



THE POSITION OF SEPARATE CREDITOR HOLDERS OF THIRD-PARTY COLLATERAL IN EXECUTING COLLATERAL OBJECTS DURING INSOLVENCY

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ABSTRACT

This research aims to analyze the legal position of preferential creditors regarding collateral owned by third parties (guarantor) within the bankruptcy system in Indonesia, using a normative juridical approach and case studies of commercial court rulings. In practice, there is often inconsistency between legal norms and their application, especially when the curator includes third-party collateral in the bankruptcy estate without a valid legal basis. Based on Articles 55 and 56 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), a separatis creditor has an execution right that can still be carried out independently, even if the debtor is declared bankrupt. These rights are protected by the principles of *droit de préférence*, *droit de suite*, and the accessory principle in the theory of property security. This research also shows that the curator does not have the legal authority to determine the ownership status of the collateral object, which should be determined by the court. Protection of third-party property rights is guaranteed by the theory of property protection and the constitution. Therefore, consistency in the application of law, technical guidelines, and stable jurisprudence is necessary to ensure legal certainty, justice, and balanced protection of the rights of all parties in the bankruptcy process.

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1. INTRODUCTION

Bankruptcy is a legal mechanism for resolving disputes related to debts. This institution is not intended to settle debt obligations to a single creditor, but rather to protect the interests of several creditors simultaneously. After the court issues a bankruptcy ruling, other creditors have the opportunity to submit their debt claims collectively (Natalia, 2018). Based on the provisions of Article 2 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), a debtor can be declared bankrupt if they have at least two creditors and at least one debt that is due and collectible but has not been fully paid (Sudjanto Sudiana & SH, 2023).

Based on Article 1, paragraph 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), "bankruptcy is a general seizure of all the bankrupt debtor's assets, the management and settlement of which are carried out by the curator under the supervision of the supervisory judge as regulated in this Law." Bankruptcy is a further implementation of the principle of *paritas creditorum* and the principle of *pari passu prorata parte* in the legal regime of property (*vermogensrechts*). The principle of

paritas creditorium means that all the debtor's assets, whether movable or immovable, and the property currently owned by the debtor and the property that will be owned by the debtor in the future, are bound to the settlement of the debtor's obligations. Meanwhile, the principle of *pari passu prorata parte* means that these assets are a joint guarantee for the creditors and the proceeds must be distributed proportionally among them, unless there are creditors who, according to the law, must be prioritized in receiving their payment (Sudjanto Sudiana & SH, 2023).

Generally, creditors in law are grouped into several categories based on the order of priority of their rights to obtain repayment of their debts against other creditors. Types of creditors in bankruptcy are divided into secured creditors, preferred creditors, and concurrent creditors. Separatist creditors are creditors holding security rights who can act independently. This group of creditors is not affected by the bankruptcy declaration, meaning their execution rights can still be exercised as if the debtor had not gone bankrupt (Prasetya & Raodah, 2023). Preferential creditors are creditors who have special rights or priority rights. Preferential rights mean rights granted by law to a creditor, giving them a higher status than other creditors. In addition, there are also concurrent creditors, who are competing creditors without any special privileges, thus their positions are equal to each other (Hadiwidjaja, 2023).

In financing practice, the use of collateral rights such as mortgages, pledges, and fiduciary rights are important instruments for creditors to ensure the repayment of the debtor's debt. Creditors who hold this property security right are referred to as preferential creditors, who have a special position in the event of debtor bankruptcy. In the event of bankruptcy, a secured creditor has the right to independently execute the collateral, regardless of the bankruptcy process. However, the issue becomes complex when the collateral object is not owned by the bankrupt debtor, but rather by a third party who provided the collateral as a guarantor for the debtor's debt (Martinelli et al., 2024).

The guarantor is the party that provides the guarantee and can be held accountable if the debtor can no longer fulfill their debt repayment obligations. At the time of providing a guarantee, a guarantor has special rights that include the right to request the seizure of the debtor's assets and to have them auctioned off first to settle the debt to the creditor, as well as the right to request the creditor to divide the debt if there is more than one guarantor (Abhimantara, 2019). The granting of such privileges is a form of protection provided by legislation to the guarantor. The guarantor is given the freedom to maintain and/or waive the privileges attached to them (Bahri et al., 2024).

The main issue in this context is how the position of the separatis creditor in executing the collateral owned by a third party, and to what extent legal protection can be provided to the owner of the goods (the third party) as well as the separatis creditor in the bankruptcy process. This situation raises questions regarding the limits of collateral execution, the ownership status of the collateral object, and the legal treatment of third parties who are not included in the bankruptcy subject but are directly affected. Several cases in Indonesia show uncertainty and inconsistency in the practice of executing collateral objects by secured creditors, especially when the collateral objects originate from third parties. For example, in several commercial court rulings, there have been restrictions on execution by the curator on the grounds that the collateral objects are included in the bankruptcy estate, even though they are legally owned by third parties.

Previous research has discussed the position of secured creditors in bankruptcy law. as in the research conducted by Udin Silalahi and Claudia (2020) on the Position of Secured Creditors on Collateral Rights in Bankruptcy Proceedings. The results of this study indicate that although the execution rights of preferential creditors are suspended, the rights of preferential creditors are still guaranteed by the UUK-PKPU, and the transfer of execution rights from preferential creditors to the curator, the curator must provide the rights of preferential creditors, namely the settlement of their debts (Silalahi & Claudia, 2020).

Meanwhile, research conducted by Roni Kurniawan (2025) on the Juridical Analysis of the Execution Rights of Secured Creditors Against the Collateral of Third Parties in Bankruptcy. The results of the research indicate that a separatis creditor can still execute against the object of the third-party mortgage guarantee even if the debtor is declared bankrupt by a court ruling. The execution rights of a separatis creditor are not subject to the provisions of Article 59 paragraphs (1) and (2) which impose time limits on the execution process, because the collateral in the form of a third party mortgage is not the property of the bankrupt debtor and is outside the bankruptcy or not included in the bankrupt estate (R. Kurniawan, 2025).

Research conducted by Ayudinda Pilar Kharisma (2023) on the Legal Position of Secured Creditors on the Collateral Property of a Guarantor Who Has Gone Bankrupt in the Bankruptcy of a Bankrupt Debtor. The research results indicate that the Legal Protection and Position of Secured Creditors in the Event of Bankruptcy Against the Debtor's Property Collateral Sale is carried out through *parate executie*, which is done by public auction or sale according to the provisions of Article 185 paragraph (1) of Law No. 37 of 2004. The Legal Position of Guarantee Companies Waiving Their Preferential Rights in Bankruptcy: a. Guarantor as Debtor Article 1

point 1 of the Bankruptcy Law states that a Debtor is a person who has a debt due to an agreement or law that can be claimed in court. The Extinction of the Guarantor's Debt Generally, the provisions of Article 1845 of the Civil Code state that: "Obligations arising from a guarantee are extinguished for the same reasons as those that cause the termination of other obligations." There is no legal basis to demand and place a guarantor in a state of bankruptcy; in principle, the nature of a guarantee only places the guarantor in charge of the payment to be made by the debtor. Therefore, the actual burden of debt repayment remains with the debtor. When the guarantor is in a state of incapacity, their position as a guarantor must be terminated and replaced with a new guarantor (Kharisma, 2023).

From these studies, it can be concluded that there are still legal gaps and a need to clarify the position of secured creditors over third-party collateral in the Indonesian bankruptcy system. Therefore, this research aims to conduct an in-depth analysis of the legal standing of secured creditors holding third-party collateral and the execution mechanisms in bankruptcy events, using a normative approach and case studies of several commercial court rulings.

2. RESEARCH METHODS

This research is a normative legal study (juridical normative) aimed at analyzing the applicable legal norms, both in legislation, legal doctrines, and court decisions, particularly concerning the position of separatis creditors regarding third-party collateral in bankruptcy. To strengthen the analysis, a case approach is also used on several commercial court decisions to examine the application of law by judges in resolving conflicts involving the execution of third-party collateral objects.

The sources of legal materials used include primary legal materials such as the Bankruptcy Law, the Mortgage Law, the Fiduciary Law, the Civil Code, and commercial court decisions. Secondary legal materials consist of literature from experts such as Rachmadi Usman and Sutan Remy Sjahdeini, as well as legal journals. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias. Data collection techniques were carried out through literature study and tracing court decisions. Data is analyzed descriptively-qualitatively by interpreting and comparing relevant legal norms. This research was conducted documentarily, with data sources obtained from legal libraries, online repositories, and decision directories during the journal preparation period.

3. RESULT AND ANALYSIS

The Position of Secured Creditors on Third-Party Guarantees in Bankruptcy

Based on the results of a juridical-normative analysis of the provisions of Articles 55 and 56 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), a separatis creditor is given a strong legal legitimacy to execute the collateral object that has been granted to them, even if the object is legally owned by a third party. This legitimacy stems from two fundamental principles in property security law, namely *droit de préférence* (the right of preference in debt repayment) and *droit de suite* (the right to follow the secured object even after ownership has transferred). Both are rooted in the doctrine of *accessoiriteit*, which asserts that the security right is inherently attached to the principal debt, so the object of the security can still be executed as long as the debt has not been settled (Hadiwidjaja, 2023).

Table 1. Three Principles of Law in the Theory of Property Security

Legal Principle	Definition	Implications in Bankruptcy
Droit de préférence	The creditor's right to be prioritized in debt repayment	Secured creditors have priority over unsecured creditors
Droit de suite	The creditor's right to follow the collateral, regardless of ownership changes	Collateral can still be executed even if no longer owned by the debtor
Accessoiriteit	The collateral follows the principal debt	Collateral becomes void if the principal debt is settled

Normatively, the UUK-PKPU does not restrict secured creditors from executing guarantees originating from third parties, as long as the provision of such guarantees is done legally and voluntarily. However, practices in the realm of commercial courts often show distorted interpretations by curators or supervising judges, especially when third-party collateral is unilaterally included in the bankruptcy estate. However, the bankruptcy estate, by definition, refers to the collection of the debtor's assets managed by the curator to fulfill debt repayment obligations through the bankruptcy mechanism.

According to the doctrinal view put forward by Rakhmawati (2022), property rights that are outside the legal control of the debtor cannot be included in the bankruptcy estate, because the principle of civil law recognizes ownership as an absolute right protected by law. Therefore, guarantees originating from a third party and provided

lawfully cannot automatically become objects of seizure or execution in bankruptcy. This approach not only upholds the principle of *nemo plus iuris ad alium transferre potest quam ipse habet*, meaning that one cannot transfer more rights than they possess, but also ensures legal certainty and the protection of the constitutional rights of the property owner.

An empirical study by Sakti and Sobandi & SH, (2021) revealed that in several bankruptcy cases, curators tend to detain third-party collateral under the pretext of expanding the bankrupt estate's assets. This practice, if not supported by valid legal grounds, has the potential to give rise to further disputes and lead to violations of property rights protected by the constitution. From the perspective of distributive justice and legal certainty, such actions can be classified as a form of maladministration or even abuse of power in the implementation of bankruptcy law.

Furthermore, Article 55 paragraph (1) of the UUK-PKPU explicitly stipulates that secured creditors retain the right to execute their collateral as if bankruptcy had not occurred, unless this right is temporarily suspended based on the provisions of Article 56. This indicates the existence of an autonomous normative status for preferential creditors in the context of bankruptcy, which cannot be immediately sidelined by the curator's authority. In this position, the *separatis* creditor occupies a preferential position that is granted constitutional space to demand the fulfillment of their rights directly from the collateral object that has been delivered, even if it originates from a third party.

Thus, the legal construction based on Articles 55 and 56 of the UUK-PKPU, combined with the principles of property security law, reaffirms that preferential creditors still have the legal authority to execute the collateral object that has been lawfully provided, even though it does not belong to the debtor. The principles of *droit de préférence*, *droit de suite*, and the principle of accessory become the theoretical foundation that asserts that the collateral cannot be classified as part of the bankruptcy estate, and therefore is not under the jurisdiction of the curator. This assertion simultaneously reflects the supremacy of law, protection of property rights, and affirms the position of secured creditors as entities substantively protected within the national bankruptcy legal system.

Analysis of the Ruling on Execution by Secured Creditors

A case study of the Central Jakarta Commercial Court Decision Number 45/Pailit/2019/PN.Niaga.Jkt.Pst shows how a collateral object that is legally still registered in the name of a third party is still declared as part of the bankruptcy estate by the curator. In that case, the curator claimed that because the collateral object was used to secure the bankrupt debtor's debt, it could be included in the bankruptcy estate. Meanwhile, the third party as the rightful owner raised an objection and asserted that the ownership of the object remains with them and cannot be transferred without a proper legal process. This decision reflects the widespread practice in interpreting the curator's authority, which does not always align with the principles of property protection and security interests. The lack of technical guidelines and consistent jurisprudence regarding the limits of the bankruptcy estate in relation to third-party guarantees causes legal uncertainty for all parties involved.

In this study, several commercial court decisions were analyzed (Aprita, 2019):

- a. The rights of separate creditors are still guaranteed by UUK-PKPU, even though there is a temporary delay in the execution by the curator. In this case, the curator is obligated to provide settlement to the separate creditors after the administration process is completed.
- b. The Commercial Court asserts that a secured creditor has the right to execute collateral owned by a third party, even if the debtor has been declared bankrupt. In this case, the collateral in the form of a mortgage in the name of a third party is not included in the bankrupt estate, and therefore is not subject to the time limitations as stipulated in Article 59 of the Bankruptcy and Suspension of Debt Payment Obligations Law.
- c. The separate creditor still has the right to execute the guarantor's collateral, even if the guarantor or the guarantor party has also gone bankrupt. However, if the guarantor has lost the ability to pay, the guarantee relationship may end, and the responsibility can be transferred to a new guarantor.

So it can be concluded that the case regarding the Central Jakarta Commercial Court Decision Number 45/Pailit/2019/PN.Niaga.Jkt.Pst and several similar decisions indicate that there is still inconsistency in the application of the law regarding the execution rights of separated creditors over third-party collateral. Although normatively, a *separatis* creditor has the right to execute the collateral object without being affected by the bankruptcy process, in practice, the curator often includes the collateral object owned by a third party into the bankruptcy estate without a legitimate legal process. This contradicts the principle of property rights protection and the principle of legal certainty. The court's ruling also confirmed that collateral mortgage rights in the name of a third party are not included in the bankrupt estate, and therefore are not subject to the execution time limits in Article 59 of the Bankruptcy Law and Suspension of Debt Payment Obligations (UUK-PKPU). Furthermore, separate execution can still be carried out on the collateral owned by the guarantor, unless the guarantor has become unable or bankrupt, which can then transfer the responsibility to another party. Therefore, more stringent legal

guidelines and consistent jurisprudence are needed to provide legal certainty and balanced protection between secured creditors, third-party collateral owners, and curators.

The Role of the Curator and Challenges in Determining Guarantee Status.

In some cases, the curator even includes third-party collateral in the bankruptcy estate. This causes obstacles for secured creditors to directly execute their rights. In the Indonesian legal system, the role of the curator is administrative and managerial, not the party that makes the final decision on ownership status. Therefore, the curator's actions that restrict the rights of secured creditors without a clear legal basis for ownership have the potential to violate the principles of legal certainty and property rights. From the perspective of contract law and property law, proving legitimate ownership of the collateral object is key. If the object can be proven to belong to a third party (guarantor), then the object is outside the scope of the bankruptcy estate, and the secured creditor has the right to execute it directly.

The function of the curator in the Indonesian bankruptcy system is actually only administrative: managing and settling bankrupt assets as stipulated in Articles 15 and 21 of the Bankruptcy Law and the Suspension of Debt Payment Obligations (UUK-PKPU). However, in several cases, the curator acts as if they are the primary interpreter of the legal status of the collateral object. This contradicts the theory of separation of functions in procedural law, where only judges are authorized to legally determine the ownership status of the disputed object (Manullang & Taufiq, 2018).

If the curator includes a third party's property in the bankruptcy estate without a court decision, such action has the potential to violate the principle of legal certainty and the protection of property rights as guaranteed by Article 28H of the 1945 Constitution and the general principles of civil law. The theory of property protection asserts that ownership is an absolute right that cannot be interfered with by others without a valid legal basis, including by the curator in bankruptcy (M. Kurniawan, 2018).

Referring to the theory of collateral security, protection of ownership, principles of bankruptcy law, and expert doctrines, it can be concluded that: Secured creditors retain the right to execute against collateral provided by a third party as long as the collateral was provided lawfully, and this right must be respected even if the debtor has been declared bankrupt. The curator does not have the legal authority to include third-party property into the bankruptcy estate without a legal proof process. Therefore, certainty and consistency in the application of the law by commercial courts are needed to maintain justice and legal protection for all interested parties (Setiono, 2018). So, in the Indonesian bankruptcy system, the curator does not have the legal authority to determine the ownership status of collateral objects, especially if the object belongs to a third party. The curator's action of including a third party's collateral in the bankruptcy estate without a valid legal proof process contradicts the principles of legal certainty, property rights, and the theory of separation of powers. According to the theory of property protection, ownership is an absolute right that cannot be intervened without a clear legal basis. Therefore, as long as the guarantee is legally provided by a third party, the separatis creditor still has the right to execute the object, even if the debtor has been declared bankrupt. Consistency in the application of the law and an active role of the court are required to ensure justice and protect all parties, including the rightful owner of the collateral and the secured creditors.

4. CONCLUSION

Based on a normative juridical analysis of the provisions in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), the theory of collateral security, the theory of ownership protection, and case studies of several commercial court decisions, it can be concluded that a separatis creditor has a strong execution right over the collateral object, including if the object originates from a third party (guarantor), as long as the collateral is provided legally. This right is guaranteed by Articles 55 and 56 of UUK-PKPU and is based on the principles of **droit de préférence**, **droit de suite**, and the accessory principle in collateral security law. The collateral owned by a third party is not included in the bankruptcy estate, because the bankruptcy estate only encompasses the legitimate assets of the debtor. Therefore, secured creditors still have the right to execute the collateral without being subject to the bankruptcy mechanism. The curator is not legally authorized to determine the ownership status of the collateral object. His role is administrative in nature and limited to the management of the bankruptcy estate. The curator's action of including third-party collateral into the bankruptcy estate without a valid court decision contradicts the principles of legal certainty, property rights, and the theory of separation of powers. Inconsistency in the application of the law by the curator and commercial court regarding the rights of secured creditors over third-party collateral creates legal uncertainty and potentially harms all interested parties, both secured creditors and the rightful owners of the collateral. For this reason, clearer legal guidelines and consistent jurisprudence are needed to provide legal certainty, ensure justice, and protect the rights of all parties, especially regarding the execution of collateral by secured creditors on third-party guarantees in bankruptcy situations. By strengthening legal certainty and clarifying the boundaries of the curator's authority through consistent regulations and judicial practices, the Indonesian bankruptcy system can reflect the principles of balanced justice and legal protection.

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