

The Protection of Secured Creditors in the Execution of Collateral in Bankruptcy

Ayu Puspita Sari¹⁾ & Ariawan Gunadi²⁾

¹⁾Faculty of Law, Universitas Tarumanagara, Indonesia, E-mail: puspitaayu3112@gmail.com

²⁾Faculty of Law, Universitas Tarumanagara, Indonesia, E-mail: ariawang@fh.untar.ac.id

Abstract. *The objective of this journal study is to examine and analyze the safeguards for Secured Creditors regarding the enforcement of property guarantees following a bankruptcy ruling against the debtor. This research employs a normative legal approach, utilizing legislation, a conceptual perspective, and case studies. The findings indicate that the position of Secured Creditors in case number 527 K/Pdt. Sus-Pailit/2020 emphasizes that the right to execute on property guarantees remains intact, even with a 90-day suspension period post-bankruptcy decision. This suspension does not eliminate the preferential status concerning debt repayment. During this time, the curator is prohibited from selling or taking control of the collateral without the Secured Creditor's consent. Specific regulations are needed to protect Secured Creditors, ensuring that the execution of their property guarantees under suspension remains under their oversight, to promote fairness, legal certainty, and proportional protection of their rights during the bankruptcy process.*

Keywords: Bankruptcy; Legal Protection; Security Right.

1. Introduction

In an era of globalization and increasingly complex economic dynamics, business activities are inseparable from financial risks, one of which is the risk of bankruptcy. Bankruptcy is not merely a matter of business failure, but also involves legal issues related to the debtor's fulfillment of obligations to its creditors (Margiyanti, 2023). In Indonesia, the growth of the business sector has become the backbone of national economic development; however, not all business entities are able to withstand market pressures and mounting debt burdens (Harianja & Sawitri, 2025).

The Government of Indonesia has anticipated this phenomenon by enacting Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) as the legal framework that regulates the mechanism for debt settlement between debtors and creditors. This statute refines the previous regulation, namely Law No. 4 of 1998, which originated from Government Regulation in Lieu of Law No. 1 of 1998 (Wedagama & Ida, 2023). The UUK-PKPU expressly categorizes creditors into three groups—secured creditor, preferred creditor, and concurrent creditor—each of which occupies a distinct legal position within bankruptcy proceedings (Rahman et al., 2025).

Separate creditors are parties holding security rights in rem over assets, such as fiduciary security, mortgage, land security rights, or pledge. Normatively, their position is privileged because they are entitled to enforce their collateral even when the debtor has been declared bankrupt, as stipulated in Article 55 paragraph (1) of the UUK-PKPU (Sihombing, 2024). However, in practice, the exercise of this enforcement right frequently encounters obstacles, either due to the curator's intervention or inconsistencies among applicable legal norms. A case that exemplifies this issue is the Supreme Court of the Republic of Indonesia Decision Number 527 K/Pdt.Sus-Pailit/2020, in which PT BPR Lestari Bali, acting as a separate creditors, experienced a postponement of collateral enforcement resulting from the curator's intervention (Yusticia & Rumesten, 2020).

The research gap in this issue lies in the absence of clear normative and practical guidance regarding the legal protection of separate creditors in the exercise of their execution rights in the midst of bankruptcy proceedings. Previous studies have tended to focus more on general aspects of debt settlement in bankruptcy (Simanjuntak & Mulyadi, 2019), while in-depth analyses of conflicts of interest between separate creditors and curators remain relatively limited. This study also seeks to address the gap in the literature concerning disharmony between the provisions of UUK-PKPU and the actual implementation of security interest execution over collateral.

The urgency of this research is grounded in the need for more robust legal protection for separate creditors so that their security rights are not undermined by the curator's subjective interpretation or by loopholes in bankruptcy practice. In addition, this research is important as an academic effort to re-examine the effectiveness of the bankruptcy legal system in safeguarding fairness for all creditors.

The novelty of this research lies in its comprehensive normative-comparative analysis of Article 55 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law (UUK-PKPU) and Article 21 of the Land Security Rights Law (Land Security Rights Law) in the context of enforcing security interests over collateral by separate creditors, examined through the lens of the Supreme Court's cassation decision that serves as the focal point of this study. By employing a juridical case study approach, this research offers a new perspective for developing legal solutions that are both equitable and practically applicable.

This study aims: (1) to analyze the legal standing of separate creditors in relation to the enforcement of security interests over collateral in bankruptcy, based on the Supreme Court of the Republic of Indonesia Decision Number 527/Pdt.Sus-Pailit/2020; and (2) to examine the legal protection granted to separate creditors who face obstacles in exercising their enforcement rights due to the curator's intervention. The theoretical contribution of this research is to enrich the body of knowledge in economic law and civil law within the field of bankruptcy, while its practical contribution is to provide guidance for policymakers and legal practitioners in designing a more equitable and functional legal mechanism.

2. Research Methods

This study used a normative legal research employing a statute approach, a case approach, and a conceptual approach (Muhaimin, 2020). The use of this research type and these approaches is intended to examine the position and the legal protection granted to separate creditors in exercising their right to enforce security interests within the field of bankruptcy law, with reference to the Supreme Court of the Republic of Indonesia Decision Number 527/Pdt.Sus-Pailit/2020, which has obtained permanent legal force. The case study is conducted by examining existing practices in the enforcement process that relate to the judicial considerations reflected in court decisions, enabling the formulation of conclusions and recommendations regarding legal certainty and protection for separate creditors in bankruptcy proceedings.

The sources of legal materials consist of primary legal materials, including the Indonesian Civil Code (Undang-Undang, n.d.), the Land Security Rights Law No. 4 of 1996 (Indonesia, n.d.), the Fiduciary Security Law No. 42 of 1999 (Nomor, 42 C.E.), and the Bankruptcy and Suspension of Debt Payment Obligations Law No. 37 of 2004 (Indonesia, n.d.), as well as the Supreme Court of the Republic of Indonesia Decision Number 527/Pdt.Sus-Pailit/2020. Secondary legal materials are obtained from literature on bankruptcy law and secured transactions law, along with accredited national journals (Susanti, 2022).

The legal materials were collected through library research by tracing, reading, and analyzing legal documents and academic literature relevant to the title and issues of this study. The legal materials were then analyzed using a descriptive-analytical technique by examining the applicable legal norms and linking them to legal doctrines and court decisions, in order to derive conclusions on the issue of legal protection for separate creditors in the execution of security interests in bankruptcy, based on the Supreme Court of the Republic of Indonesia Decision Number 527/Pdt.Sus-Pailit/2020.

3. Results and Discussion

3.1. Analysis of the Legal Position of Separate Creditors in the Execution of Security Interests in Bankruptcy Based on Supreme Court Decision No. 527/Pdt.Sus-Pailit/2020

Creditors are classified into three categories as previously explained. This differs from the classification in general civil law, which recognizes only two types of creditors, namely preferred creditors and concurrent creditors. In general civil law, preferred creditors are those who hold rights arising from statutory privileges and are entitled to priority in the repayment of their claims. However, in the context of bankruptcy, preferred creditors are limited to creditors who, by operation of law, must be prioritized in the settlement of their claims, such as holders of statutory privileges, holders of rights of retention, and similar categories. Meanwhile, creditors who hold security interests in rem over assets are referred to as separate creditors (Sangkut & Mulyani, 2022).

The position of separate creditors is regulated in Article 1134 of the Indonesian Civil Code, which sets out the distinctions in creditor rankings under the applicable legal norms. There are three levels of creditors: those granted special statutory rights, known as preferred creditors; those with a lower ranking, referred to as concurrent creditors; and finally, creditors who hold security rights over specific assets, referred to as separate creditors, whose position ranks above that of preferred creditors (Hutabarat et al., 2025). Furthermore, Article 2 paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations Law (UUK-PKPU) classifies creditors in bankruptcy as concurrent creditors, preferred creditors, and separate creditors. In particular, separate creditors may file a petition for a declaration of bankruptcy without losing their security interests in rem and continue to retain their priority rights.

The authority of separate creditors as holders of security interests in rem is principally regulated under the Land Security Rights Law No. 4 of 1996. The actions of a holder of a land security right in enforcing the secured object constitute the application of the *droit de préférence* principle, namely the right to receive payment in priority over other creditors. This principle is expressly provided in Article 20 paragraph (1) of the Land Security Rights Law No. 4 of 1996, which grants the first-ranking holder of a land security right the authority to sell the secured object on their own initiative through a public auction and to satisfy their claim from the proceeds of the sale (Muis et al., 2022).

This provision is consistent with Article 6 of the Land Security Rights Law, which affirms that when the debtor is in default, the first-ranking holder of a land security right is entitled to sell the secured object without requiring the debtor's consent through a parate execution mechanism. In addition, Article 14 paragraph (2) of the Land Security Rights Law confers an executorial title on the land security right certificate, thereby granting it the same legal force as a final and binding court judgment. This means that the holder of a land security right enjoys a priority position in the sale of the secured asset compared to other creditors, providing a form of legal protection for the interests of separate creditors in obtaining repayment of their claims in an effective, prompt, and equitable manner without having to undergo lengthy litigation procedures.

Furthermore, the rules governing the right of separate creditors to receive priority in the sale of secured assets are set out in Article 27 of Fiduciary Security Law No. 42 of 1999, hereinafter referred to as the Fiduciary Security Law. This statute provides that the fiduciary grantee has priority over other creditors in obtaining repayment of debts from the proceeds of the enforcement of assets constituting the object of the fiduciary security, even in the event of the bankruptcy or liquidation of the fiduciary grantor. Enforcement of a fiduciary security may be carried out if the fiduciary grantor commits a breach of contract or is in default. The fiduciary grantor is required to surrender the object of the fiduciary security during the enforcement process. Under Article 29 of the Fiduciary Security Law, if the debtor or fiduciary grantor fails to fulfill their obligations, enforcement of the fiduciary security object may be carried out through a sale based on an executorial title that carries the same legal force as a court judgment (Faisal, 2024).

In bankruptcy law, the rules governing assets provided as security by secured creditor—as holders of security interests in rem—are set out in Article 55 paragraph (1) of the UUK-PKPU. This provision states that any creditor holding a pledge, fiduciary security, land mortgage, mortgage, or any other security right over an asset may exercise their rights as if the bankruptcy had not occurred (Putro & Badriyah, n.d.). However, as of the date of the bankruptcy ruling, Article 56 paragraph (1) of UUK-PKPU stipulates that the right to execute the assets of the bankrupt estate is suspended for a maximum period of 90 days. As a result, the special right of secured creditor to execute the assets of a bankrupt debtor appears to be restricted. The imposition of this stay on secured creditor is closely linked to the very purpose of bankruptcy law, namely to serve as a collective process for gathering and maximizing the realizable value of the bankrupt estate so that it can be distributed among all creditors in accordance with their ranking and the type of their claims (Sentika & Kartoningrat, 2020).

Creditors holding security interests in rem are, in principle, entitled to execute their security as if the bankruptcy proceedings were not taking place. Moreover, secured creditors retain the right to claim any shortfall if the proceeds from the sale of the collateral are insufficient to cover the debtor's obligations to them. Conversely, if a secured creditor has relinquished its security and has been paid, any remaining proceeds from the sale of the collateral are allocated to repay the claims of unsecured creditors (Clarisa Talia, 2022).

In the case of a miscellaneous claim heard by the Commercial Court of Surabaya, secured creditor PT BPR Lestari acted as plaintiff against Curator Handiono (in bankruptcy), who was managing and liquidating the assets of the bankrupt debtor Handiono, who had also provided mortgage and a fiduciary security interest to PT BPR Lestari. The Bankruptcy Administrator Handiono was designated as Defendant I, while the State Asset and Auction Service Office (KPKNL) Denpasar—which had organized the execution auction planned by PT BPR Lestari but postponed it after receiving a stay request from Defendant I—was designated as Defendant II.

The case arose from a credit facility granted to Handiono by PT BPR Lestari Bali. The facility was secured by a piece of real property, namely a parcel of land and a building located in Mengwitani Village, Mengwi Sub-District, Badung Regency, Bali Province, situated at Jalan Bukit Tinggi No. 8, with an area of 2,520 square meters and registered under Freehold Title Certificate No. 589 in the name of Handiono. In addition to the mortgage over the land, Handiono also provided security over movable property through a fiduciary security interest covering five four-wheeled motor vehicles. All of these secured assets were in the possession of PT BPR Lestari. When Handiono failed to repay the credit facility, PT BPR Lestari planned to proceed with a public auction through KPKNL Denpasar; however, before the auction could take place, Handiono was declared bankrupt by a court decision.

KPKNL Denpasar had scheduled the auction for 6 February 2019. However, the Head of KPKNL Denpasar postponed the auction following a letter from the curator, Curator's Request Letter No. 040/Kurator-Handiono/EKD/I/2019 dated 23 January 2018, requesting a judicial determination imposing a stay of execution over part of the bankrupt estate belonging to Handiono (in bankruptcy). The postponement of the auction clearly caused losses to PT BPR

Lestari Bali, which had already arranged the auction in order to recover the outstanding debt owed by Handiono.

As a result of this situation, PT BPR Lestari filed a claim with the Commercial Court of Surabaya. In its decision No. 11/Pdt.Sus-G.Lain-lain/2019/PN Niaga Sby. jo. No. 13/Pdt.Sus/Pailit/2018/PN Niaga Sby., dated 11 November 2019, the court rejected all claims submitted by PT BPR Lestari. In response, PT BPR Lestari filed a cassation appeal with the Supreme Court in Case No. 527 K/Pdt.Sus-Pailit/2020. In its cassation ruling, the Supreme Court affirmed the decision of the Commercial Court of Surabaya and rejected all of PT BPR Lestari Bali's cassation requests.

The cassation appeal was denied on the grounds that PT BPR Lestari Bali's execution efforts were still subject to the stay period (*masa diam*) prescribed in Article 56(1) of the Bankruptcy and Suspension of Debt Payment Obligations Act (UUK-PKPU), and that the insolvency conditions under Article 57(1) and Article 178(1) of the UUK-PKPU had not yet been fulfilled. Consequently, the actions of Curator Handiono (in bankruptcy) in requesting a stay of the auction execution were not considered unlawful, and the Supervising Judge's Determination No. 13/Pdt.Sus-Pailit/2018/PN Niaga Sby. dated 28 January was declared valid and enforceable.

Based on this decision, the position of secured creditors—who, in principle, hold a special and priority right to execute their security that should not be affected by bankruptcy—is in fact restricted by provisions that suspend the right of secured creditors to sell the collateral, as stipulated in Articles 56, 57(1), and 178 of the Bankruptcy and Suspension of Debt Payment Obligations Act (UUK-PKPU). The postponement of a scheduled auction execution clearly and demonstrably harms PT BPR Lestari Bali as a secured creditor seeking to realize its repayment rights. Moving forward, there is a need for more specific regulation regarding the rights of secured creditors once the execution process has reached the auction stage, particularly concerning whether a stay of auction execution may be imposed solely on the basis of a bankruptcy declaration.

The principle of priority and preferential rights embodied in Article 55(1) of the Bankruptcy and Suspension of Debt Payment Obligations Act (UUK-PKPU) must continue to be applied and upheld. Creditors holding security interests in rem are entitled to execute the secured assets without having to proceed through the debtor's bankruptcy process. This legal position grants such creditors a clear advantage in the repayment process. Under Article 55(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, secured creditors are authorized to execute their collateral independently, as if no bankruptcy proceedings were underway. However, this provision does not mean that the secured assets are excluded from the bankrupt estate. The assets remain part of the estate, but the right to execute them is vested in the creditor holding the security interest in rem, allowing the creditor to take enforcement measures in accordance with the applicable legal rules. Likewise, a land mortgage grants creditors enhanced priority in the repayment of debts, even though certain legal conditions may limit the creditor's practical ability to exercise that right (Biantara & Utami, 2025).

What should be emphasized and prioritized in PT BPR Lestari Bali's claim is that the arguments presented in its petition concern matters that properly fall within the duties and responsibilities of the curator. Although a 90-day stay of auction execution applies to secured creditors in order to await a declaration of insolvency, as provided under Article 56 of the Bankruptcy and Suspension of Debt Payment Obligations Act (UUK-PKPU), this does not give Curator Handiono (in bankruptcy) unrestricted authority to transfer the secured assets to other parties or to dispose of the collateral pledged to PT BPR Lestari Bali. This consideration ought to serve as an important legal basis for panels of judges adjudicating future cases involving stays of auction execution, so that curators may be prohibited from transferring secured assets to third parties. The underlying principles and norms governing security interests continue to apply—namely, that debts secured by security interests in rem, i.e., the claims of secured creditors, must be repaid and prioritized, alongside other preferred claims recognized by statute, such as tax claims and workers' wage claims.

3.2. Protection for Secured Creditor in Bankruptcy Proceedings When Execution Is Suspended

Before explaining the forms of protection that ought to be afforded to secured creditor in the execution of security interests in rem during bankruptcy proceedings, it is first necessary to clarify the concept of legal protection. Legal protection constitutes an effort to safeguard the human rights of individuals who suffer loss as a result of another person's actions. Such protection is provided so that members of the community can fully enjoy the rights granted to them by law. In brief, legal protection encompasses various measures that must be taken by law enforcement authorities to ensure personal security—both mental and physical—against disturbances and threats from any party. Thus, the term “to protect” refers to preventive actions undertaken by individuals or groups for the benefit of certain persons or parties through specific means (Sasea, 2022). The term “legal protection” covers not only individuals, but also legal entities. In civil law, both are recognized as legal subjects. Accordingly, legal protection may be understood as efforts to safeguard or assist legal subjects through the use of legal instruments (Rahim, 2023).

Protection for secured creditors or holders of security interests in rem is, both philosophically and normatively, reflected in their right to execute the collateral ahead of other creditors. The applicable provisions state that if the debtor fails to repay the debt, the creditor holding a mortgage or other security interest may conduct a public auction of the secured assets in order to recover the outstanding claim in accordance with the governing legal framework on security interests. The creditor may exercise this right in priority to other creditors, provided that such priority does not prejudice the position of state claims under applicable regulations. The special privilege enjoyed by secured creditors is a statutory right to preferential payment, and the claim itself is categorized as a privileged or preferential claim, while the creditor is recognized as a preferred creditor. These privileges are also governed in Book IIa, Chapter XIX on “Privileged Claims”, encompassing Articles 1131 to 1149 of the Indonesian Civil Code. This chapter is divided into three sections, which set out:

1. Claims that are granted priority;
2. Special rights attached to specific objects; and
3. Special rights over all assets in general, both movable and immovable (Lubis & Harahap, 2023).

The bankruptcy norms contained in the Bankruptcy and Suspension of Debt Payment Obligations Act (UUK-PKPU) continue to employ the system of security over property as reflected in Articles 1131 and 1132 of the Indonesian Civil Code, which incorporate the principles of creditor equality and priority concerning the debtor's obligation to repay earlier-ranking claims. However, once the debtor has been declared bankrupt, creditors holding security interests in rem acquire the right to execute the assets provided as collateral for the debt. In the context of bankruptcy law, the position of secured creditors can be identified through several key provisions. Article 2(1) of the UUK-PKPU provides that secured creditors are entitled to file a petition for a declaration of bankruptcy against the debtor without losing their security rights and without forfeiting their priority. Furthermore, Article 55 of the UUK-PKPU explicitly states that secured creditors may continue to exercise their rights as if bankruptcy had not occurred—in other words, they may disregard the fact that bankruptcy has been declared (Mubarak & Kharisma, n.d.).

The bankruptcy norms contained in the Bankruptcy and Suspension of Debt Payment Obligations Act (UUK-PKPU), however, do not yet provide adequate protection for secured creditors. This issue arises from inconsistencies between Article 55 and other provisions that restrict the rights of secured creditors by imposing temporal limitations. Article 56(1) of the UUK-PKPU stipulates that a creditor's right to execute its security is suspended for a maximum of 90 days after the bankruptcy ruling is issued. Article 56(3) of the UUK-PKPU further provides that during this stay period, the curator may utilize movable assets belonging to the bankrupt estate. Once the stay period expires, the curator must grant the creditor an additional period of two months (60 days) to carry out the execution. If the creditor fails to execute within this period, the curator is then entitled to demand the surrender of the secured assets for sale through a public auction or for direct sale by the curator (Silalahi & Claudia, 2020).

If the secured creditor fails to exercise its right of execution within the two-month period, the authority to carry out the execution is transferred to the curator pursuant to Article 60 of the UUK-PKPU. This provision sets out the procedural steps that must be followed by creditors holding security interests in rem who intend to enforce their rights, including the obligation to report the results of the sale of the secured assets to the curator. The curator is also responsible for ensuring that any remaining proceeds—after deducting costs and satisfying the secured claim—are distributed to the appropriate parties, including creditors with higher-ranking claims. Furthermore, if the sale proceeds are insufficient to fully cover the debt, the secured creditor may file a claim for the deficiency against the bankrupt estate, but only in the capacity of a concurrent creditor after undergoing the claim verification process (Wibowo, 2025).

Article 60 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU) is, in normative terms, intended to regulate the mechanism for accountability and the distribution of proceeds generated from the sale of secured assets by secured creditors (Aprita & Shalihin, n.d.). In practice, however, this provision has not fully provided adequate legal protection for secured creditors. This shortcoming becomes evident when a secured creditor fails to exercise its execution rights within two months after the debtor is declared insolvent, causing the authority to sell the collateral to shift to the curator. In such circumstances, the secured creditor loses control over the execution process, and the sale price of the collateral often fails to reflect its actual market value. Any shortfall in the sale proceeds is subsequently categorized as a concurrent claim, placing the secured creditor on the same level as ordinary creditors and depriving it of any repayment priority.

In Case Number 527 K/Pdt.Sus-Pailit/2020, involving PT BPR Lestari Bali as a secured creditor, Curator Handiono (in bankruptcy), and KPKNL Denpasar, the Supreme Court essentially ruled that Curator Handiono's act of requesting a stay of auction execution from KPKNL Denpasar was not unlawful. However, this outcome resulted in inadequate legal protection for PT BPR Lestari Bali, as no measures were taken to safeguard its secured assets. This situation raises questions regarding the status of the secured assets and the steps taken to protect PT BPR Lestari Bali's collateral, given that PT BPR Lestari Bali continued to pursue execution of its security right after the 90-day stay period had expired. It also raises issues concerning any actions taken, if at all, by the curator following KPKNL Denpasar's determination to stay the execution. These aspects are not explicitly regulated under bankruptcy law and instead depend solely on general norms governing the curator's duties in managing and liquidating the bankrupt estate, including assets provided as collateral by secured creditors.

Accordingly, the forms of protection for secured creditors in Case Number 527 K/Pdt.Sus-Pailit/2020 that may be identified with respect to PT BPR Lestari Bali as a secured creditor vis-à-vis Curator Handiono include the following:

1. For secured creditors that have already registered an auction with KPKNL but face a postponement due to a curator's request for a stay of execution during the 90-day stay period under Article 56 paragraph (1) of UUK-PKPU, KPKNL should, upon the expiry of the stay, reschedule the auction without imposing lengthy administrative procedures, since Article 59 paragraph (1) of UUK-PKPU grants only two months for the execution sale to be carried out.
2. During the protection of assets following a stay of auction execution based on the stay period, the curator may not intervene in or take over the rights of secured creditors in the auction execution process after the stay period ends. Article 55 paragraph (1) of UUK-PKPU remains applicable, confirming that secured creditors retain full rights to execute as if no bankruptcy had occurred.
3. Protection must also be afforded to secured creditors against potential legal losses in situations where the collateral initially has a higher realizable value, but the curator's assumption of control over the execution process leads to a lower sale price, thereby harming

the secured creditors. For this reason, specific regulations are needed governing the treatment of security interests held by secured creditors when execution is carried out by the curator.

There is therefore a clear need for new legal provisions within the Bankruptcy and Suspension of Debt Payment Obligations Law (UUK-PKPU) to ensure more effective protection for secured creditors. The most detrimental impact on the secured creditor—in this case, PT BPR Lestari Bali—occurred after Receiver Handiono submitted a request to the State Assets and Auction Service Office (KPKNL) to postpone the execution of the auction in the midst of the bankruptcy proceedings. In this context, the secured property placed under the control of Receiver Handiono during the bankruptcy process consisted of a parcel of land located in Mengwitani Village, Mengwi Sub-District, Badung Regency, Province of Bali, known as Jalan Bukit Tinggi No. 8, with a total area of 2,520 square meters and registered under Ownership Certificate No. 589 in Handiono's name. The collateral also included movable assets in the form of five vehicles, all of which were already in the possession of PT BPR Lestari but were nonetheless made available for use by Receiver Handiono during the bankruptcy proceedings.

A possible protective measure is that, if any sale of movable assets is carried out during the stay period, the receiver must provide prior notice to the secured creditor regarding the proposed sale and subsequently report the proceeds generated from the transaction. The resulting proceeds must then be transferred to the secured creditor holding the security interest, in acknowledgment of their priority right in the repayment of the outstanding debt.

4. Conclusion

The position of the Separatist Creditor in case number 527 K/Pdt.Sus-Pailit/2020 demonstrates that the creditor has the legal authority to sell the collateral property independently through a public auction and is entitled to receive payment from the sale, as if bankruptcy had not occurred. However, under the bankruptcy law system as regulated in Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (PKPU), the execution rights of the Separatist Creditor are limited by a stay period of 90 days from the declaration of bankruptcy until the debtor is declared insolvent. The imposition of this stay period does not annul the legal position of the Separatist Creditor as the creditor with priority (preferential rights) in debt settlement. During the stay period, the Separatist Creditor is still recognized as the party holding rights over the collateral property, while the curator is not allowed to sell, transfer, or control the collateral property without the approval and knowledge of the Separatist Creditor. Protection for the Separatist Creditor in case number 527 K/Pdt.Sus-Pailit/2020 between PT. BPR Lestari Bali and Curator Handiono can be realized through several mechanisms. First, for Separatist Creditors who have registered the auction with the State Asset Management and Auction Service Office (KPKNL) but face delays due to the curator's request based on the 90-day stay period as outlined in Article 56 paragraph (1) of the UUK-PKPU, after the stay period ends, KPKNL must reschedule the auction without lengthy and time-consuming administrative procedures. Second, during the stay period, the curator who sells movable assets is required to provide a report regarding the sales plan, and the proceeds from the sale must be received by the Separatist Creditor who holds the priority rights in debt settlement. Third, a special

regulation is needed to ensure that the execution of the Separatist Creditor's collateral, which is postponed, remains under the supervision of the Separatist Creditor, to ensure fairness, legal certainty, and the proportional protection of rights during the bankruptcy process.

5. References

- Aprita, S., & Shalihin, R. (n.d.). *Hukum Kepailitan Dalam Islam*. Mitra Wacana Media.
- Biantara, S. G., & Utami, N. P. D. Y. (2025). Kepastian Hukum Bagi Bank Dalam Eksekusi Jaminan Hak Tanggungan Non Eksekutabel (Studi Putusan Nomor 14/PDT.BTH/2018/PN SNT). *Jurnal Kertha Semaya*, 13(7), 1423–1437. <https://doi.org/10.24843/KS.2025.v13.i07.p09>
- Harianja, D. R., & Sawitri, D. A. D. (2025). ASAS KELANGSUNGAN USAHA DALAM PERKARA KEPAILITAN DAN PENUNDAAN KEWAJIBAN PEMBAYARAN UTANG DALAM HUKUM KEPAILITAN DI INDONESIA. *Kertha Wicara: Journal Ilmu Hukum*, 15(3), 124–136.
- Hutabarat, A. G., Sunarmi, S., & Robert, R. (2025). Perlindungan Kreditur Separatis terhadap Jangka Waktu Eksekusi Objek Hak Tanggungan dalam Proses Insolvensi. *Binamulia Hukum*, 14(1), 173–186.
- Indonesia. (n.d.). Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan. In *Tambahan Lembaran Negara Republik Indonesia Nomor 3632*. Lembaran Negara Republik Indonesia.
- Lubis, M. A., & Harahap, M. Y. (2023). Perlindungan Hukum Terhadap Kreditur Sebagai Pemegang Hak Jaminan Dalam Perkara Debitur Wanprestasi. *Jurnal Interpretasi Hukum*, 4(2), 337–343.
- Margiyanti, I. Y. (2023). PERLINDUNGAN HUKUM BAGI PIHAK KREDITUR ATAS PERKARA KEPAILITAN. *Jurnal Hukum Statuta*, 3(1), 27–43.
- Mubarak, H. H., & Kharisma, D. B. (n.d.). PERLINDUNGAN HUKUM TERHADAP KREDITUR SEPARATIS DALAM EKSEKUSI HARTA BOEDEL PAILIT APABILA DIHADAPKAN DENGAN SITA PERKARA TINDAK PIDANA KORUPSI. *Jurnal Privat Law*, 11(2), 255–264.
- Muhaimin, M. (2020). Metode penelitian hukum. *Dalam S. Dr. Muhaimin, Metode Penelitian Hukum, Mataram-NTB: Mataram*, 1, 59–62.
- Muis, I. F., Ikhwansyah, I., & Handayani, T. (2022). Kedudukan Kreditur Separatis Terkait Jaminan Hak Tanggungan yang Masuk Dalam Boedel Pailit Debitur. *Jurnal Poros Hukum Padjadjaran*, 3(2), 277–288.
- Nomor, U.-U. (42 C.E.). *tahun 1999 tentang Jaminan Fidusia*.
- Putro, E. B., & Badriyah, S. M. (n.d.). Perlindungan Hukum Kreditur Separatis Pemegang Hak Tanggungan dalam Perkara Kepailitan. *Notarius*, 17(3), 2207–2222.

- Rahman, D., Gultom, E., & Permana, S. (2025). TY - BOOK AU - Indonesia TI - Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang PB - Lembaran Negara Republik Indonesia CY - 2004 SN - 131 T2 - Tambahan Lembaran Negara Republik Indonesia Nomor 3889 ER -. *Mahkamah : Jurnal Riset Ilmu Hukum*, 2, 86–99. <https://doi.org/10.62383/mahkamah.v2i3.670>
- Sangkut, M., & Mulyani, S. (2022). Tanggung Jawab Kreditor Separatis Pemegang Hak Tanggungan Terhadap Kelebihan Penjualan Aset Pasca Kepailitan (Studi Kasus Putusan Gugatan Lain Lain Nomor: 23 K/Pdt. sus-Pailit/2021). *Notary Law Research*, 3(2), 12–27.
- Sasea, E. M. (2022). Hukum Jaminan. *Purbalingga: Eureka Media Aksara*.
- Sentika, A. D., & Kartoningrat, R. B. (2020). Kedudukan Kreditor Separatis dalam Meneksekusi Objek Jaminan Saat Terjadi Kepailitan. *Perspektif: Kajian Masalah Hukum Dan Pembangunan*, 25(1), 63–73.
- Sihombing, J.-S. P. (2024). Permasalahan Kasus Perkara PKPU dan Kepailitan. *Kabupaten Bogor: Mitra Wacana Media*.
- Silalahi, U., & Claudia, C. (2020). Kedudukan kreditor separatis atas hak jaminan dalam proses kepailitan. *Masalah-Masalah Hukum*, 49(1), 35–47.
- Undang-Undang. (n.d.). *Kitab Undang-Undang Hukum Perdata*. <https://jdih.mahkamahagung.go.id/legal-product/kitab-undang-undang-hukum-perdata/detail>
- Wedagama, B. G. D., & Ida. (2023). Upaya Mencegah Kepailitan Dengan Menunda Kewajiban Pembayaran Hutang. *Jurnal Kertha Negara*, 11(3), 292–303.
- Yusticia, J., & Rumesten, I. (2020). Limitasi Hak Kreditor Separatis Atas Pelunasan Piutang Setelah Lampau Waktu Penjualan Jaminan Kebendaan Dalam Proses Penyelesaian Kepailitan di Pengadilan Niaga. *Lex Lata*.