to concurrent creditor should be still conducted.

However, a problem that occurs during the settlement of bankrupt assets is concurrent creditor's receivables are not fully paid off, if the debt amount is greater than bankrupt property taken by separatist creditor and preferred creditor. To put in a concept, the debt agreement between concurrent creditor and debtor is carried out legally even though there is no guarantee of property rights (mortgage right, fiduciary, and loan) becomes a weakness of bankruptcy law

on the concurrent creditor's rights before the occurrence of debtor's bankruptcy.

Furthermore, Lestari and Kurniawan explained in their research that PKPU is a solution for resolving bankruptcy disputes for creditors. Article 281 paragraph 1 of the PKPU Law is a guarantee for separatist creditors not to lose their collateral rights and can withdraw their collateral first, in contrast to concurrent creditors who are the most disadvantaged if the debtor goes bankrupt. (Lestari & Kurniawan, 2020)

Salman Alfaris (*Aspek Hukum Penolakan Perdamaian Oleh Kreditor Konkuren Dalam Penundaan Kewajiban Pembayaran Utang Sebagai Upaya Memperoleh Pembayaran Terhadap Hak Tagihnya*, n.d.) has conducted a research with similar theme on concurrent creditor, which the researcher examined the verdict 21/Pdt.Sus-Pkpu/2020/Pn.Niaga.Sby and verdict 15/Pdt.Sus-Pkpu/2020/Pn.Niaga.Sby and found that the reconciliation for the settlement of bankruptcy dispute conducted by related parties have failed (rejected), because it does not fulfill requirements stated in Article 281 Paragraph 1 PKPU and restructuration offer that can bring failure risk due to assets impairment and debtor company capital which does not indicate the ability of debt repayment. Based on the decision on that case, both separatist creditor and concurrent creditor, as the position of separatist creditor has a privileged rights on debt repayment than concurrent creditor, but in this case, the status of separatist creditor is taken down and becomes concurrent creditor by taking vote and division of debt payment according to *pari passu* principle.

The research above has similarities in the theme of the discussion studied, namely legal protection for creditors in bankruptcy. however, this study focuses on an in-depth analysis of the position of concurrent creditors on collateral in bankruptcy and examines the legal aspects of Islamic bankruptcy.

All attempts and settlement of bankrupt assets are aimed to maximize the value of bankrupt assets and reduce bankruptcy costs for the creditors who have interest in this matter, for instance concurrent creditor. Therefore,

although the position of concurrent creditor is fulfilled after debt repayment of separatist creditor and preferred creditor, it needs a legal certainty for the concurrent creditor over fulfillment of rights, considering that the payment of debt bill of concurrent creditor is very rarely fulfilled in full from the result of bankrupt assets sales.

RESEARCH METHOD

This research was conducted using normative law, the researcher examines a bankruptcy law regulation on the position of concurrent creditors on their rights. The research approach is carried out using the statue approach, namely: Undang-Undang Nomor 37 Tahun 2004 tentang PKPU (Penundaan Kewajiban Pembayaran Utang; Keputusan Mahkamah Agung Republik Indonesia Nomor 109/KMA/SK/2020 dan Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia. The conceptual approach is used to examine theories related to the themes studied, including the theory of legal protection and bankruptcy law in Islamic law. Furthermore, comprehensively, this research is processed systematically based on the objectives and analyzed using qualitative descriptive methods.

DISCUSSION

Legal Aspects of Concurrent Creditor According to Perspectives of Law 28th, 2004 About Bankruptcy

Contract agreement between creditor and debtor did not rule out the possibility that the debtor could not fulfill the obligation and rise of dispute between those two related parties. The inability of debtor to fulfill the obligation or pay debt bills could be settled by submitting bankruptcy statement to the court. To guarantee certainty and create a legal protection for creditor, it needed

regulation concerning to bankruptcy, as it has been listed in law 37th, 2004 on Bankruptcy and postponement of obligation for debt payment.

In the bankruptcy law, not all creditors have similar position. The difference among creditors was determined by each receivable type as below:

1. Separatist debt, the type of receivable with certain collateral property, as regulated in Article 1133 of Civil Code (for example, mortgage right, pawning, fiduciary guarantee);
2. Debt with general preference rights, the receivable relating to bankrupt assets, as regulated in Article 1149 of Civil Code;
3. Debt with special preference rights, the receivable relating to certain bankrupt assets, as regulated in Article 1139 of Civil Code;
4. Concurrent debt, the receivable repayment according to prorated bases, as regulated in Article 1131-1132 of Civil Code;
5. Special receivable, such as tax debt (Article 1137 of Civil Code).

The explanation above has referred the classification of creditor in bankruptcy law:

1. Separatist creditor, the holder of property security right that was pledged by the debtor, such as hypothec, pawn, mortgage right, fiduciary guarantee, etc. The position of creditor has execution right of collateral property when the debtor defaulted or could not fulfill the debt repayment (Article 55 of Bankruptcy Law and PKPU); (*PENGARUH UNDANG-UNDANG KEPAILITAN DAN UNDANG-UNDANG HAK TANGGUNGAN TERHADAP KEDUDUKAN KREDITUR PEMEGANG HAK TANGGUNGAN APABILA DEBITUR PAILIT | Kertha Semaya : Journal Ilmu Hukum*, n.d.)
2. Preferred creditor, based on the formulation of Article 1134 of Civil Code, the creditor has special right, in which the law has limitedly put receivables

first in taking repayment than the other creditors. However, the new preferred right appeared when the confiscated properties were not sufficient to repay all debt amounts and preferred right did not give authority of an object. The preferred right for a collector could not be done on the confiscation of an object without having executorial title;

3. Concurrent creditor, the creditor who did not hold collateral and have special right, the bills were not admitted and conditional, this type of creditor, the receivable repayment was settled through auction or sales of bankrupt assets after the separatist creditor and preferred creditor took their portion, while the division of receivable size was based on the position of each creditor.

Based on the explanation above, the concurrent creditor has these following characteristics:

1. The concurrent creditor did not have privilege, this kind of creditor competed with the other collecting the payment of auction result, so the position was not prioritized in repayment (*Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Hutang* | *Perpustakaan Pusat*, n.d.);
2. Based on Article 1131 *jo* and Article 1132 of Civil Code, the concurrent creditor did not have preference of receivable repayment as the separatist creditor and preferred creditor;
3. The creditor did not have privilege and/or not the creditor who was previously agreed, so the receivable went into bankrupt *boedel* after the bankruptcy statement by creditor;
4. The repayment waited remaining of repayment or auction of bankrupt assets deducted by the obligation to pay the debt of guarantee right holder and the creditor with special right was proportionally based on the size of receivables of each concurrent creditor;

Based on the explanation, the concurrent creditor was a creditor who did not have rights to take repayment first (*Hukum Pailit Dalam Teori Dan Praktek/ Dr. Munir Fuady, S.H.,M.H.,LL.M. | OPAC Perpustakaan Nasional RI., n.d.*), the position of concurrent creditor was differed from preferred creditor.

The concept of legal protection for creditor was not only the fulfillment of creditor's rights in debt repayment by the debtor, but also the certainty of debt repayment. The legal protection listed in Bankruptcy Law and PKPU was *actio paulina* that has been ruled in Article 1341 of Civil Code. *Actio paulina* was the creditor's legal effort to cancel transaction taken by debtor which was regarded to cause losses for the creditor. Next, Article 1131 of Civil Code which has regulated *creditorium parity* principle was closely related to the Article 1341 of Civil Code, which explained that the debtor of all the properties owned was not free as long as he has debt to the creditor.

The principle of *creditorium parity* was an equality of all creditors' position or provision that all creditors have similar rights over all debtors' property, as a form of legal protection guarantee, the reflection of how the law could realize legal certainty, justice, and legal benefits in accordance with the rules of Bankruptcy Law (Idham et al., 2020). On the concept of banking, the term "*according to balance*" was referred to a division of receivable size of the creditor (English: in proportion, Latin: pro rata). (*Sejarah, Asas, Dan Teori Hukum Kepailitan: Memahami Undang-Undang No. 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran / Sutan Remy Sjahdeini | OPAC Perpustakaan Nasional RI., n.d.*)

The principles of *creditorium parity* and *pari passu po rata parte* ruled in Article 1132 of Civil Code and Article 1132 of Civil Code have confirmed that the aim of bankruptcy provisions on the classification of debtor's assets for the creditors through the implementation of general confiscation of all debtors' assets which would be divided according to the proportional right. It referred that all creditors have similar rights over debtor's asset, unless there was a legal

reason to prioritize and precede one of the creditors (*Pengantar Hukum Kepailitan Di Indonesia*, n.d.).

However, the implementation of concurrent creditor of all bankrupt debtors' assets, to put in an example, the research by Irfan Idham (2020) has referred that in verdict 04/Pdt.Sus. Pkpu Pailit/2018/PN.Niaga Mks, the concurrent creditors have not received their rights of refund and *umrah* because they must wait the remaining of bankrupt assets settlement that was firstly paid to the other creditors who have the higher position.

In another example, within the Supreme Court Decision 725/PDT. SUS/2011, the position of concurrent creditor has registered object of fiduciary guarantee to the Ministry of Law and Human Rights, since the concurrent creditor did not have precedence rights to collect debtors, so in this decision, the receivable bill would be given to the registered respondent first.

One of the obstacles in the practice of implementing bankruptcy rules comes from the debtor who does not have good intention and no intention to pay the debts (*Jaminan Fidusia / Gunawan Widjaja & Ahmad Yani | OPAC Perpustakaan Nasional RI.*, n.d.). Based on those obstacles, the objective of regulations in bankruptcy law is not fully achieved; the concurrent creditors' rights over bankrupt debtor's assets based on *pari passu pro rata parte* principle.

As it was known before that the aim of bankruptcy law was to provide legal protection guarantee of creditor's rights, so the debtor could fulfill the bills (*Hukum Kepailitan / Adrian Sutedi | OPAC Perpustakaan Nasional RI.*, n.d.), it was also referred that all properties owned by the bankrupt debtor in terms of movable and immovable property with general guarantee and those creditors have an equal position, also in this case of debt repayment, no one was prioritized between two, as well as the concurrent creditors (*Jaminan Fidusia / Gunawan Widjaja & Ahmad Yani | OPAC Perpustakaan Nasional RI.*, n.d.).

Regarding to the difference of position among creditors ruled in law, it showed that there was no legal certainty over repayment of concurrent creditors.

Utrech explained that the legal certainty has these following meanings: 1) a general rule to create loyal individuals who know what can and cannot be done; 2) as a form of legal protection for individuals from governmental arbitrariness. (Subekti, 1977)

Anyway, the position of creditors should not be distinguished generally, because frequently – in fiduciary guarantee – the concurrent creditor did not recognize that the object of fiduciary guarantee has been previously charged to the first creditor, so the concurrent creditor must compete with the other creditors who have special rights. In this case, actually the role of debtor's good intention was needed and very significant between debtor and creditor.

Position of Concurrent Creditor on His Debts Whose Property Rights Are Not Guaranteed In Terms of Islamic Law

Based on the law regulation, the concurrent creditor got repayment from the remaining of debt repayment or auction of bankrupt assets. The division of debt repayment among concurrent creditors must be done proportionally in accordance with the comparison of receivable size of each of creditor (*pari passu pro rata parte*). *Pari passu* and *pro rata rights* referred that the creditors jointly got repayment (without anyone comes first) calculated according to the receivable size of each rather than their receivables in whole, to all properties of bankrupt debtor. (*Akibat Hukum Pernyataan Pailit Terhadap Harta Warisan Berdasarkan Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang*, n.d.)

The bankruptcy law has defined that the bankrupt debtor and his assets were not more than the debt amount, so the concurrent creditor was the most disadvantaged party and harmed with not getting paid any debt repayment from the debtor. The bankruptcy facility should not be used for bad intention. In Article 2 Paragraph 1 of Law 37th, 2004 on Bankruptcy and Postponement of Debt Payment has confirmed that the bankruptcy condition was consisted

of two or more creditors and at least overdue debt which was very risky and potential to be used for debtor or creditor's distorted interest from the essence of bankruptcy and might harm other parties (Disemadi & Gomes, 2021). The regulation of bankruptcy was aimed to offer protection, so the creditors could get repayment in fair and balanced, and the debtor could pay the debt with good intention.

The debt repayment was a responsibility that must be fulfilled by debtor, in this context the debtor was a borrower (*mu'ir*). The debtor as borrower must have a good intention and confidence to settle down the debt repayment as it has been agreed at the beginning of debt contract. In the principles within sharia contract, one principle matched to this context, it was the principle of appointment bond as many orders about keeping promises written in Al-Qur'an and Hadits. In the rules of *ushul fiqh*, "The order basically shows an obligation". Thus, it could conclude that the promise was binding and must be fulfilled. The responsibility of debtor as a borrower to fulfill debt contract was based on Allah's order in surah Al-Isra (17) verse 34, "*Don't come near to the wealth of the orphan, except in a good way until he comes to strength; and keep the covenant. Definitely, the covenant will be asked.*"

Abu Bakar has said that Rasulullah SAW decided that whoever dies and owns someone else's property, but he has not received any payment yet, so the property owner is more entitled than someone else. If the seller gets goods on bankrupt customer, he is more entitled to get and take it from all creditors who have receivables. As Rasulullah SAW said, "*Those who get their wealth include all those who have assets that are different from others through debt or buying and selling, although there are many hadits that clearly use the word buying and selling.*"

The concurrent creditor must obtain justice in debt repayment, although he did not have property guarantee rights. When the preferred creditor and separatist creditor got specialty and privilege in debt repayment, it was different when it came to concurrent creditor who must wait the remaining if there was

still debtor's property left. The separatist creditor could easily get debt repayment by selling property guarantee right. However, this case was allowed as Rasulullah SAW said in Hadits, *"From Ibnu Kaab bin Malik, from his dad r.a, that Rasulullah SAW has withheld Mu'adh's property and then He sold it to pay off the debt that became a burden for him(Muwatta Malik - Wikipedia Bahasa Indonesia, Ensiklopedia Bebas, n.d.)."*

Imam Syafi'i, Imam Malik, Abu Yusuf, and Muhammad have allowed the sales of debtor's assets at the request of creditor. Al-Syaukani has also allowed the confiscation of bankrupt debtor's property in order to pay the debt, even though the whole properties did not adequate to pay all the debts. This opinion was referred to the story of Muaz bin Jabbal.(Rusli, 1999)

Occasionally, the receivable payment of concurrent creditor was not fulfilled completely. This condition was proven by the dissatisfaction of concurrent creditor over bankrupt asset division by curator or lack of bankrupt assets that should be received by concurrent creditors arising after the bankruptcy assets were settled by the curator. It needed the implementation of a fair and truthful justice in order to realize justice for the disputing parties.

The statement above has asserted that Islam has regulated the relationship among human in social life, including to debt matter. It was also explained in Surah Al-Baqarah verse 283 about debt, "And if one of you deposits a thing on trust with another, you should be responsible of the repayment."

Moreover, another Hadits written that *"Those who is in debt with the intention of paying it back, Allah will pay on His behalf, and whoever owes money with the intention of waste, Allah will destroy his life."*

Every creditor must obtain the same and equal position between one and another, in the context of debt repayment. *Al'adalah* principle in sharia basis could be implemented in a fair and balanced division of debt repayment. The implementation of this basis in a contract should be well-implemented in the disclosure of will and condition, fulfill contract and agreement that have been made, and settle all obligations according to the position of each creditor. The

justice was an aim that should be realized by all laws. In Islamic law, justice is directly Allah SWT's order. Receiving debt repayment in fair distribution for all concurrent creditors was a form of justice. The justice was a very essential aspect which all parties were obliged to hold firmly on the justice principle within an agreement. The definition of justice principle was a basis that put all rights and obligations based on the principles of truth of Islamic Law, with fair deeds; we would not oppress other people.(LUBIS, 2013)

The next important principle for concurrent creditor in getting debt repayment was the implementation of *al-'adalah* principle. The principle of *al-'adalah* in sharia basis should be practiced in a balanced and fair division of debt repayment. This principle within a contract was demanded to be well-implemented in order to reveal will and condition, fulfill the agreement, and settle all obligations according to the position of each creditor. The justice was a goal that should be created by all laws. In Islamic law, justice was directly an order from Allah SWT. To receive debt repayment in fair distribution for all concurrent creditors was a form of justice. The justice was a very essential feature which all parties should hold firmly on the justice principle within a debt contract. The definition of justice principle was a basis that put all rights and obligations based on the principles of truth of Islamic Law, with fair deeds; we would not oppress other people.

The justice principle was form of Islamic legal protection to teach human life protection, all rules in Islamic law have ruled about human benefit and refused harm.

Ibnu Taimiyah has said that justice was a fundamental pillar in a government. That was how important the justice for human, until Ibnu Taimiyah has argued that a fair government with non-Muslim leader was better than an unfair Muslim government. Based on that phrase, Ibnu Taimiyah seemed to assert that the fair government with non-Muslim leader was much better than

unjust Muslim government. This expression also implied that the essence was more important than the form, and the value was more treasured than merely the symbol. Relating to the statement of Ibnu Taimiyah, actually it stated that justice principle in sharia contract was referred that the related party should uphold this principle, so injustice could be prevented, don't let it happen like Ibnu Taimiyah's statement that the fair non-Muslim leader was better in a system than unfair Muslim leader, it interpreted that a business contract between two parties, one Muslim and non-Muslim, the implementation of justice principle was more important than contract among Muslims but committing acts of fraud and injustice.

Islam protected weak people against inequality and discrimination. Injustice was a transaction which raised inequality for other parties. The supervising judge and curator must concern on a fair and balanced protection for interest of all creditors. It was not allowed when the debt repayment was only addressed to creditor with property guarantee rights. The pressure by the more dominant party on weak party (in this context referring to concurrent creditor) was included into injustice act.

Injustice act was prohibited in *muamalah* contract. PBI No.10 /16/ PBI/2008 on the implementation of sharia principle in fundraising and funds disbursement contexts also Islamic bank services have explained that sharia transaction must be free from *gharar*, *maisir*, usury, injustice, and haram object. Therefore, the agreement in sharia transaction which might contain injustice features was forbidden and not in accordance with sharia principles.(Fidhayanti, 2018)

CONCLUSIONS

Bankruptcy law regulated the classification of creditor on debt fulfillment rights from bankrupt debtor. The concurrent creditor was a creditor without any guarantee whose rights fulfillment was categorized after separatist creditor and preferred creditor – those were higher than concurrent creditor, this classification often caused harm in the debt repayment of bankrupt debtor for concurrent creditor. The concurrent creditor might not also get repayment when the debtor's assets were less than the total debt of bankrupt debtor.

According to Islamic law, the bankrupt people was called *muflis*, while the debt repayment was an obligation for debtor, and the entity which offered debts was called as a creditor. The debtor sometimes did not have ability to pay off the debt (fulfilling the obligation to the creditor). This case was ruled in Surah Al-Baqarah verse 282 which stated that the debt repayment is an obligation that cannot be neglected as a form of certainty for the creditor.

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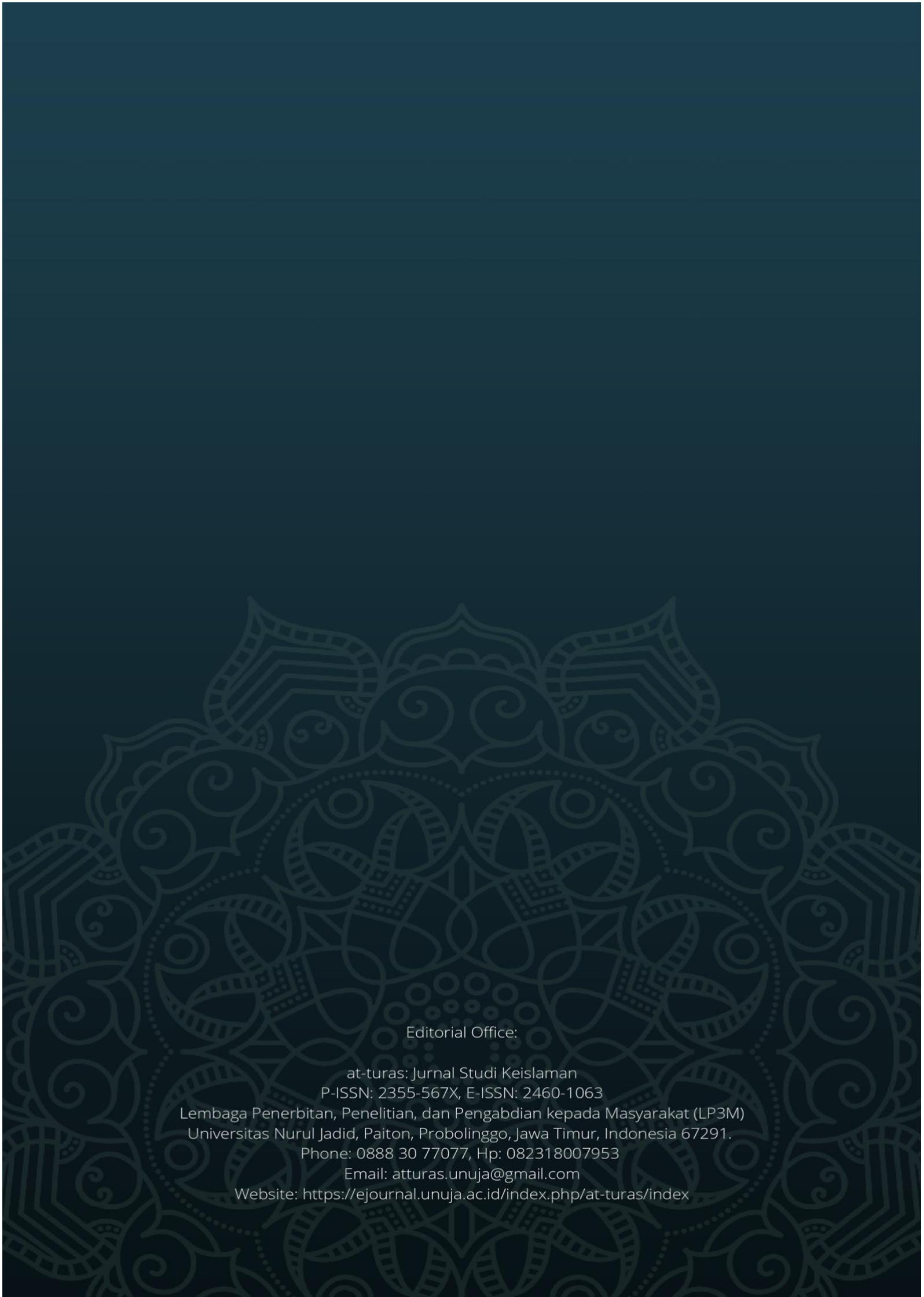
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