

Tenant Rights in Post-Bankruptcy Property Lease Agreements: A Legal Analysis of Curator-Controlled Rental Contracts

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Abstract

Legal protection for tenants in the context of property owner bankruptcy in Indonesia remains inadequately regulated, despite the enactment of Law No. 37 of 2004. When a property owner is declared bankrupt, leased assets become part of the bankruptcy estate managed by the receiver to satisfy creditors' claims. This situation often raises legal issues, particularly concerning tenants' rights to continue using the property until the lease term ends. This study aims to evaluate the validity of lease agreements post-bankruptcy and analyze the role of receivers and judicial considerations in resolving lease disputes. Using a normative juridical approach, this research examines primary and secondary legal materials. The findings reveal that bankruptcy alters the legal status of property owners and may threaten tenants' rights. Inconsistent court decisions exacerbate legal uncertainty for tenants. However, tenants are recognized as concurrent creditors entitled to claims without specific time limitations for registration. This study emphasizes the necessity for clearer regulations to ensure the protection of tenants' rights in bankruptcy cases.

1. Introduction

Bankruptcy, as regulated under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (Law No. 37/2004), is a legal process in which all the assets of the debtor are placed under court supervision and managed by a receiver to satisfy creditors' claims. In practice, a bankruptcy declaration also affects other legal relationships involving the debtor, including lease agreements between property owners (debtors) and tenants. The impact of bankruptcy on lease agreements raises various legal issues, particularly concerning the protection of tenants' rights, which are often neglected during asset liquidation. This study aims to analyze relevant legal principles and provide recommendations for strengthening regulations to protect tenants' rights in bankruptcy situations.¹ Legal protection for tenants in Indonesia in the context of a property owner's bankruptcy is often poorly understood and remains inadequately regulated by existing laws, even though Law No. 37/2004 outlines the role of receivers in managing bankrupt assets.² When a property owner is declared bankrupt, the leased property as part of the bankrupt estate comes under the control of the receiver. The receiver is tasked with managing and liquidating the assets to satisfy creditors' claims. This situation has significant implications for tenants, particularly regarding their rights to use the leased property until the end of the lease term.

¹ Dessy Sunarsih, "Kepastian Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Sewa Menyewa Rumah Toko," *Supremasi Jurnal Hukum* VOL. 4, NO. 2, no. VOL. 4, NO. 2 (2022) (2022): 1-13, <https://doi.org/https://doi.org/10.36441/supremasi.v4i2.715>.

² Carolyn M. Callahan. (2013). The valuation and reliability implications of FIN 46 for synthetic lease liabilities. *Journal of Accounting and Public Policy*, Volume 32, Issue 4 (Volume 32, Issue 4 2013), 271-291. <https://doi.org/https://doi.org/10.1016/j.jaccpubpol.2013.04.002>

The uncertainty arising when property owners are declared bankrupt renders tenants' positions vulnerable. In civil law, lease agreements are reciprocal contracts that grant tenants the right to utilize the leased property for a specified period in exchange for periodic rental payments. However, the bankruptcy of property owners results in all their assets, including leased properties, falling under the management of the receiver. This situation poses a potential threat to tenants' rights to occupy and utilize the leased property until the end of the lease term. A study conducted by Rahmani (2018)³ highlights that in cases of developer bankruptcy, buyers of condominium units lose their rights of execution and control over the purchased property due to the prioritization of claims from other creditors related to the developer's debts. Additionally, Khalda (2023)⁴ identifies that the lack of protection for secured creditors presents another challenge in resolving bankruptcy disputes, as holders of mortgage rights often lose their enforcement rights over related assets. This indicates that the position of tenants in bankruptcy proceedings can also become precarious, especially when their rights are deprioritized in favor of other creditors' claims.

This study aims to examine the critical need to clarify tenants' rights when dealing with receivers tasked with managing the bankrupt assets of property owners. Its primary goal is to provide recommendations for clear legal protections for tenants, ensuring their rights to leased properties are maintained until the expiration of their contracts. The findings of this research are expected to address the regulatory gaps in existing laws, provide legal certainty for tenants, and serve as a reference for courts in handling similar cases in the future. Bankruptcy situations raise fundamental issues concerning the protection of tenants' rights. A valid lease agreement entered into prior to bankruptcy inherently grants tenants exclusive rights to enjoy the leased property in accordance with the terms of the contract. However, once the owner is declared bankrupt, the continuity of the lease is often jeopardized due to the receiver's authority to manage and even liquidate assets to fulfill the debtor's payment obligations. This contradiction not only undermines legal certainty for tenants but also creates ambiguity in the enforcement of rights previously secured through valid contracts. In bankruptcy contexts, the legal focus predominantly centers on fulfilling creditors' rights as claim holders. Consequently, tenants, despite being parties to a binding lease agreement, frequently lack adequate legal protection. Tenants are generally placed in a vulnerable position, as lease agreements are not prioritized in the resolution of bankrupt assets. This lack of certainty highlights the necessity for stronger regulations and legal protections to safeguard tenants' rights under lease agreements, even in cases where property owners undergo bankruptcy proceedings.

This situation is exacerbated by the fact that tenants, who are not primary creditors, are often not recognized as priority parties in the hierarchy of claims over assets. Research by

³ Imanuel Rahmani, "Perlindungan Hukum Kepada Pembeli Dalam Kepailitan Pengembang (Developer) Rumah Susun," *Hukum Bisnis Bonum Commune* Volume 1, no. Volume 1, Nomor 1 Agustus 2018 (August 1, 2018): 1-16, <https://doi.org/https://doi.org/10.30996/jhbbc.v0i0.1758>.

⁴ Muhammad Boma Adichandra, "Bentuk Perlindungan Hukum Terhadap Pembeli Rumah Dalam Penyelesaian Sengketa Kepailitan Pengembang," *Media Of Law And Sharia* 3, no. 1 (2021): 1-20, <https://doi.org/https://doi.org/10.18196/mls.v3i1.13222>.

Salsabila and Artati (2023),⁵ indicates that secured creditors frequently lose their enforcement rights over collateralized assets when debtors are declared bankrupt, highlighting the weak protection of rights associated with property agreements in bankruptcy proceedings. This underscores the critical importance of legal certainty for parties involved in property contracts, including tenants, to ensure stability in long-term legal relationships that may be jeopardized by bankruptcy. Several prior studies highlight the legal uncertainty in the management of assets under the control of receivers, particularly in the context of property developers' bankruptcy. These studies reveal that property buyers' rights are often jeopardized because receivers are authorized to manage and liquidate assets to satisfy creditors' claims. This research emphasizes that the lack of regulatory protection for property buyers or tenants in bankruptcy proceedings results in significant losses for parties bound by contracts entered into prior to bankruptcy. The study by Wicaksono and Suryoutomo (2023)⁶ highlights discrepancies in Supreme Court rulings regarding tenants' rights in bankruptcy situations. In Case No. 658 K/Pdt.Sus-Pailit/2014, the Supreme Court allowed tenants to continue using the leased property until the expiration of their contracts. However, in Case No. 78 PK/Pdt.Sus-Pailit/2015, the receiver was granted full authority to decide the contract's continuity. These contrasting decisions not only exacerbate legal uncertainty but also underscore the urgency of establishing clearer legal guidelines to protect tenants' rights.

Further research on bankruptcy in property contracts highlights that handling bankruptcy involving lease agreements requires deeper consideration of tenants' rights and the protection that should be afforded by receivers. A juridical analysis reveals that the absence of clear legal protection in the law leaves tenants vulnerable when facing the authority of receivers, who tend to prioritize the interests of primary creditors. This study is designed to address the legal vacuum regarding the protection of tenants' rights in lease agreements affected by the bankruptcy of property owners. When tenants are confronted with situations where their lawful rights to use the property are threatened by a receiver's decision to liquidate assets, the lack of robust legal protection can result in significant harm to the tenants. Simultaneously, this research provides recommendations for the government to consider regulations that clarify tenants' rights in the context of bankruptcy, thereby fostering a more stable legal environment for the broader community.

2. Methods

This study employs a normative juridical approach, emphasizing theoretical analysis and the collection of relevant primary and secondary legal materials to examine the protection of tenants' rights in lease agreements over residential properties managed by receivers following the bankruptcy of property owners.⁷ The analysis focuses on understanding the

⁵ Luqyana Khalda Salsabila, "Analisis Perlindungan Hukum Terhadap Kreditur Separatis Pemegang Hak Tanggungan Yang Kehilangan Hak Eksekusi Dalam Proses Kepailitan," *Reformasi Hukum Trisakti* Vol. 5 No. 4 (2023), no. Vol. 5 No. 4 (2023): Reformasi Hukum Trisakti (November 30, 2023): 1-14, <https://doi.org/https://doi.org/10.25105/refor.v5i4.18702>.

⁶ Widi Widagdo Pri Wicaksono, "Perlindungan Hukum Terhadap Penyewa Akibat Pemberi Sewa Dinyatakan Pailit," *Akta Notaris* Vol. 2 No. 2 (2023), no. Vol. 2 No. 2 (2023): Desember: Jurnal Akta Notaris (December 14, 2023): 1-13, <https://doi.org/https://doi.org/10.56444/aktanotaris.v2i2.1240>.

⁷ Imran Nating, "Peranan, dan Tanggung Jawab Kurator dalam Pengurusan dan Pemberesan Harta Pailit", (Jakarta: PT Raja Grafindo Persada, 2004).

legal aspects underlying lease agreements based on the Indonesian Civil Code (KUHPer) and Law No. 37 of 2004, which governs the authority of receivers in managing the assets of bankrupt debtors.⁸ The primary sources utilized in this research include primary legal materials such as the Civil Code and Law No. 37 of 2004, as well as secondary legal materials, including journals, legal articles, and relevant court decisions. These materials are used to compare legal practices concerning tenants' rights in bankruptcy proceedings.

3. Results and Discussion

3.1. Analysis of the Principles of *Pacta Sunt Servanda* and *Pari Passu Pro Rata Parte*

The principle of *pacta sunt servanda*, which asserts that agreements bind both parties as law⁹, should remain enforceable even in extraordinary circumstances such as bankruptcy. However, this principle often conflicts with the principle of *pari passu pro rata parte* in bankruptcy law¹⁰, which prioritizes equal distribution among creditors. This conflict creates a legal dilemma as receivers are empowered to manage and liquidate the debtor's assets to meet creditor claims, potentially overriding tenants' rights to use the property until the lease term ends. In the Indonesian context, the application of the principle *lex specialis derogat legi generali* must be analyzed to determine whether the Bankruptcy Law overrides the provisions of Article 1548 of the Indonesian Civil Code regarding tenants' rights. Thus, this study also considers whether tenants' contractual rights should remain protected as part of legally valid agreements.

According to Article 1131 of the Indonesian Civil Code, all of a debtor's assets serve as general collateral for all creditors unless there are specific preferential rights. In this context, tenants are neither classified as privileged creditors nor concurrent creditors. This places tenants at a lower position in the hierarchy of claims, resulting in their rights often being overlooked during asset liquidation. Further analysis is required to explain the relevance of Article 1131 in conjunction with Law No. 37/2004 and how this hierarchy affects tenants' rights. Legal uncertainty due to inconsistent court rulings in bankruptcy cases also requires examination.¹¹ In some cases, courts have upheld tenants' rights to continue using leased property until the lease expires. Conversely, other rulings have granted receivers full authority to terminate lease agreements in favor of creditors. For instance, in Supreme Court Decision No. 658 K/Pdt.Sus-Pailit/2014, the court allowed tenants to maintain their rights under the

⁸ M. Hadi Shubhan, "*Hukum Kepailitan (Prinsip, Norma dan Praktik di Peradilan)*", (Surabaya: Prenada Media Group, 2007).

⁹ Silvia Crafa. (2023). *Pacta sunt servanda: Legal contracts in Stipula*. Science of Computer Programming, Volume 225(Volume 225, January 2023). <https://doi.org/https://doi.org/10.1016/j.scico.2022.102911>

¹⁰Satish Kumar. (2024). Bankruptcy law and the leverage speed of adjustment. *Finance Research Letters*, Volume 66(Volume 66, August 2024). <https://doi.org/https://doi.org/10.1016/j.frl.2024.105673>; Alexander W. Cappelen. (2019). Fairness in Bankruptcies: An Experimental Study. *MANAGEMENT SCIENCE*, Volume 65(Volume 65, Issue 6 June 2019), 2445–2945. <https://doi.org/https://doi.org/10.1287/MNSC.2018.3029>; Rizwaan Jameel Mokal. (2001). Priority as Pathology: The *Pari Passu* Myth. Cambridge University Press, Volume 60(Issue 3, 30 November 2001), 581–621. <https://doi.org/https://doi.org/10.1017/S0008197301001246>

¹¹ Nemiraja Jadiyappa. (2022). Bankruptcy law, creditors' rights, and cash holdings: Evidence from a quasi-natural experiment in India. *Finance Research Letters*, Volume 46(Volume 46, Part A). <https://doi.org/https://doi.org/10.1016/j.frl.2021.102261>

lease until its term expired. However, in Decision No. 78 PK/Pdt.Sus-Pailit/2015, the receiver was granted full authority to terminate the lease agreement. A normative analysis of the legal basis used in these decisions is crucial to identify whether the discrepancies arise from interpreting the same legal provisions or conflicts between different norms.

3.2. Analysis of Lease Agreements Based on Bankruptcy

Lease agreements are governed by Article 1548 of the KUHPer, which defines leasing as an agreement in which the lessee is granted the right to use the leased object for a specified period with an agreed-upon payment. As a reciprocal contract, the lease provides the lessee with the exclusive right to enjoy the property or leased item without third-party interference during the lease term.¹² This exclusive right should be legally protected throughout the duration of the contract, even if the lessor experiences bankruptcy. However, the fact that the assets of the bankrupt debtor are placed under the management of a receiver often creates conflicts between the rights of the lessee and the debtor's obligations to repay debts to creditors.

The lessee's right to enjoy the leased property is threatened because the receiver appointed by the court has the authority to manage, settle, and even sell the assets under their control. This often places the lessee's rights in a vulnerable position, particularly if the receiver decides to auction off the leased property to pay the bankrupt debtor's obligations.¹³ This practice demonstrates that the legal position of the lessee is not prioritized in the bankruptcy process, even though they have a legally binding agreement that was in effect prior to the bankruptcy. This situation highlights a gap in Indonesian law, which has not explicitly regulated the rights of lessees in the context of a property owner's bankruptcy, leaving lessees at risk of losing their rights to property that was lawfully leased. This legal uncertainty also signals that, in bankruptcy, tenant protection has not been made a primary concern in existing regulations. The complexity of this issue is further compounded by the fundamental principle of bankruptcy, which is to give priority to creditors in collecting debts from the debtor's assets.¹⁴ The lessee's rights are not placed on the priority list, meaning that the receiver has the authority to act on the property in the interest of creditors who have higher hierarchical rights. In other words, the exclusive rights that were previously guaranteed in the lease contract can be disregarded without any clear legal assurance to protect the lessee's rights from actions taken by the receiver during bankruptcy.

3.3. The Role of the Receiver in Bankruptcy and Its Implications for Lessees

The receiver is the party authorized by the court to take over the management and settlement of the assets of a bankrupt debtor pursuant to Law No. 37/2004. In practice, the receiver has the right and obligation to settle the debtor's assets in the manner deemed most effective to satisfy the creditors' claims. The receiver is directly accountable under the

¹² Abdulkadir Muhammad, "Hukum Perdata Indonesia", (Bandung: Penerbit Citra Aditya Bakti, (2014).

¹³ Sudjana Sudjana, "Perlindungan Terhadap Lessee Usaha Dalam Perjanjian Sewa Guna Sebagai Kontrak Baku," *Res Nullius Law Journal* Vol 5 No 2, no. Vol 5 No 2 (2023) (October 9, 2023): 135-53, <https://doi.org/https://doi.org/10.34010/rnlj.v5i2.7858>.

¹⁴ Rexon Manihuruk, "Perlindungan Hukum Pihak Ketiga (Penyewa) Terhadap Investor Akibat Tidak Melepaskan Hak Guna Bangunan Pasca Pemutusan Kontrak Bagi Tempat Usaha," *Jurnal Idea Hukum* Vol 6, No 1, no. Vol 6, No 1 (2020) *Jurnal Idea Hukum* (March 1, 2020): 25-45, <https://doi.org/https://doi.org/10.20884/1.jih.2020.6.1.130>.

supervision of the Supervisory Judge, who ensures that the bankruptcy process complies with applicable rules and laws. However, when bankruptcy involves assets under a lease agreement, the receiver faces a more complex dilemma.¹⁵ On one hand, they are obligated to liquidate the debtor's assets to pay off the creditors. They must consider the lessee's rights, who lawfully holds the right of use over the assets based on the lease contract entered into prior to the bankruptcy. The receiver's authority to settle the assets conflicts with the lessee's right to occupy the property until the lease term ends. This issue arises particularly when the receiver decides to sell or auction off the leased assets, without taking into account or providing adequate compensation to the lessee. The rights of primary creditors, such as mortgage holders, are often prioritized in the process of liquidating bankruptcy assets, while the rights of third parties with agreements with the debtor, including lessees, are placed in a less favorable position. This indicates that existing regulations tend to favor primary creditors over parties who only have contractual agreements with the debtor. When the receiver decides to terminate or auction off assets, the lessee's rights remain unprotected, and they are forced to face the consequences of actions that are not entirely within their control.

Court decisions in several bankruptcy cases related to tenants' rights reveal inconsistencies that can create legal uncertainty for lessees. In 2014, the Supreme Court in case number 658 K/Pdt.Sus-Pailit/2014 issued a ruling that allowed tenants to continue using the leased property until the contract expired, even though the property owner was declared bankrupt. This decision demonstrated that the Supreme Court recognized the tenant's rights as a legitimate party in the lease agreement, providing legal protection for tenants against unilateral actions taken by the curator. However, in 2015, the Supreme Court in case number 78 PK/Pdt.Sus-Pailit/2015 issued a different ruling, granting the curator full authority to manage, settle, or even terminate the lease agreement without the obligation to uphold the tenant's rights. This case reflects a more pragmatic approach to the liquidation of bankruptcy assets, where the interests of creditors are prioritized over the rights of tenants, who are in a weaker position.¹⁶ This decision raises doubts about legal protection for tenants in the context of bankruptcy, given the lack of consistent provisions to safeguard tenant rights. It highlights that the resolution of disputes related to bankruptcy and lease rights remains highly dependent on the interpretation of the judges who decide the case. In this context, it is essential to formulate regulations that provide legal certainty and consistent protection for tenants, so that they no longer have to rely on court rulings that may be subject to change.¹⁷

Protecting tenants' rights in bankruptcy requires a comprehensive legal approach. Article 1548 of the Indonesian Civil Code defines a lease agreement as an arrangement where one party grants another the right to use a property for a specified period in exchange for

¹⁵ Sunaryo Sunaryo, "Tanggung Jawab Kurator Dalam Perkara Kepailitan Berdasarkan Prinsip Independensi," *Justicia Sains Jurnal Ilmu Hukum* Vol 8, No 1 (2023), no. Vol 8, No 1 (2023) *Justicia Sains Jurnal Ilmu Hukum* (June 1, 2023): 42–53, <https://doi.org/https://doi.org/10.24967/jcs.v8i1.2309>.

¹⁶ Adriel Michael Tirayo, "Problematik Definisi Harta Pailit Dalam Kepailitan Dan PKPU Untuk Mencapai Kepastian Hukum," *Verstek Jurnal Hukum Acara* Vol 10, No 2, no. Vol 10, No 2 *Verstek Jurnal Hukum Acara* (2021): 306–16, <https://doi.org/https://doi.org/10.20961/jv.v10i2.67631>.

¹⁷ Martin Suryatama Mulia, "Perlindungan Hukum Terhadap Penyewa Akibat Pembatalan Secara Sepihak Dalam Perjanjian Sewa Menyewa Shop Unit Mall," *Notary Law Research* Vol 4, No 1, no. Vol 4, No 1 (2022) (December 2022): 14–33, <https://doi.org/http://dx.doi.org/10.56444/nlr.v4i1.3419>.

payment. This provision establishes a legal foundation for tenants to uphold their rights during the lease term, ensuring they can benefit from the agreement's terms. However, under Law No. 37/2004, receivers are granted extensive authority to manage and liquidate a debtor's assets. Unfortunately, this often results in tenants' rights being overlooked, as bankruptcy law tends to prioritize creditors' claims. To address this, it is crucial to establish clear limits on receivers' authority over assets that are tied to lease agreements, ensuring that tenants' interests are adequately protected.

Additionally, the principle of *pacta sunt servanda*, which upholds the binding nature of agreements, should be integrated with the principle of protecting third parties, such as tenants.¹⁸ This approach ensures that tenants' interests are not disregarded during bankruptcy proceedings. To achieve this, explicit regulations must be established to guarantee that tenants' rights are preserved as long as they fulfill their contractual obligations. By combining these principles and implementing stronger legal safeguards, a balance can be struck between protecting tenants' rights and addressing creditors' claims in bankruptcy cases.¹⁹

3.4. Legal Protection for Tenants

Legal protection for tenants in the context of the bankruptcy of property owners is still not explicitly regulated. As a valid contract under civil law, a lease agreement should remain valid and binding even if the lessor is declared bankrupt. However, in practice, existing regulations tend to prioritize the settlement of the debtor's obligations to creditors, often neglecting the rights of tenants in the process of bankruptcy asset liquidation. Law No. 37/2004 does not provide specific provisions regarding the protection of third parties, such as tenants, who have valid agreements with the debtor prior to bankruptcy. In such situations, tenants are heavily dependent on the curator's discretion, who can unilaterally determine the status of the leased asset. The absence of legal protection for tenants results in uncertainty and can disadvantage tenants who lack bargaining power to contest decisions that favor primary creditors. For example, the curator has the right to sell or liquidate bankrupt assets about the interests of primary creditors without having to consider the rights of tenants. This demonstrates that the current legal system does not fully account for the need to protect the rights of third parties bound by lease agreements with bankrupt debtors. Consequently, legal protection for tenants facing the bankruptcy of property owners remains limited and weak.

Legal protection for tenants in lease agreements affected by the bankruptcy of property owners is an important issue that needs to be clarified in Indonesian law. According to the KUHPer, lease agreements are regulated under Article 1548, which states that a lease contract is an agreement that grants the tenant the right to use the leased property for a specified period in exchange for an agreed-upon rental fee. However, the rights recognized in Article 1548 of the KUHPer do not provide clarity on the status of the tenant's rights when the lessor is declared bankrupt.²⁰ This means that when the property owner is declared bankrupt, the

¹⁸ <https://doi.org/10.36642/mjil.43.3.pacta>; 10.30641/dejure.2021.v21.447-458:

¹⁹ Bo Li. (2023). The realization of class-monopoly rents: Landlords' class power and its impact on tenants' housing experiences. *Journal of Urban Management*, Volume 12, Issue 4 (Volume 12, Issue 4, December 2023), 360–374. <https://doi.org/https://doi.org/10.1016/j.jum.2023.08.002>

²⁰ Dessy Sunarsih, "Kepastian Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Sewa Menyewa Rumah Toko," *Supremasi Jurnal Hukum* VOL. 4, NO. 2, no. VOL. 4, NO. 2 (2022) (2022): 1–13, <https://doi.org/https://doi.org/10.36441/supremasi.v4i2.715>.

tenant's rights under the valid lease agreement become vulnerable to the decisions of the curator, who has full authority over the liquidation of assets in accordance with Law No. 37/2004.

Law No. 37/2004, Article 1, paragraph (1) states that bankruptcy is a general seizure of all assets of the bankrupt debtor, which is managed by the curator under the supervision of the Supervisory Judge. Furthermore, Articles 21 through 23 of Law No. 37/2004 grant the curator full authority to control and manage all assets of the bankrupt debtor, including the authority to decide on actions regarding leased assets. Article 24, paragraph (1) of Law No. 37/2004 emphasizes that, from the date the bankruptcy declaration is made, the debtor automatically loses the right to manage or control the assets within the bankruptcy estate. This means the curator has the right to make all decisions regarding the bankrupt debtor's assets, without any explicit limitation on the rights of third parties such as tenants who have valid agreements before the bankruptcy. This provision places the tenant's rights, which should be recognized under the lease contract in the KUHPer, in a vulnerable position because they are not explicitly recognized in bankruptcy law.²¹ In practice, tenants' rights are often overlooked because Law No. 37/2004 focuses more on the interests of creditors, who are seen as having primary rights over the debtor's assets. Tenants, who have also entered into agreements with the lessor, find themselves in a less protected position due to the provisions of this law. This is further exacerbated by the curator's authority to decide on liquidation actions deemed necessary, including the potential termination of the lease contract if it is considered beneficial to the asset liquidation process in favor of the creditors.²²

Article 1320 of the KUHPer affirms that a contract is considered valid if it meets four essential conditions: mutual consent of both parties, legal capacity, a definite object, and a purpose that is lawful according to the law. A lease agreement that fulfills these requirements should be valid, binding, and legally protected. However, in bankruptcy practice, tenants' rights do not receive the same level of legal protection as creditors' rights. In the absence of specific protection for tenants under Law No. 37/2004 or the KUHPer, the rights of tenants based on their contracts can be disregarded when the curator liquidates the bankrupt assets. This situation illustrates that Law No. 37/2004 needs to be revised to include provisions for special protection for tenants involved in valid agreements prior to bankruptcy, ensuring that their rights remain protected in accordance with the applicable contract terms.

The provisions in Indonesia's bankruptcy law are still heavily focused on fulfilling the rights of primary creditors, while the rights of third parties such as tenants are often neglected. A more holistic approach is required to ensure that the rights of third parties in valid agreements, including tenants, are also respected and protected when the debtor undergoes bankruptcy. Therefore, there is an urgent need to establish provisions that prohibit unilateral actions by the curator concerning lease contracts, unless there is an agreement or a valid court ruling allowing such actions. Referring to the laws of several countries that apply the principle

²¹ Rini Ristanti, "Perlindungan Hukum Bagi Kreditur Dalam Akta Jaminan Berupa Hak Sewa Kios Pasar," *Officium Notarium* Vol. 4 No. 1, no. Vol. 4 No. 1: MEI 2024 (May 28, 2024): 81-94, <https://doi.org/https://doi.org/10.20885/IJON.vol4.iss1.art6>.

²² Endang Pandamdari, "Kedudukan Penyewa Tanah Dalam Perjanjian Sewa Menyewa Tanpa Jangka Waktu," *Era Hukum Jurnal Ilmiah Ilmu Hukum* Vol. 17 No. 1, no. Vol. 17 No. 1 (2019) (June 10, 2019), <https://doi.org/https://doi.org/10.24912/erahukum.v17i1.5976>.

requiring curators to respect lease contracts that were in effect prior to the declaration of bankruptcy, provided that the tenant continues to fulfill their obligations. This principle allows for a balance between the rights of the tenant and the interests of the creditors, ensuring that the asset liquidation process proceeds without compromising the rights of parties bound by previous agreements.²³ In line with this, the application of a similar principle in Law No. 37/2004 in Indonesia would provide more balanced protection for tenants, where the curator would be required to honor lease agreements made prior to the bankruptcy unless the interests of primary creditors truly necessitate the liquidation or sale of the asset.²⁴ In the current legal situation, the lack of protection for tenant rights in bankruptcy law creates legal uncertainty for those renting assets owned by a bankrupt debtor. Strengthening the bankruptcy law by incorporating provisions that protect tenants in valid contracts would create greater legal certainty and enhance trust in property lease transactions.

To better protect the rights of tenants in situations of property owner bankruptcy, regulatory updates are needed that explicitly guarantee their rights under lease agreements by formulating specific rules that prohibit unilateral termination of valid lease contracts by the curator, unless there is mutual agreement between the tenant and the curator. Furthermore, provisions should be included that require the curator to provide appropriate compensation to the tenant if the curator decides to terminate the lease before the lease term ends. Imposing an obligation on the curator to consider the tenant's rights in every asset liquidation action can help enhance legal certainty for tenants. This would not only offer better protection for tenants' rights but also foster greater trust in property lease relationships. With clearer regulations and stronger protections, tenants' rights can be recognized as part of legal protections that are on par with creditor rights, ensuring that the asset liquidation process in bankruptcy is carried out in a fair and balanced manner.

Bankruptcy, as regulated under Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (Law No. 37/2004), is a legal process where all the debtor's assets are placed under court supervision and managed by a receiver to satisfy creditors' claims. In practice, bankruptcy declarations also affect other legal relationships involving the debtor, such as lease agreements between property owners and tenants. The impact of bankruptcy on lease agreements raises several legal issues, especially regarding the protection of tenants' rights, which are often neglected during asset liquidation. This study seeks to analyze the relevant legal principles and provide recommendations for strengthening regulations to protect tenants' rights in such situations.

The principle of *pacta sunt servanda*, which asserts that agreements bind both parties as law, should remain enforceable even in extraordinary circumstances like bankruptcy. However, this principle frequently conflicts with *pari passu pro rata parte*, a principle in bankruptcy law that prioritizes equal distribution among creditors. This creates a legal

²³ Mukhamad Khabib Risvian, "Perlindungan Hukum Kreditor Yang Memegang Hak Tanggungan Dalam Kepailitan," *Jurnal Cakrawala Hukum* Vol 13, No 1, no. Vol 13, No 1 (2022) *Jurnal Cakrawala Hukum* (April 1, 2022): 29–37, <https://doi.org/https://doi.org/10.26905/idjch.v13i1.7438>.

²⁴ I Made Adi Saputra, "Perlindungan Hukum Penyewa Terhadap Ap Objek Hak Tanggungan Yang Di Bebani Hak Sewa," *Konstruksi Hukum* Vol. 1 No. 2, no. Vol. 1 No. 2 (2020): *Jurnal Konstruksi Hukum* (October 28, 2020): 1–5, <https://doi.org/https://doi.org/10.22225/jkh.1.2.2538.404-408>.

dilemma since receivers are empowered to manage and liquidate the debtor's assets to meet creditors' claims, potentially overriding tenants' rights to use the property until the lease term ends. In Indonesia, the application of *lex specialis derogat legi generali* must be analyzed to determine whether the Bankruptcy Law supersedes Article 1548 of the Indonesian Civil Code, which governs tenants' rights.²⁵ Article 1131 of the Indonesian Civil Code stipulates that a debtor's assets serve as general collateral for all creditors unless specific preferential rights are granted. Consequently, tenants are neither classified as privileged creditors nor concurrent creditors, placing them in a lower position in the hierarchy of claims. This often results in tenants' rights being overlooked during asset liquidation. Further analysis is required to clarify the relationship between Article 1131 and Law No. 37/2004, as well as the implications of this hierarchy on tenants' rights. Moreover, inconsistent court rulings in bankruptcy cases contribute to legal uncertainty. In some instances, courts have upheld tenants' rights to continue using leased property until the lease expires. Conversely, other rulings have granted receivers the authority to terminate lease agreements to prioritize creditors' interests. For example, in Supreme Court Decision No. 658 K/Pdt.Sus-Pailit/2014, the court allowed tenants to maintain their lease rights until the contract's expiration. However, in Decision No. 78 PK/Pdt.Sus-Pailit/2015, the receiver was authorized to terminate the lease agreement. A normative analysis of these decisions is essential to identify whether the discrepancies result from different interpretations of the same provisions or conflicts between norms.²⁶

Article 1548 of the Civil Code defines a lease agreement as an arrangement where one party grants another the right to use a property for a specific period in exchange for payment. This provision establishes the legal basis for tenants to retain their rights during the lease term. However, Law No. 37/2004 grants receivers extensive authority to manage and liquidate a debtor's assets. This often results in tenants' rights being neglected because bankruptcy law prioritizes creditors' claims. Therefore, it is necessary to limit receivers' authority over assets that are tied to lease agreements.²⁷ The principle of *pacta sunt servanda* should be combined with the principle of protecting third parties, such as tenants, to ensure their interests are not disregarded in bankruptcy proceedings. Regulations must explicitly guarantee that tenants' rights are preserved as long as they fulfill their contractual obligations.

To address these challenges, clearer regulations are essential. Tenants who meet their obligations under lease agreements should receive legal protections equivalent to those afforded to primary creditors. This can be achieved by applying the principle of *lex specialis derogat legi generali* to ensure the applicability of Article 1548 of the Civil Code in bankruptcy cases. The law should also explicitly state that valid lease agreements remain enforceable unless annulled by a court ruling. Additionally, receivers must be required to consider tenants'

²⁵ Vivien Beattie. (2006). International lease-accounting reform and economic consequences: The views of U.K. users and preparers. *The International Journal of Accounting*, Volume 41, Issue 1 (Volume 41, Issue 1, 2006), 75–103. <https://doi.org/https://doi.org/10.1016/j.intacc.2005.12.003>

²⁶ Christopher Daniel. (2024). What retail apocalypse? A Delphi forecast of commercial space demand in the Toronto region. *Journal of Retailing and Consumer Services*, Volume 77 (Volume 77, March 2024), 103–670. <https://doi.org/https://doi.org/10.1016/j.jretconser.2023.103670>

²⁷ David le Bris. (2019). Testing legal origins theory within France: Customary laws versus Roman code. *Journal of Comparative Economics*, Volume 47 (Volume 47, Issue 1, March 2019), 1–30. <https://doi.org/https://doi.org/10.1016/j.jce.2018.10.003>

rights in all asset liquidation actions, including providing fair compensation if lease agreements are prematurely terminated. Furthermore, standardizing judicial interpretations can help ensure consistent protection of tenants' rights.

4. Conclusions

Protecting tenants' rights in lease agreements affected by the bankruptcy of property owners necessitates more robust regulation in Indonesian law. Conflicts between the principles of *pacta sunt servanda* and *pari passu pro rata parte* must be resolved through an approach that prioritizes balancing the interests of creditors and tenants. Strengthening relevant regulations can provide better legal certainty and fairness for all parties involved. This effort requires collaboration among policymakers, academics, and legal practitioners to develop regulations that not only safeguard creditors' rights but also ensure justice for tenants. By doing so, Indonesia can establish a more inclusive and equitable bankruptcy legal system. The protection of tenants' rights in house rental contracts controlled by a curator after the bankruptcy of the property owner is a complex legal issue that requires serious attention from the legal system in Indonesia. In the context of bankruptcy, existing laws tend to prioritize the rights of creditors, often neglecting the rights of tenants who have valid agreements prior to the bankruptcy. Research findings indicate that tenants' positions are often weakened in the asset liquidation process, where the curator has the authority to manage, terminate, or even sell rental assets without considering the tenants' rights.

The varying decisions by the Supreme Court in several cases concerning tenants' rights suggest the presence of legal uncertainty that can harm tenants, who should have the right to use the property until the lease term ends. The need for reform in bankruptcy regulations has become increasingly urgent, aiming to guarantee tenants' rights, so they are not only protected from the curator's unilateral actions but also recognized as parties with legitimate interests in the valid lease agreement. Implementing provisions that prohibit unilateral termination of lease contracts without mutual agreement could provide better protection for tenants and impose an obligation on the curator to consider tenants' rights in every asset liquidation action. With clearer and more definitive legal measures, the legal system in Indonesia can create a fairer and more transparent climate in rental relationships, while providing tenants with confidence that their rights remain safeguarded even if the property owner goes bankrupt. Ultimately, by reforming the regulations and providing better protection for tenants, greater justice can be achieved in resolving bankruptcy issues, where all parties, both creditors and tenants, can feel their rights are protected and acknowledged under the applicable legal system.

5. Reference

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