

DOUBLE DIPPING PROHIBITION IN THE MODERN BANKRUPTCY ERA: A COMPARATIVE REVIEW OF INDONESIA WITH BANKRUPTCY LAWS IN SOUTHEAST ASIA AND EUROPE

PROIBIÇÃO DE DUPLA RECEBIMENTO DE BENEFÍCIOS NA ERA MODERNA DA FALÊNCIA: UMA ANÁLISE COMPARATIVA DAS LEIS DE FALÊNCIA DA INDONÉSIA COM AS DO SUDESTE ASIÁTICO E DA EUROPA

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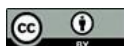
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Abstract

Billing double or double dipping in context bankruptcy corporation become an increasingly pressing issue relevant in various countries, including Indonesia. Practice This happen when a creditors submit the same claim against two different entities in bankruptcy proceedings, which can harm other creditors and influence distribution fair assets. Although in developed countries like Europe and the United States arrangement about prohibition billing double Already exist and are regulated with strict, Indonesia and several countries in Southeast Asia have not own explicit regulations arrange matter this. In law Indonesian bankruptcy, although No There is provision directly prohibiting practice these are the principles like *pari passu* and *pari creditorium* try guard justice and equality between creditors. Research This aim For analyze prohibition billing double in system law bankruptcy in Indonesia with review comparative towards countries in Southeast Asia, Europe, and the United States. Research it also discusses ambiguity existing regulations in

Resumo

*A cobrança dupla ou o recebimento indevido de créditos em processos de falência tornaram-se uma questão cada vez mais premente em diversos países, incluindo a Indonésia. Na prática, isso ocorre quando um credor apresenta a mesma reivindicação contra duas entidades diferentes em um processo de falência, o que pode prejudicar outros credores e influenciar a distribuição justa dos ativos. Embora em países desenvolvidos como os da Europa e os Estados Unidos já existam regulamentações rigorosas para a proibição da cobrança dupla, a Indonésia e diversos países do Sudeste Asiático não possuem regulamentações específicas sobre o assunto. Na legislação indonésia sobre falências, embora não haja uma disposição que proíba diretamente essa prática, princípios como o *pari passu* e a *paridade credor* buscam garantir a justiça e a igualdade entre os credores. O objetivo desta pesquisa é analisar a proibição da cobrança dupla no sistema jurídico de falências da Indonésia, comparando-o com o de países do*



Indonesia, as well as give recommendation For repair system Indonesian law to prevent practice detrimental double dipping other creditors and disrupt principle justice in distribution treasure bankrupt. It is hoped that research This can give outlook For create system law more bankruptcy transparent, fair and just in Indonesia.

Keywords: Prohibition Double Billing, Bankruptcy Law, Indonesia, Asia, Europe.

Sudeste Asiático, da Europa e dos Estados Unidos. A pesquisa também discute as ambiguidades da legislação existente na Indonésia, além de apresentar recomendações para aprimorar o sistema jurídico indonésio a fim de prevenir a prática prejudicial de recebimento indevido de créditos em processos de falência e a violação do princípio da justiça na distribuição de ativos em casos de falência. Espera-se que esta pesquisa possa contribuir para a criação de um sistema jurídico de falências mais transparente, justo e equitativo na Indonésia.

Palavras-chave: Proibição de cobrança dupla, Lei de falências, Indonésia, Ásia, Europa.

1 INTRODUCTION

Phenomenon billing double or *double dipping* in context bankruptcy corporation has become an increasingly pressing issue relevant in various countries, including Indonesia.¹ Practice This refers to a situation where the creditor or entitled party can claim payment on the same debt more from once, good through structure entity different laws or through a number of potential claims overlapping overlap in bankruptcy proceedings.² In many case, billing double can increase position creditors certain in the process of completion bankruptcy, which has the potential harm holder right others and influence distribution fair assets.³ Phenomenon deep double dip structure a number of year lastly, has Lots implemented in debt restructuring in Europe, where creditors can claim the same debt through two paths different in structure the same company to improve recovery they.⁴ This, although legitimate in Lots system law, giving rise to question about justice and transparency in settlement bankruptcy. In Europe, the use of billing double Already arranged with more details in regulation more bankruptcy strict. For example, countries

¹ RA Hapsari et al., “Bankruptcy Indicator Frameworks Used In Cross-Country Reviews (Indonesia – Russia Bankruptcy Law),” *Nurani* 24, no. 1 (2024): 63–76, Scopus, <https://doi.org/10.19109/nurani.v24i1.22023>.

² BL Kyer and GE Maggs, “Some International Evidence on Double-Dip Recession,” *International Advances in Economic Research* 25, no. 3 (2019): 347–62, Scopus, <https://doi.org/10.1007/s11294-019-09747-2>.

³ G. McCormack, “The European Restructuring Directive and Stays on Creditor Enforcement Actions,” *International Insolvency Review* 30, no. S1 (2021): S67–88, Scopus, <https://doi.org/10.1002/iir.1423>.

⁴ CL Gutiérrez et al., “Firms' Performance under Different Bankruptcy Systems: A Europe-USA Empirical Analysis,” *Accounting and Finance* 52, no. 3 (2012): 849–72, Scopus, <https://doi.org/10.1111/j.1467-629X.2011.00407.x>.

like Germany, France, and the UK has set restrictive regulations use claim double by creditors in scenario restructuring and liquidation. Structure This allows various types of debt for considered at the time the same, but with strict supervision For prevent abuse.⁵ On the other hand, Indonesia and countries in Southeast Asia in general Not yet own regulations that govern problem billing double in a way explicit in law bankruptcy they.⁶ This is add challenge for courts and parties related in manage the bankruptcy process fairly and transparently, because No There is runway clear laws For handle possible claims overlapping overlap.

In Indonesia, although there is Constitution bankruptcy, uncertainty about distribution fair claims between creditors in bankruptcy often creates room gray that can exploited by unauthorized parties responsible answer For submit claim double. This inherent with law bankruptcy in Indonesia which has develop in a way rapidly. Citing data from system information search cases (SIPP) from 5 courts commerce (PN) namely Court Central Jakarta Commercial Court Medan Commerce, Court Semarang Commerce, Court Surabaya Commerce and Court Makassar Commerce, recorded There is as many as 651 (six hundred and fifty one) PKPU case and 95 (nine twenty five) cases bankruptcy in 2023.⁷ That matter is fact that many the party that benefits institution court commerce For finish debt matters with PKPU application or Bankruptcy, more Far Again with many registered case as case bankrupt Of course just result in many problem the law that arises in practice bankruptcy. One of the problem the namely many agreement credit the coverage that will be implications regarding guarantee status materiality and position law Debtor main and as *Personal Guarantee* or guarantor.

Mechanism application statement bankrupt can happen to Principal Debtors and guarantor Because agreement liability happen consequence existence party the third one agreed For interest si in debt tie up self For fulfil engagement si in debt namely at the time time si in debt Alone No succeed fulfil obligations.⁸ In the legal framework in Indonesia, the framework agreement Alone shared become insurance carried out by

⁵ H. Song and

⁶ FL Yudhi Priyo Amboro, *Bankruptcy Law, Application of Bankruptcy Law to Corporations in Indonesia, the United States, the United Kingdom and Australia* (Setara Press, 2020).

⁷ E. Fahamsyah et al., "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied?," *Volksgeist: Journal Legal and Constitutional Studies* 7, no. 1 (2024): 199–218, Scopus, <https://doi.org/10.24090/volksgeist.v7i1.10079>.

⁸ MH Shubhan, "Misuse of Bankruptcy Petitions by Creditors: The Case of Indonesia," *International Journal of Innovation, Creativity and Change* 10, no. 6 (2019): 195–217, Scopus.

individuals and insurance carried out by legal entities (*personal guarantee and corporate guarantee*). Both matter that is basically own the same principle, because Good rights and obligations held guarantor on both type liability the identical, only just subject the perpetrator different.⁹

The problem that then arises happened in Indonesia, namely if in something agreement liability *Personal Guarantee* stated Bankrupt and in simultaneously with Principal Debtor, however with number case different. From the problem the Then appear problem where to creditors submit the bill said. If use doctrine grammatical elements contained in Article 1820 of the Civil Code so clear that in problem the creditors must collect to Principal and non-principal debtors to *Personal Guarantee*, however problem Then appear if creditors bill the bill to The principal debtor who is bankrupt and also to Bankrupt *Personal Guarantee* with same type and bill to two subjects different laws bankruptcy.¹⁰ Under the conditions the unfortunately not yet in Indonesia own framework clear law, consequences will cause loss and uncertainty law related billing double.

2 THEORETICAL FOUNDATIONS AND LITERATURE REVIEW

Framework literature study law bankruptcy Actually has common used term billing double. Billing double Alone is practice common and occurring billing in law bankruptcy in a way international. Practice billing double in framework law modern bankruptcy becomes issue main in law many bankruptcies implemented in Europe and some parts of Asia.¹¹ Although billing double in context bankruptcy has get attention in developed countries as in Europe and the United States specifically in aspect technical and procedural from arrangement claim double in system laws of countries with economy progress. Research latest about billing double in bankruptcy part big focused on European countries and the United States. Research by Jones Day (2023) revealed that in structure debt restructuring, structure *double dip* the more often used by creditors For maximize recovery they in situation bankruptcy, in particular in cases large involving more from

⁹ Hadi Shubhan, *Legal Opinion in the Legal Aspects of Bankruptcy / PKPU* (2020).

¹⁰ Zainal Asikin, *Bankruptcy Law* (Andi Offset, 2022).

¹¹ Brishti Guha and Prabal Roy Chowdhury, "Micro-Finance Competition: Motivated Micro-Lenders, Double-Dipping and Default," *Journal of Development Economics* 105 (November 2013): 86–102, <https://doi.org/10.1016/j.jdeveco.2013.07.006>.

One track claims.¹² In Europe, especially in countries like English and German regulations about billing double relatively more strict, where the system law arrange with careful How claim can shared between creditors and how its influence to liquidation company.¹³ On the other hand, in the context of Southeast Asia, especially Indonesia, has not There is regulations that are explicit arrange billing double in bankruptcy whereas practice billing double has Lots happen in system law bankruptcy in Indonesia. In the context of Indonesia, research show that there is difference striking between system law bankruptcy in Indonesia and European countries in matter implementation principles justice in distribution claim.¹⁴ Although law bankruptcy in Indonesia in general general arrange debt management, but No There is clear limitations related billing double. Therefore that, the gap This become important issues For reviewed more in, in order to provide more recommendations clear related arrangement claim in bankruptcy in Indonesia. The research will also contribute to ambiguity regulations in implementation *double dipping* that lasts This considered valid. Practice billing double This result in injustice and imbalance in distribution on sale treasure Bankrupt later day. This is happen consequence registered creditors the bill two things bankrupt on the same debt Can get more Lots than he should have get temporary other creditors get more amount A little or No get The same once. Therefore that, prohibition *double dipping* is very important For implemented in the bankruptcy process to ensure principle justice and equality bill creditors.

During This Not yet there is research that is comprehensive discuss How practice billing double and certainty the law that actually occurs in Indonesia can looking in the mirror with other countries. Research This will focus on comparison between Indonesia and the system law in Europe and Southeast Asia. This will give outlook about how each country regulates or ignore problem billing double, and whether There is potential For repair system Indonesian law in matter this. Comparative study this is also important For understand challenge legal issues faced by developing countries, such as Indonesia, in

¹² A. Gurrea -Martinez, "Debtor-in-Possession Financing in Reorganization Procedures: Regulatory Models and Proposals for Reform," *European Business Organization Law Review* 24, no. 3 (2023): 555–82, Scopus, <https://doi.org/10.1007/s40804-023-00289-z>.

¹³ P. Ariqah and S. Anisah, "ARRANGEMENT OF BANKRUPTCY DEBT REPAYMENT TOWARD EMPLOYEES IN INDONESIA AND GERMANY," *Indonesia Private Law Review* 3, no. 1 (2022): 47–62, Scopus, <https://doi.org/10.25041/iplr.v3i1.2598>.

¹⁴ H. Jayadi, "Application of Cross Border Insolvency in Bankruptcy from the Legal Perspective of Indonesian Civil Procedure Law," *International Journal of Innovation, Creativity and Change* 10, no. 3 (2019): 169–84, Scopus.

handle practices that can damage principles base from fair and transparent bankruptcy. Most of existing literature only discuss phenomenon billing double in context very limited law, without see impact more wide to credibility system law, distribution riches in bankruptcy proceedings, and potential loss for holder right others. Lack of clear regulations in Indonesia regarding billing double create emptiness laws that can utilized in practices that are not fair. Therefore that, still There is need urge For research that examines gap This in law Indonesian bankruptcy and offers more solutions practical and can implemented in Indonesian context. Therefore, that, research This will focus on questions study namely How is it? Prohibition billing double in the Modern Bankruptcy Era with review Comparative With Bankruptcy Laws In Southeast Asia And Europe.

3 RESEARCH METHODOLOGY

The type of research the author used in compiling this legal paper is normative legal research or library legal research. Normative legal research is a scientific research procedure to discover the truth based on the logic of legal science from a normative perspective.¹⁵The approach in this research is the legal approach. analytical (*analytical approach*) and Legal approach (*statute approach*). Legal approach (*Statute Approach*) is carried out by examining all Bankruptcy Laws and Guarantee Laws by examining philosophical elements, then it can be concluded whether or not there is a philosophical conflict between the law and the legal issue being handled. Analytical (*Analytical Approach*) is carried out For analyze What is implemented and the rules that will be developed.¹⁶The data used in study This is secondary data sources with material law. Data analysis techniques using approach descriptive analytical For solve problem in study This.

¹⁵ Zainuddin Ali, *Legal Research Methods* (Sinar Grafika , 2016), 105.

¹⁶ Peter Mahmud, *Legal Research* (Kencana , 2011).

4 RESULTS AND DISCUSSION

4.1 Principles of bankruptcy law in Indonesia

Business and the world of bankruptcy is a legal process Where a debtor stated No capable pay his debts through track Court. ¹⁷One of the objective he did billing through track court is effort For involving state agency in the billing process that will be impact law for position treasure debtor. Bankruptcy in Article 1 paragraph (1) of Law No.37 of 2004 concerning Bankruptcy and Suspension Obligation Debt Payment means as confiscation general on all over riches debtor bankrupt, both those who have There is and those that will there later day. ¹⁸The purpose of holding bankruptcy through institution court is For confiscation general which confiscation to all over treasure riches debtor also known as execution collective (*collective execution*).¹⁹ That is, a special process from execution collective done in a way direct to all assets owned by the debtor For benefit all creditors.²⁰ After confiscation the so to all over riches debtor is part from management to treasure bankruptcy (*management of estate*).²¹ Another view was conveyed by Jerry Hoff who provided an interpretation regarding bankruptcy with "*Bankruptcy is a general statutory attachment encompassing all the assets of the debtor. The bankruptcy only covers the assets, the personal status of an individual will not be affected by the bankruptcy; he is not placed under guardianship. A company also continues to exist after the declaration of bankruptcy. During the bankruptcy proceedings, acts with regard to the bankruptcy estate can only be performed by the receiver, but other acts remain part of the domain of the debtor's corporate organs*" ²² Therefore can it is said bankruptcy is confiscation general on all riches debtor bankrupt whose management and settlement carried out by the curator below supervision of the supervising judge. This process aim For finish debt disputes in a way fair and proportional through liquidation asset debtor For pay debts to creditors.

¹⁷ Elyta Ras Ginting, *Bankruptcy Law : Bankruptcy Theory* , in Sinar Grafika (2018).

¹⁸ Hadi Shubhan, *Bankruptcy Law , Principles , Norms, and Practices in Court* (Kencana , 2008).

¹⁹ Thomas H. Jackson, "Avoiding Powers in Bankruptcy," *Stanford Law Review* 36, no. 3 (1984): 725, <https://doi.org/10.2307/1228721>.

²⁰ Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard Univ. Press, 1986).

²¹ Charles J. Tabb, *Bankruptcy Anthology* (Anderson Publ , 2002).

²² Shubhan, *Bankruptcy Law , Principles , Norms, and Practices in the Courts* .

Constitution Bankruptcy formed For give protection to creditors if debtor No pay his debts, creditors expected can get access to treasure riches from the stated debtor bankruptcy, thing the Because debtor No capable Again pay his debts.²³ In other words that institution bankruptcy is state efforts to administer something billing For avoid struggle treasure debtors who do not capable pay his debt, which is directly this process will carry out administrative processes billing from creditors Good as strong creditors or holder guarantee material and creditors in view weak in struggle treasure debtor with debt settlement in a way fair and proportional. This as context held bankruptcy principle justice and equality very important bill For prevent arbitrariness party collector and ensure that all creditors get fair share from treasure bankrupt debtors.²⁴

Principle bill in law bankruptcy must covers two main points principle namely justice and equality or known with principle *parity creditorium* and principles *pari passu prorata parte*.²⁵ This matter is realization from two principles the main points contained in Article 1131 of the Civil Code which reads that all material si in debt, whether moving or not moving, both those who have There is both new and old will there later day, to be liability For all engagement individual and 1132 of the Civil Code which reads that material the become guarantee together for everyone who lends to him, income, sales objects That divided up according to balance. Principle *parity creditorium* and principles *pari passu prorata party* is principle main debt settlement from debtor to creditors. Principle *parity creditorium* (equality the position of creditors) determines that the creditors have equal rights to all treasure object debtor. If debtor No can pay his debt, then treasure riches debtor become target creditor. Another meaning of principle *parity creditorium* is that which becomes guarantee general against debtors' debts only limited to property his wealth only and not aspect others, such as personal status and rights others outside treasure riches The same very No affected against the Debtor's debts the.²⁶

The existence of two principles that is in essence intended so that bankruptcy can give justice in billing to prevent authority authority in billing For ensure rights creditors For get fair and proportional share from treasure debtor bankrupt, so that the Principle of Justice in billing must be covers aspect proportional, balanced and reasonable as part from

²³ Amrih Sacred Goddess Ivida and Herowati Poesoko , *Bankruptcy Law : Position and Rights of Creditors Separatists Over Collateral Debtor Bankruptcy* (Laksbang) Pressindo , 2012).

²⁴ Fahamsyah et al., "The Problem of Filing for Bankruptcy in Indonesian Law: Should the Insolvency Test Mechanism Be Applied?"

²⁵ Kartini Mulyadi, *Bankruptcy and Settlement of Debts and Receivables* (Alumni, 2004).

²⁶ Shubhan, *Bankruptcy Law , Principles , Norms, and Practices in the Courts .*

mandate Law No.37 of 2004 concerning Bankruptcy and Suspension Obligation Debt Payment to avoid unpaid billing fair.

4.2 Prohibition on double billing in bankruptcy in various European and ASIAN countries

Law No.37 of 2004 concerning Bankruptcy and Suspension and Obligations Debt Payment confirmed aspect main thing you want protected by the state as maker regulations is give balance protection between interest Creditors and interests Debtor. Therefore That For create fair conditions need done careful action in do verification bills to avoid existence creditors who take advantage of bankruptcy For accept payment in a way excessive, in Law No.37 of 2004 concerning Bankruptcy and Suspension and Obligations Debt Payment verification process Alone arranged in Article 28 paragraph 2 states that curator authorized For look after treasure debtor bankruptcy, including accept bill receivables from the creditors. So that with authority the curator can take attitude can accept or reject something the bill according to curator No appropriate submitted.

Bankruptcy arrange various aspect related nature and type bills, both debts owned by the debtor and receivables or claims filed by creditors. In the context of law bankruptcy, bankruptcy process often happens as consequence from existence claims filed by creditors, which can put debtor in situation the law that is called bankruptcy.²⁷This is arranged in Law no. 37 of 2004 concerning Bankruptcy and Suspension Debt Obligations. In bankruptcy proceedings, the relationship law between creditors and debtors produced from agreement giving performance or counter achievement, where each party own obligation For do or No do action certain, which in Constitution called as “*underwerp object*”. With thus after the determination a or legal entity in condition bankrupt so instantly regime billing become regime billing in bankruptcy that is carried out with methods and mechanisms bankruptcy, as something description in some countries billing double “*double dipping*” set in a way firm about how and what That bill double, such as in The United ²⁸States *Bankruptcy Code* regulates prohibition billing

²⁷ Sutan Remy, *Bankruptcy Law* (Pustaka Utama Grafiti , 2002).

²⁸ Bankruptcy Code Chapter II (Chapter 11) and Chapter 7 (Chapter 7) Section 502 “Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee

double implemented For ensure that creditors No get payment more from one time for the same claim. Therefore it is United States Bankruptcy Law arrange about fair distribution to all creditors based on set priorities in code bankruptcy.

Practice prohibition billing double “*Double Dipping*” is basically also applied in several Asian countries southeast, such as Malaysia, Thailand, Vietnam, Singapore, and Brunei Darussalam among these countries there is similarities that No there is arrangement in a way explicit in Article in Constitution bankruptcy about prohibition billing double However set in principle or practices applied in *common law* as well as in procedure court bankruptcy, in matter Malaysia's regulations regulate about prohibition billing double proof prohibition law Malaysian bankruptcy is known as the “Rule Against Double Proof” which is principle adopted law from common law, not shaped One chapter explicit in Constitution Malaysian bankruptcy (Insolvency Act 1967²⁹). Thailand does not there is chapter specific question prohibition billing double³⁰, rule This walk as the principle of fairness and for prevent payment double dividend on the same debt in practice bankruptcy. Vietnam does not found chapter explicit, principle This run so that dividends No paid twice on one debt is set in the process of proof of debt and distribution dividends³¹. Singapore The principle of “rule against double proof” is recognized by common law and practice insolvency³², however No set at one chapter explicit in a way written. Brunei Darussalam double proof ban applies in practice court bankruptcy based on the principle of fairness, reflected in the Insolvency Order 2016 and Bankruptcy Act Chapter 67, however without chapter specific.

Different settings there is in Bankruptcy Law in the UK as there is in rule *Insolvency Act* 1986³³ which regulates prohibition billing double For prevent submission the same claim more from very in a bankruptcy process. This can understood as something business in ensure existence distribution remaining assets done in a way fair

has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.”

²⁹Law Of Malaysia, Insolvency Act 1967, As at 1 November 2024

³⁰ Bankruptcy Act BE 2483 (1940)

³¹ Law on Bankruptcy No. 51/2014/QH13 (2014)

³²Insolvency, Restructuring and Dissolution Act 2018

³³Insolvency Act 1986 Section 107 : Subject to the provisions of this Act as to preferential payments, the company's property in a voluntary winding up shall on the winding up be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the articles otherwise provided) be distributed among the members according to their rights and interests in the company. Insolvency Act 1986 Section 175 : (1) In a winding up there shall be paid in priority to all other debts (a) the preferential debts (within the meaning given by section 386 in Part XII of this Act), and (b) the expenses of the winding up, in the prescribed order and manner.

and equitable in accordance with order priorities are set. In Canada, it is also regulated in bankruptcy law as poured out in *Bankruptcy and Insolvency Act (BIA)* ³⁴ which states that all claim to debtor must submitted and determined in bankruptcy. And regulate distribution based on order priority payment to creditors in bankruptcy. Australia also regulates about practice prohibition billing double in *Corporation Act 2001* ³⁵ which regulates *Set-Off* in bankruptcy, and ensure No There is creditors who receive more from should and stated all claim must assessed secatra evenly distributed and paid on a pro-rata basis. Apart from to the 4 (four) countries in German Bankruptcy Law also regulates about Prohibition Double Dipping as poured out in *Insolvenzordnung* ³⁶ (InsO) States that all claim to debtor must submitted in the bankruptcy process. And regulate order priority payment to creditors.

4.3 Prohibition on double billing in bankruptcy law in Indonesia

When compared with prohibition billing doubles in various countries in Asia and Europe which is clear arranged in laws, different in Indonesian Bankruptcy Law. Bankruptcy law in Indonesia does not in a way explicit arrange prohibition billing double. However, the principle This can found in arrangement related handling claims and distribution asset in bankruptcy proceedings, as regulated in Article 55 of the Law Number 37 of 2004 concerning Bankruptcy and Suspension Obligation Debt Payment.

³⁴ Bankruptcy and Insolvency Act (BIA) Section 141 (1) Subject to this Act, all debts and liabilities, present or future, to which the bankrupt is subject at the date of the bankruptcy or to which the bankrupt may become subject before their discharge by reason of any obligations incurred before the date of the bankruptcy, are claims provable in proceedings under this Act. Section 136 : (1) Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows: (a) the costs of administration, in the following order: (i) the expenses and fees of any person acting under a direction made under paragraph 14.03(1)(a), (ii) the expenses and fees of the trustee, and (iii) legal costs;

³⁵ Australia Corporation Act 2001 Section 553C : (1) Where there have been mutual credits, mutual debts or other mutual dealings between an insolvent company that is being wound up and a person who wishes to have a debt or claim admitted against the company, an account is to be taken of what is due from the one party to the other in respect of those mutual dealings, and the sum due from the one party is to be set off against any sum due from the other party. Section 555 : Except as otherwise provided by this Act, all debts and claims proved in a winding up rank equally and, if the property of the company is insufficient to meet them in full, they must be paid proportionately. Section 108 : (1) Subject to this Division, the trustee shall, from time to time, with all convenient speed, declare and distribute dividends among the creditors entitled thereto.

³⁶ Insolvenzordnung (InsO) Section 187: The administrator must draw up a list of all claims against the debtor. The creditors must submit their claims to the administrator within the period specified by the court. Section 45 : All claims must be satisfied in accordance with their priorities as established by the insolvency proceedings. Claims of the same rank shall be satisfied proportionally if the assets are insufficient to cover them in full.

This article arrange position creditors who have right liability, fiduciary, pledge, mortgage, or right collateral on object others, who are entitled For execute guarantee although debtor stated bankrupt. However, the results from execution guarantee the must used For pay off secured debts, and creditors No may collect Again from treasure bankrupt For the same amount If Already get payment from execution guarantee In addition, the provisions in Articles 1131 and 1132 of the Civil Code which contain the Principle of *Parity Creditorium*, *Pari Passu Principle*, and *Pro Rata* also support principle this. Although law Indonesia's bankruptcy does not own provisions that are direct forbid billing double, principle the reflected in provisions governing verification claims and distribution results sale treasure bankrupt, which must done in a way fair to creditors based on levels or degrees claim. This is also reflected in various decision court disputed trade values, objects, and types claim. The purpose of provision This is For prevent billing double on One debt object, in order to ensure fair distribution based on order priority claims that have been set.

Although law Indonesia's bankruptcy does not in a way explicit arrange prohibition to billing double dipping, in Constitution Number 37 of 2004 concerning Bankruptcy and Suspension Debt Obligations, in practice justice commerce, term *double dipping* no foreign and frequent implemented in decision court. This is can understood Because law Indonesian bankruptcy efforts For reach balance between interest creditors and debtors. Therefore that, in practice justice business that upholds principle justice and equality in claim must be careful not to create the superior party can take advantage of the bankruptcy process For profit personal. Practice billing double Once appear in room Indonesian courts, one of which in Decision Court Commercial Case at the Surabaya District Court Number 08/ Pdt.Sus -PKPU-Renvoi/2020/PN- Commercial Sby which was decided on November 13, 2020. In the decision said, in a manner clear confirmed existence prohibition billing double in law bankruptcy in Indonesia by a judge. Legal basis the judge forbade practice billing double (*double dipping*) in law Indonesian bankruptcy is is something problems that arise attention special in justice, although No in a way explicit arranged in Law. In cases that occur in court Surabaya Commerce, the Panel of Judges gave affirmation about prohibition billing double, which is deep matter This referring to the application the same bill to two different debtors.

Case the started when Applicant namely the Curator Team of PT. Rukun Bersama Sentosa (in Bankruptcy) and Rangga Prasetya (in Bankruptcy) refused bill submitted by

the Applicant. Rejection This due to the fact that bill the intended to PT. Bukit Mas Prima Persada (In Bankruptcy) acted as debtor main and has stated bankrupt previously. Based on matter This, the Curator Team have an opinion that Applicant should submit bill to debtor main, namely PT. Bukit Mas Prima Persada, because debtors who act as guarantors, namely PT. Rukun Bersama Sentosa and Ranga Prasetya only play a role as guarantor and not can accountable on bill. Furthermore, based on evidence submitted by the Applicant, namely agreement liability between Applicant with PT. Rukun Bersama Sentosa and Ranga Prasetya, the Panel of Judges explained that connection law between parties the is Applicant as giver credit to PT. Bukit Mas Prima Persada, while PT. Harmonious Together with Sentosa and Ranga Prasetya act as guarantor for the debt borne by PT. Bukit Mas Prima Persada. However, because bill against PT. Bukit Mas Prima Persada has accepted in case the bankruptcy of the person concerned, the Panel of Judges assessed that submission bill to guarantor is form submission unpaid bills appropriate and potential leading to practice billing double, which is basically forbidden in law bankruptcy.

The panel of judges also referred to the opinion expert law Shubhan's bankruptcy which provides explanation about draft *double dipping* in law bankruptcy. This term referring to the application the same bill to two different debtors for similar debts, so creditors get equal payment from both parties In view ³⁷of law bankruptcy, practice this is strictly prohibited Because can harm creditors other and contradictory with principle justice in distribution treasure bankrupt. According to expert, one debt only may billed once, and if the same bill submitted to two subjects different laws, then will potential cause mismatch in the process of distribution treasure bankrupt and detrimental other parties who of course also cause injustice. The principle of justice in law bankruptcy No only refers to protection to rights creditors, but also regulates so that they do not happen injustice between One creditors with creditors others. ³⁸The principle of justice This contained in explanation general Law no. 37 of 2004, which emphasizes the need create balance and justice in the process of settling debts involving bankrupt debtors. With Thus, the bill submitted double to two different parties will bother balance and create injustice

³⁷ Shubhan, *Legal Opinion in the Legal Aspects of Bankruptcy / PKPU* .

³⁸ Ariqah and Anisah, "ARRANGEMENT OF BANKRUPTCY DEBT REPAYMENT TOWARD EMPLOYEES IN INDONESIA AND GERMANY."

that can harm other parties. Practice *double dipping* contradictory with principle This Because give unearned profits fair to creditors who apply bill double.

As for example, if the same creditor accept payment from debtor principal and guarantor, then creditors the get paid twice for the same debt, while creditors other Possible No get sufficient payment from treasure bankrupt debtor main thing. That If associated with theory *unjust enrichment*, namely enrichment that is not legitimate so according to theory This have an opinion that somebody No may get unearned profits fair with accept double payment on the same obligations. In ³⁹the case of billing double, acceptance payment from two parties (debtor principal and guarantor) for the same debt will leads to *unjust enrichment*, which means creditors get benefits that are not valid, because payment the No based on legitimate rights. In addition, *overschuldigde betaling* or unpaid payments owed also becomes attention in theory This. Payment that is not owed can happen if something obligation paid twice for the same debt. In the context of bankruptcy, thing This will cause waste of bankruptcy funds that should have been used For pay creditors others. Therefore that, rejection to bill double is effort For prevent occurrence *unjust enrichment* and ensure that payments made by debtors bankrupt only happen once, according with provision applicable law.

In addition, the Panel of Judges considered base relevant law, namely Article 1131 of the Civil Code (KUHPerdara), which regulates that all over riches debtor in bankruptcy used For pay his debts. In moderate cases checked, bill Applicant against PT. Bukit Mas Prima Persada has accepted fully in the bankruptcy process concerned. Therefore that, the Panel of Judges is of the opinion that bill against PT. Rukun Bersama Sentosa and Rangga Prasetya, which are guarantor, no can accepted return Because matter the will leading to unpaid payments owed or *overschuldigde betling*. Apart from referring to laws and opinions expert, in consideration the law, the Panel of Judges also quoted Jurisprudence in Case Number 339/ Pdt.G /2015/ PN.Jkt.Sel, which states that if creditors has submit bill in bankruptcy proceedings debtor main, then submit bill to guarantor before bankruptcy proceedings finished, then matter the considered as *premature*. Submission bill to guarantor only can done after the clearing process bankruptcy to debtor main finished. This is confirmed in decision The Court of Appeal stated that plaintiff who has pull out bill to debtor main No can collect to guarantor, except after bankruptcy

³⁹ Jens Forssbæk et al., “Stayin’ Alive: Debt Complexity as a Bankruptcy-Delaying Mechanism,” *Journal of Corporate Finance* 93 (July 2025): 102804, <https://doi.org/10.1016/j.jcorpfin.2025.102804>.

proceedings finished. With thus, based on consideration said, the Panel of Judges in case This evaluate that the actions of the Curator Team who refused bill Applicant Already in accordance with principle justice and applicable law. Submission bill double in two cases different bankruptcies No allowed, because can harm rights creditors others and cause injustice in the process of distribution treasure bankrupt. Therefore that, although No There is provision explicit in Law no. 37 of 2004 concerning prohibition *double dipping*, practice This still considered violate principles existing and conflicting laws with principle justice in law Indonesian bankruptcy.

In a way overall, although law Indonesia's bankruptcy does not in a way explicit arrange double dipping ban, practice the considered violate principle justice and equality contained in laws and practices justice Indonesian commerce. Meanwhile that, countries in Asia, Europe, and the United States own a more approach firm in prohibit double dipping. Countries such as Malaysia, Singapore, Thailand, and the Philippines have explicit forbid practice This through principle *pari passu* in law bankruptcy them. Likewise with European countries and the United States, which emphasize prohibition to claim double For ensure fair and equitable distribution among creditors. For ensure greater justice and equality good in Indonesia, important for law Indonesian bankruptcy for consider adoption more provisions explicit about double dipping ban, in line with practices applied in other countries.

5 CONCLUSION

Existence bill double in Indonesian Bankruptcy Law indeed No mentioned in a way explicit in Law No.37 of 2004 concerning bankruptcy and postponement Obligation Debt Payment thing this is almost the same in arrangement in several Southeast Asian countries such as Malaysia, Thailand, Singapore, Vietnam and Brunei Darussalam this is very different with the countries of America, England, Canada, Australia and Germany regulating in Constitution His bankruptcy, however, prohibition billing double can found in separate provisions and must be united as a norm as provision in Article 1131 and Article 1132 of the Civil Code, Article 1359 of the Civil Code and the Principles in Indonesian bankruptcy law, with provision the can become the norm used by judges in Court Commerce in Indonesia for state that there is prohibition billing double committed by Creditors For one and the same debt However billed in two different subjects, so that

with existence Decision court the become something *Jurisprudence* in essence give fair and equal protection for bill creditors as well as avoid practice *Unjust Enrichment* and payment to the party that does not owed (*Overschuldigde Betaling*).

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All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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