



Provisions for Separatist Creditors in Executing Rights and Obligations After an Insolvency Situation

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Abstract

Implementation of the execution rights of separatist creditors from the perspective of the Bankruptcy Law and PKPU, as well as the application of time limits for the implementation of the execution rights of separatist creditors based on Article 59 paragraphs (1) and (2) of the Bankruptcy Law and PKPU. The object of special collateral held by separatist creditors is part of the bankruptcy assets starting from the time the bankruptcy declaration decision is pronounced, so that its execution is not unaffected by the bankruptcy process. Separatist creditors must begin implementation within two months of insolvency. When the execution has been completed, the separatist creditor is obliged to provide an accountability report to the curator. If there are remaining proceeds from the sale of material collateral, then this portion must be handed over to the curator to be distributed to other creditors. Determining the start and completion of separatist creditors' rights of execution is strictly regulated in the Bankruptcy Law and PKPU, however, when separatist creditors are deemed to have stopped or no longer exercise their rights, there is no definite benchmark.

Keywords: *Insolvency; Rights and obligations; Separatist Creditors*

Introduction

Indonesia as a country of law, where the legal benchmarks in state equipment that prioritize the importance of the rule of law must be based on the 1945 Constitution of the Republic of Indonesia as the state constitution and must apply the values of supremacy of law, equality before the law, and due process of law as one of the embodiments of Pancasila as the basic philosophy of the state. All legal regulations made must not conflict with the 1945 Constitution of the Republic of Indonesia, where the constitution is the highest source of law in Indonesia.

Bankruptcy is a further implementation that has the principle of creditorium parity and the principle of *pari passu prorata parte*. In general, creditors are grouped into several groups based on the priority order of their rights to obtain repayment of their receivables from other creditors. According to Article 1 point (2) of Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt

Payment Obligations, in the distribution of bankruptcy assets, there are 3 creditors who are entitled to the distribution of bankruptcy assets, namely: separatist creditors, creditors who have special privileges, and concurrent creditors (Prasetya et al., 2023).

Separatist creditors are creditors who can act to maintain the law as if there were no bankruptcy for the debtor. This group of creditors is not affected by the decision to declare bankruptcy, meaning that their execution rights can still be exercised as if there were no bankruptcy. Creditors who have special privileges are other mortgage holders and fiduciary holders. Creditors who have privileges or privileges. This group of creditors has the right to prioritize the payment of their receivables over other creditors. Concurrent creditors are a group of ordinary creditors whose receivables are not guaranteed (Simanjuntak et al., 2014).

The enactment of Law of the Republic of Indonesia Number 37 of 2004 concerning bankruptcy and postponement of debt payment obligations has greatly affected mortgage rights institutions. The provisions of Article 55 of the Law on Bankruptcy and Suspension of Debt Payment Obligations explain that every creditor holding a pledge, fiduciary guarantee, security right, mortgage, or collateral right over other objects can execute their rights as if bankruptcy had not occurred. However, Article 56 paragraph (1) of the Law of the Republic of Indonesia on Bankruptcy and Suspension of Debt Payment Obligations explains that the creditor's execution rights, as intended in Article 55 paragraph (1), and the rights of third parties to claim their assets, which are in the control of the bankrupt debtor or curator, are suspended. for a period of 90 days from the date the decision to declare bankruptcy is pronounced (Ginting, 2018). From the Explanation to Article 2 Paragraph 1 of Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and PKPU, it states that it is permissible for a separatist creditor to submit a bankruptcy petition to the debtor without having to release collateral rights over the property. This is clearly seen in the provisions of Article 138 of Law of the Republic of Indonesia Number 37 of 2004 concerning Bankruptcy and PKPU, which states that creditors whose receivables are guaranteed by pledges, fiduciary guarantees, security rights, mortgages, collateral rights over other objects, or who have special rights over a particular object in the bankruptcy estate and can prove that some of the receivables are unlikely to be able to be repaid from the sale of the object that is collateral may be granted the rights of concurrent creditors without reducing the rights of priority over objects that serve as collateral for the receivables (Purba, 2013).

This means that the bankruptcy law gives the right to separatist creditors and preferred creditors to appear as concurrent creditors without having to give up their rights of precedence over objects that are collateral for their receivables, provided that preferred and separatist creditors can show that the objects that are collateral are This is not enough to pay off the bankrupt debtor's debt. The provisions of Article 56, paragraph (1), regarding the suspension of the execution rights of separatist creditors are considered inconsistent provisions because they conflict with previous provisions. In guarantee law, the right of execution is always linked to the maturity date of the debt that must be paid by the debtor. If the debtor's debt is not paid at maturity, the creditor can exercise the right of execution by selling the collateral under his control, the proceeds of which are used to pay off the debtor's debt. Exercise of these rights is not affected or continues to exist even if the debtor is declared bankrupt. It needs to be emphasized that the right of execution arises after the debtor's debt is due and is not paid. In relation to the suspension as regulated in Article 56, paragraph (1), the suspension is not a problem if the maturity date itself has not yet occurred; however, if the debtor's declaration of bankruptcy coincides with the maturity of the separatist guaranteed debt, then the suspension will clearly limit the execution rights of separatist creditors to immediately obtain repayment of their receivables.

From the bankruptcy requirements mentioned above, if we compare the old and new regulations, it turns out that there are significant differences, especially when looking at the insolvency perspective. In the old provisions, the terms of bankruptcy were based on whether there was an insolvency, whereas in

the new provisions, the terms of bankruptcy no longer look at the presence or absence of an insolvency. Insolvency, according to Henry Campbell Black, is a person's inability to pay their debts. Black says it in full, as follows: Insolvency is the inability to pay one's debt; lack of means to pay one's debt. Such a relative condition of a man's assets and liabilities that the former, if all made immediately available, would not be sufficient to discharge the latter. Or the conditions of a person who is unable to pay his debts as they fall due, or in the usual course of trade business (Black, 1968). This opinion is supported by Harold F. Lusk, Charles M. Hewitt, John D. Donnell, and A. James Barnes (1982), who say that "debtors are considered insolvent if they are unable or fail to pay their debts as they become due" (Siregar, 2019). In a free translation, the debtor is considered to be in a state of insolvency if he is unable or fails to pay his debts, as is his obligation.

Apart from the bankruptcy above, Indonesia also has another debt restructuring scheme called Postponement of Debt Payment Obligations (PKPU). PKPU requirements are based on Article 222 of Law of the Republic of Indonesia No. 37 of 2004 and are the same as the provisions in Article 2 paragraph (1), which are requirements for bankruptcy, which essentially refer to the existence of debts that have matured and can be collected and the fact that there is more than one creditor. There is another condition in PKPU, namely that the debtor cannot continue to pay his debt, which is due and can be collected. The aim of PKPU is to achieve peace, which is stated expressly in Article 222 paragraphs (2) and (3) of Law of the Republic of Indonesia No. 37 of 2004.

Based on these provisions, if the separatist creditor cannot exercise his right to sell the debtor's collateral within the specified time period after the insolvency situation begins, the curator must request that the collateral be handed over to be sold in public. The provisions of Article 59, paragraph (2), of the Bankruptcy Law and PKPU have unclear formulations, burden creditors holding material security rights, and conflict with the executorial rights of material collateral held by creditors holding material rights. Apart from that, there is a problem for the curator, who has to ask the Separatist Creditor to hand over the object that is used as collateral to be sold in public after a period of two months after the start of the insolvency situation. There are no legal remedies for the Curator if the Separatist Creditor does not want to hand over the objects as collateral to the Curator (Prasetya et al., 2023).

Problems in the relationship between debtors and creditors arise when debtors do not fulfill their debt repayment obligations to creditors. One way that creditors can obtain repayment of their receivables is through the bankruptcy process. Bankruptcy is often declared as a general confiscation of all of the debtor's assets in order to achieve peace between the debtor and creditors or so that the assets can be divided fairly among the creditors. Based on these provisions, in general, the rights of separatist creditors to carry out executions are not affected by the bankruptcy process. This can be seen from the phrase "can execute one's rights as if bankruptcy had not occurred," but if one looks closely, one will find a contravention of the principle of not being affected by the bankruptcy process, namely in the word "as if," which indicates that the creditor's right to execute separatism in the bankruptcy process is not unlimited.

The limitation on the execution rights of separatist creditors in the bankruptcy process in question is the limitation on the period of execution of the material collateral objects they hold. Separatist creditors are required to exercise their execution rights no later than two months after insolvency, but if the two-month period has passed and the separatist creditors have not exercised their execution rights, then their execution rights will transfer to the curator. The period for implementing the right of execution by separatist creditors as intended in Article 59, paragraph (1), of the Bankruptcy Law and PKPU means that within the two-month period, the separatist creditor must have started exercising their rights (Tamba, 2018). If the separatist creditor has finished exercising his execution rights over the material collateral objects he owns, then the bankruptcy law and PKPU require the separatist creditor to account to the

curator for the proceeds of the sale of the object, which is the collateral, and hand over the remaining sales proceeds after deducting the amount of debt, interest, and costs to the curator.

Thus, as a sign that the separatist creditor has finished exercising his execution rights, the separatist creditor has been obliged by the Bankruptcy Law and PKPU to account for the results of the execution of the material collateral objects he holds to the curator; however, a parameter has not yet been determined that can state that the separatist creditor has stopped or is deemed to have stopped exercising his right of execution, so that the curator can demand that the material collateral belonging to the separatist creditor be handed over.

Research Metode

This type of research is normative legal research (Ibrahim, J & Efendi, 2016), namely legal research, which focuses on the study and analysis of positive law and includes various aspects, namely aspects of theory, philosophy, comparison, structure and composition, scope and material, consistency, general explanation article by article, formality and binding force of a law, as well as the legal language used. Researchers try to focus on and answer problems from a legal perspective and ignore norms other than the law. Due to the fact that this type of research is normative legal research (Ibrahim, 2006), the approach used is a statutory approach and a conceptual approach. A statutory regulation approach is used because what will be studied are legal regulations related to this research, namely bankruptcy laws and regulations. This approach is carried out by reviewing all laws and regulations related to bankruptcy. This approach is also used to find answers to the legal content material formulated in this research.

Results and Discussion

1. Agreements Made by Separatist Debtors and Creditors in Material Guarantee Agreements That Have Their Own Legal Rules

The right to manage the debtor's assets, starting from the time the bankruptcy declaration is pronounced, falls into the hands of the curator. The curator can start settling the bankruptcy estate without having to wait for the bankruptcy estate to be unable to pay and the debtor's business to be stopped. In fact, the curator does not need to wait for the bankruptcy declaration to become effective. Even if a cassation or judicial review is filed against the decision to declare bankruptcy, the right to settle the bankruptcy assets can still be exercised by the curator. This is regulated in Article 16 paragraph (1) of the Bankruptcy and PKPU Law, which reads: The curator has the authority to carry out the duties of managing and/or settling the bankruptcy assets from the date the bankruptcy decision is pronounced, even if the decision is submitted for cassation or judicial review.

The settlement of bankruptcy assets is carried out by the curator, taking into account the rights of certain creditors who have special rights or positions compared to other creditors. The principles of creditorium *parity and pari passu pro rata parte* (Lie, 2023) that are known in bankruptcy law mean that the position of creditors in bankruptcy is basically the same. This causes each creditor to have the same rights to the proceeds from the sale of the bankruptcy bond, but the repayment or payment to them is adjusted to the amount of each creditor's claims. These two principles, however, exclude or do not apply to categories of creditors who have priority rights based on the Bankruptcy Law, PKPU, and other laws and regulations, as well as to creditors who hold material security rights. The exception as referred to above means that there is a difference in treatment of creditor groups in accordance with the principles of structured creditors, which also has an impact on differences in treatment of the right to fulfill creditors' receivables (Dewi & Wahyoeono, 2022).

Material collateral gives rights and powers to the holder of the material collateral object to obtain repayment of receivables from the collateral object if the debtor defaults. The right to sell or cash in on material collateral held by separatist creditors cannot automatically be exercised in the bankruptcy process. Separatist creditors need to pay attention to the provisions in the Bankruptcy Law and PKPU before exercising their execution rights, in the event that the debtor has been sentenced to a bankruptcy declaration (Sibli et al., 2023). The implementation of separatist creditors' rights of execution needs to be viewed from two different perspectives. The first period is before the decision on the declaration of bankruptcy is pronounced, and the second period is from the time the decision on the declaration of bankruptcy is pronounced, with the following explanation: First, before the decision on the declaration of bankruptcy is pronounced, Creditors holding material collateral can execute the material collateral objects they own directly, or what is known as *parate execution*. *Parate execution* is the easiest and simplest way for creditors to recover their receivables when the debtor breaks their promise, compared to execution through the assistance or intervention of the district court. According to J. Satrio, a *parate execution* is an execution carried out without going through the confiscation process first and without intermediaries or the judge's permission (Juniresta & Adheria, 2018). Second, since the decision to declare bankruptcy was pronounced, Creditors holding material collateral exercise their execution rights by taking into account the regulations in the Bankruptcy Law and PKPU. The Bankruptcy Law and PKPU have separate regulations regarding the execution rights of separatist creditors over the material collateral objects they hold in the bankruptcy process in Article 55, paragraph (1) of the Bankruptcy Law and PKPU.

The phrase "as if bankruptcy had not occurred" can be interpreted as meaning that separatist creditors can sell the material collateral objects they hold as determined in the guarantee law, but this must be done while remaining subject to the regulations in bankruptcy law. This is because the material collateral object is included in the bankruptcy debt, which can also be used to pay off other creditors in the event that there are remaining proceeds from the sale of the material collateral object after deducting the amount of debt, interest, and fees to the curator. The consequence of pronouncing the decision to declare bankruptcy becomes a benchmark for the implementation of the separatist creditor's right of execution, namely that the material collateral objects held by the separatist creditor are part of the bankruptcy assets, or, in other words, the material collateral objects are included and counted as bankruptcy assets. The object of material collateral included in the bankruptcy estate means that there is a portion of the remaining proceeds from the sale of material collateral that can be used as repayment for other creditors' receivables that do not have material collateral. The allocation of the remaining sales proceeds to other creditors can be done when, after the object of material collateral is sold, there is still money left after deducting the receivables from creditors holding the material collateral, as well as fees and interest to the curator (Silalahi, 2020).

The separation of the debtor's assets, which is facilitated by material collateral, is also accommodated in bankruptcy; that is, part of the repayment of the separatist creditor will definitely come from the object of the material collateral held by him, and he can even obtain full repayment. If and only if there is a remainder, then other creditors who do not have material collateral (preferred creditors and concurrent creditors) can obtain their share of repayment of receivables from the sale of the object of material collateral. The rights of separatist creditors are not reduced in the slightest by the proceeds from the sale of the material collateral they hold. Article 60 paragraph (3) of the Bankruptcy Law and PKPU basically regulate that if the proceeds from the sale of material collateral objects are not sufficient to pay off the receivables of the separatist creditor concerned, then the separatist creditor can submit a claim for repayment of the deficiency as a concurrent creditor.

The suspension period, or what is commonly known as the *stay*, applies from the date the decision to declare bankruptcy for the debtor is pronounced. The purpose of the *stay* or suspension is to increase the possibility of achieving peace, increase the possibility of optimizing bankruptcy assets, and enable the curator to carry out his duties optimally. The *stay* period in the bankruptcy process is stated

"for a maximum period of 90 (ninety) days," meaning that the stay may end before the 90 (ninety) day period is fully fulfilled. Article 57 of the Bankruptcy Law and PKPU regulates the termination of the stay, meaning that the supervisory judge can decide to lift the suspension or change the terms of the suspension based on considerations aimed at securing and optimizing the value of the bankruptcy estate (Hendra Atmajaya, 2018). The end of the stay period, either because the time period as stipulated in Article 56 paragraph (1) of the Bankruptcy Law and PKPU has expired or because it was ended earlier in accordance with the provisions of Article 57 of the Bankruptcy Law and PKPU, causes separatist creditors to be able to exercise their right to execute material guarantees. he held. Optimizing the value of bankruptcy assets (in this case, the material collateral object) through suspension or stay, apart from the aim of ensuring that separatist creditors' receivables can be paid off, it is also hoped that there will be an excess from the results of the execution of the material collateral object, which can also be distributed to preferred creditors and concurrent creditors. Limiting execution rights through a stay, although it appears to delay the settlement of creditors' receivables, actually brings benefits, not only for separatist creditors as holders of material collateral but also for preferred creditors and concurrent creditors.

2. Guarantee for the Protection of the Rights of Creditors Holding Security Rights Who Have Receivables Against Debtors

Several important elements in Article 59, paragraph (1), of the Bankruptcy Law and PKPU, namely: 1. Separatist creditors must exercise their rights within two months after the start of the insolvency situation. 2. Insolvency is a situation where, at a receivable matching meeting, the debtor does not offer a peace plan, or the peace plan offered by the debtor is not accepted, or ratification of the peace agreement is rejected based on a decision that has obtained permanent legal force, so it can be said that there are no other efforts that can be taken. carried out in addition to clearing up the bankruptcy estate. 3. The phrase "must exercise its rights" means that the separatist creditor must have started exercising his right to execute the material collateral object he holds, not have finished executing the material collateral object. Separatist creditors have unlimited time to exercise the right to execute the material collateral they hold. This is because the Bankruptcy Law and PKPU only provide a time limit of two months for separatist creditors to start exercising their rights, not complete (Tobing et al., 2023).

This is as regulated in Article 59, paragraph (2), of the Bankruptcy and PKPU Law, which in full states that: after the time period as intended in paragraph (1) has passed, the Curator must demand that the object that is used as collateral be handed over for further sale in accordance with the method as intended in Article 185, without reducing the rights of creditors holding such rights to the proceeds from the sale of said collateral. Based on these provisions, it can be understood that separatist creditors are given the opportunity within a period of two months after the insolvency period to exercise their execution rights. After these two months have passed, the curator has the right to demand that the material collateral be handed over to him in the event that the separatist creditor does not begin to exercise his execution rights (Juniresta & Adheria, 2018).

Basically, it is almost impossible to determine how long a separatist creditor must complete the exercise of their execution rights, for example, in the case of the execution of material collateral objects carried out by auction. Obstacles that burden the determination of the time period for completing sales through auction are as follows: a. The auction process that must be gone through is quite extensive and time-consuming, which begins with appointing an appraiser to assess the material collateral object to be auctioned. This is done if there is no appraisal value or the appraisal value of the material collateral object in question is no longer up-to-date. Next, separatist creditors need to determine the limit value and submit an auction request to the State Property and Auction Services Office (Multazam, 2014). After receiving the auction schedule, the separatist creditor is obliged to announce the auction plan, some of which will be held once, but others will be held twice, depending on the type of goods and the limit value set for the material collateral object to be sold. After that, the auction can take place. held. b. The auction can be

cancelled, either at the seller's request or due to a provisional determination or decision of a judicial institution. Cancellation of the auction outside of these provisions is carried out by the auction officer. c. There was no interest in the auction being held, so a repeat auction had to be held. A re-auction will, of course, result in certain stages of carrying out an auction that have already been carried out having to be carried out again so that a re-auction can be held.

Based on the description above, it is known that there are such obstacles in determining how long the period for completing the exercise of the right to execute material collateral objects by separatist creditors will be. If this time period remains fixed, this could in fact injure the rights of separatist creditors provided by the material collateral they hold. The right in question is the convenience, fast time, and low cost of getting back creditors' receivables.

The drafters of the Bankruptcy Law and PKPKU understand that it is very difficult to determine when or in what time period separatist creditors must finish exercising their rights. Therefore, it is wise to regulate the actions required of separatist creditors to indicate that they have finished exercising their rights. Reflecting on this, it is also best to formulate in the Bankruptcy Law and PKPU what actions are the benchmarks for separatist creditors to stop or no longer exercise their rights, so that further settlement can be carried out by the curator (Liem, 2022). Actions that indicate that the separatist creditor is no longer exercising their execution rights are important to know because the object of material collateral held by the separatist creditor is bankruptcy assets, which can also be used to pay off the receivables of other creditors that do not have material collateral. This action is what determines when the material collateral object is handed over to the curator, so that the curator can sell it and pay off the separatist creditor's receivables from the proceeds from the sale of the material collateral object. In the event that there is still a remainder from the sales proceeds after deducting receivables from separatist creditors, then the remainder is also taken into account for payment of receivables from other creditors whose debts are not secured by material collateral, namely preferred creditors and concurrent creditors. Therefore, it is necessary to clarify the parameters of separatist creditor actions that are classified as ceasing to exercise their rights (Dengan & Hak, 2016).

The material collateral held by a separatist creditor gives him special rights, whereas these rights are not owned by other creditors. Determining what actions of a separatist creditor are classified as ceasing to exercise their rights provides freedom for the separatist creditor to determine whether they will continue to exercise and complete the implementation of their rights, or whether the separatist creditor will complete the process of exercising their rights. This choice is completely left to the separatist creditors because it is based on their actions. It is different if what is specified is the period for completing the right of execution. Separatist creditors are "forced" or inevitably to adjust their actions to meet the stipulated time period.

Limiting the time period for completing execution rights is considered a solution to obtain certainty whether there is an excess from the sales proceeds, because if there is an excess, then the excess must be distributed to preferred creditors and concurrent creditors. If it is not limited and the collateral execution is only carried out after the bankruptcy is ended, it is feared that preferred and concurrent creditors will not get their rights. These concerns are actually unfounded. This is because the rights of preferred creditors and concurrent creditors to receive distributions if there are still newly discovered bankruptcy assets remain protected even though the bankruptcy has been terminated. This is as stipulated in Article 203 of the Bankruptcy Law and PKPU, which states as follows: "In the event that after a closing distribution is made, there is a distribution that was previously reserved as intended in Article 198 paragraph (3), falls back into the bankruptcy estate, or if it turns out that there is still "The portion of the bankruptcy estate, which was unknown when the settlement was carried out, is then, based on the court's orders, settled and divided based on the previous distribution list (Widjaja, 2003)." According to the provisions of Article 203 of the Bankruptcy Law and PKPU, determining the time period for completing

execution rights is not the main thing. Protection for preferred creditors and concurrent creditors is still provided even if the process of executing the material collateral object is only completed after the closing distribution is made. So, the concern that if the execution completion period is not regulated, other creditors who do not have material collateral will not receive repayment of their receivables from the remaining proceeds from the sale of the object of material collateral is not justified.

The parameters of a separatist creditor's actions, which indicate that they have stopped exercising their rights, need to be clarified. It is proposed that one of the benchmarks that can be used to determine the actions of separatist creditors who stop exercising their rights is if there are actions of separatist creditors that result in a delay or cessation of the process of executing the material collateral object. In the event of such action, the curator can demand that the collateral be handed over to the separatist creditor. For example, if separatist creditors do not carry out a re-auction process after the previous auction, there will be no takers. To confirm whether the separatist creditor's action of not re-auctioning contains an element of deliberate delay or termination so that the execution process cannot be carried out, the curator can directly ask and remind the separatist creditor about the delay in question. The separatist creditor's answer will determine whether the delay is justified or unjustified. In the event that there is an unjustified delay caused by the actions of separatist creditors, the curator can implement the provisions of Article 59 paragraph (2) of the Bankruptcy Law and PKPU, namely demanding the handover of material collateral objects from separatist creditors. (Ramadhanti, 2022).

In fact, regulations regarding unjustified delays are implicitly reflected in Article 185, paragraph (3), of the Bankruptcy Law and PKPU. Article 185 paragraph (3) of the Bankruptcy Law and PKPU basically regulates that if the bankruptcy assets cannot be disposed of immediately or at all, the curator is obliged to decide what action must be taken with the objects with the permission of the supervising judge. Based on these provisions, the supervisory judge has the authority to give authorization or approval to the curator to carry out the sale or execution of the bankruptcy assets in question (Nasional, 2019). Separatist creditor actions that can result in a delay or termination of execution are classified as actions to stop exercising their rights. Apart from the failure to carry out a re-auction, a delay or termination of execution can also result from the actions of separatist creditors who deliberately do not submit an auction request by not appointing an appraiser to assess the material collateral object to be sold (Dwiyanti & Adlina, 2023).

Conclusion

The period before the decision to declare bankruptcy is pronounced, during which separatist creditors who wish to obtain repayment of their receivables can sell the material collateral objects they hold, taking into account the terms of execution of the collateral objects they hold. The second period starts from the time the decision to declare bankruptcy for the debtor is pronounced, which results in all of the debtor's assets, including objects of material collateral that have been pledged as collateral to separatist creditors, automatically becoming bankruptcy assets. Thus, from the moment the decision to declare bankruptcy is pronounced, the object of material collateral is viewed by the Bankruptcy Law and PKPU as a bankruptcy object whose sale or execution must be carried out with due observance of the provisions in the Bankruptcy Law and PKPU. The provisions of the Bankruptcy Law and PKPU stipulate that there is a waiting period of 90 days for creditors before they can execute their material collateral; however, in the event of bankruptcy resulting from an unsuccessful PKPU, separatist creditors can immediately execute their material collateral as if it had not happened. without having to wait 90 days. The right of execution is exercised no later than two months after the start of the state of insolvency.

References

- Dengan, K., & Hak, J. (2016). Perlindungan Hukum Bagi Kreditur Dalam Eksekusi Perjanjian Kredit Dengan Jaminan Hak Tanggungan. In *Lex Et Societatis* (Vol. 4, Issue 2.1).
- Dewi, M. K., & Wahyoeono, D. (2022). KEPASTIAN HUKUM BAGI KREDITOR SEPARATIS PEMEGANG HAK TANGGUNGAN SAAT DEBITOR PAILIT. *JHP17 (Jurnal Hasil Penelitian)*, 7(2). <https://doi.org/10.30996/jhp17.v7i2.6188>.
- Dwiyanti, A., & Adlina, S. (2023). Ambiguitas Pengaturan Harta Bersama dalam Dimensi Kepailitan Ditinjau Berdasarkan Asas Keadilan. *Padjadjaran Law Review*, 11(1). <https://doi.org/10.56895/plr.v11i1.1268>.
- Ginting, E. R. (2018). Hukum Kepailitan: Teori Kepailitan. In *Sinar Grafika*.
- Hendra Atmajaya. (2018). Perlindungan Hukum Terhadap Kreditur Dalam Kepailitan (Studi Putusan No. 03/Pdt.Sus-PKPU/2014/PN Niaga.Mks). In *Skripsi*.
- Ibrahim, J & Efendi, J. (2016). Metode Penelitian Hukum Normatif Dan Empiris (Edisi Pertama). In *Kencana* (Vol. 2, Issue Hukum).
- Ibrahim, J. (2006). Teori dan Metodologi Penelitian Hukum Normatif Bayumedia Publishing. In *Bayumedia Publishing*.
- Juniresta, & Adheria. (2018). Analisis Yuridis Terhadap Keadaan Insolvency Debitor Dalam Kepailitan (Studi Putusan Pailit PT. Perindustrian Njonja Meneer dan PT. Metro Batavia). *Kementerian Riset Teknologi Dan Pendidikan Tinggi*, 1–23.
- Lie, G. (2023). A Negative Pledge as an Alternative Solution to Achieve the Pari Passu Pro-Rata Parte Principle. *International Journal of Sustainable Development and Planning*, 18(1). <https://doi.org/10.18280/ijstdp.180128>.
- Liem, T. D. S. (2022). PROBLEMATIKA HUKUM PROSES PERMOHONAN PENUNDAAN KEWAJIBAN PEMBAYARAN UTANG TETAP OLEH KREDITOR. *Maleo Law Journal*, 6(1). <https://doi.org/10.56338/mlj.v6i1.2202>.
- Multazam, M. T. (2014). Kewenangan Notaris Sebagai Pejabat Umum dalam Membuat Akta Pertanahan dan Akta Risalah Lelang Berdasarkan Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris. *Rechtsidee*, 1(2).
- Nasional, B. P. H. (2019). *Naskah Akademik RUU Tentang Perubahan Atas UU RI Nomor 37 Tahun 2004 Tentang Kepailitan dan PKPU*.
- Prasetya, O. A., Sudiarto, & Raodah, P. (2023). Kedudukan Hukum Kreditur Separatis Terhadap Eksekusi Jaminan Dalam Kepailitan Yang Hartanya Lebih Kecil Daripada Utangnya. *Commerce Law*, 3(2). <https://doi.org/10.29303/commercelaw.v3i2.3250>.
- Purba, L. L. (2013). Implikasi Hukum Pencantuman Klausula Arbitrase Dalam Kontrak Bisnis Dalam Hal Permohonan Pailit (Study Tentang Putusan Ma Ri Nomor: 64/Pailit/2012/Pn.Niaga.Jkt.Pst). *Jurnal Hukum USU*, 53(9).
- Ramadhanti, A. D. (2022). Akibat Hukum Kepailitan Induk Perusahaan Terhadap Saham Pada Anak Perusahaan. *Jurist-Diction*, 5(6). <https://doi.org/10.20473/jd.v5i6.40069>.

- Sibli, N., Maramis, R. A., Perlindungan, S., Bagi, H., Separatis, K., Jaminan, T., Tanggungan, H., Ditetapkan, Y., Boedel, S., Lex, P., & Soeikromo, D. (2023). PERLINDUNGAN HUKUM BAGI KREDITOR SEPARATIS TERKAIT JAMINAN HAK TANGGUNGAN YANG DITETAPKAN SEBAGAI BOEDEL PAILIT. *LEX ET SOCIETATIS*, 11(1).
- Silalahi, U. (2020). KEDUDUKAN KREDITOR SEPARATIS ATAS HAK JAMINAN DALAM PROSES KEPAILITAN. *Masalah-Masalah Hukum*, 49(1). <https://doi.org/10.14710/mmh.49.1.2020.35-47>.
- Simanjuntak, R., Shubhan, M. H., Hartono, D., Wangsawidjaja, & Hartini, R. (2014). Kepailitan : Implementasi dan Implikasi. *Jurnal Hukum Bisnis*, 33(1).
- Siregar, M. G. J. A. (2019). EKSEKUSI JAMINAN DALAM KEPAILITAN PADA KREDITOR SEPARATIS KETIKA DITANGANI OLEH KURATOR. *Jurist-Diction*, 1(2). <https://doi.org/10.20473/jd.v1i2.11011>.
- Tamba, F. R. (2018). ANALISIS PUTUSAN PAILIT NOMOR: 02/PAILIT/2009/PN.NIAGA.SMG TERHADAP UNDANG-UNDANG NOMOR 37 TAHUN 2004 TENTANG KEPAILITAN DAN PENUNDAAN KEWAJIBAN PEMBAYARAN UTANG. *Journal of Private and Commercial Law*, 1(1). <https://doi.org/10.15294/jpcl.v1i1.12355>.
- Tobing, L. A., Malikhatun, S., & Suharto, R. (2023). *Legal Protection of the Auction Winner in Parate Executie: A Juridical Analysis of the Execution of Mortgage*. <https://doi.org/10.4108/eai.4-11-2022.2329678>.
- Widjaja, G. (2003). Tanggung Jawab Direksi atas Kepailitan Perseroan. In *Language* (Vol. 16, Issue 315p).
- Yunita, E., & Permatasari, P. (2022). Perlindungan Hukum Bagi Kreditor Pemegang Hak Tanggungan Yang Tidak Mendaftarkan Piutangnya Sampai Dengan Batas Akhir Pendaftaran Tagihan. *Jurnal Sains Sosio Humaniora*, 6(2). <https://doi.org/10.22437/jssh.v6i2.22916>.

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