https://jurnal-umbuton.ac.id/index.php/aiqu
https://doi.org/10.35326/aiqu.v8i4.

AIQU: Journal Multidiscipliner of Science Vol. 3, No. 2 June 2025, Hal. 125-136

Legal Analysis of The Position of Separated Creditors Regarding Guarantee Rights in Bankruptcy

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ABSTRACT

This study aims to analyze the legal position and legal consequences for secured creditors (separatist creditors) holding security rights in bankruptcy proceedings. Separatist creditors are those who possess collateral rights such as mortgage, fiduciary transfer, hypothec, or pledge over the debtor's assets, theoretically entitling them to preferential repayment from the execution of those assets. However, in practice particularly within the framework of bankruptcy these rights often conflict with provisions stipulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (the Indonesian Bankruptcy Law). This research employs a normative juridical method using a statutory and conceptual approach, with qualitative analysis of primary, secondary, and tertiary legal materials. The findings reveal that although Article 55 of the Bankruptcy Law recognizes the right of separatist creditors to execute their collateral as if bankruptcy did not occur, Articles 56, 57, and 58 impose significant restrictions, such as execution moratoriums and intervention by the curator. As a result, secured creditors face legal uncertainty, diminished priority rights, and potential disputes with the curator. These legal inconsistencies reflect the lack of harmony between bankruptcy law and collateral law. Therefore, legal reform is needed to align the Bankruptcy Law with collateral regulations, the Civil Code, and other sectoral laws such as taxation and labor regulations. Such harmonization is crucial to ensure legal certainty and fairness for all parties involved in bankruptcy proceedings.

Keywords: *Legal analysis, Position of separated creditors, Security rights, Bankment*

1. Introduction

The availability of capital in the business world is a fundamental requirement. Without capital, it is almost certain that a business or enterprise cannot operate smoothly. Because of the fundamental need for capital, various efforts are made by the public, especially business owners, to obtain capital for their business operations. One way businesses (both individuals and institutions) obtain capital is through loans, either to individuals or to financial institutions. In Indonesia, these financial institutions consist of banks and non-banking institutions. In principle, a capital loan is a legal event involving parties referred to as legal subjects, where the parties bind themselves to each other in the form of a debt agreement or installment agreement. As with any legal agreement, debt or credit agreements also imply the birth of rights and obligations between the parties.

The lender (creditor) has the obligation to provide the debt (loan) and the right to receive repayment. Meanwhile, the debtor (debtor) has the right to receive the debt (loan) and the obligation to repay the debt (loan). Typically, debt (loan) as a legal event is almost impossible to occur if the parties, especially the debtor, do not provide a guarantee that they will repay the debt. In fact, today, debt repayment guarantees are the first and foremost requirement for a debt (loan) process to take place. In line with this, D.Y. Witanto commented: "In the field of civil law, we all agree that a guarantee agreement is an accessory to another agreement, which generally takes the form of a debt agreement or credit agreement. However, we

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cannot say that the debt agreement and credit agreement are more important than the guarantee agreement. In reality, the guarantee agreement plays a decisive role in the emergence of the debt agreement. In practice, agreement regarding the object of the guarantee always arises before the debt is agreed upon." (Witanto, 2015)

The above description illustrates that, in principle, a guarantee agreement is an accessory agreement that arises from the existence of the principal agreement, namely a debt agreement or credit agreement. Due to its accessory nature, the existence of a guarantee agreement is based on the principal agreement. Furthermore, the description above also illustrates that a debt agreement is always accompanied by a guarantee that the debtor will repay the debt by providing the collateral.

The term guarantee is a translation from Dutch, namely zekerheid or catiue, namely the debtor's ability to fulfill or pay off his debt to the creditor, which is done by holding certain goods of economic value as collateral for the loan received by the debtor to his creditor. (Rachmadi Usman, 2016) In the National Legal Development Agency Seminar held in Yogyakarta, from July 20 to 30, 1977, the definition of guarantee was concluded, namely guaranteeing the fulfillment of obligations arising from a legal agreement, which can be valued in money. (Salim, 2011) In addition to the term guarantee, in the perspective of banking law in relation to debts, there is also the term collateral or collateral. Both the terms guarantee and collateral or collateral, in social life are generally given the same meaning. Meanwhile, when viewed from a legal aspect between guarantee and collateral or collateral have different meanings. According to Law Number 7 of 1992, as amended by Law Number 10 of 1998 concerning Banking, collateral is defined as confidence in the good faith, ability, and capability of a debtor to repay their debt or repay the financing as agreed. The term "collateral," as defined in Article 1, number 23 of Law Number 7 of 1992, as amended by Law Number 10 of 1998, is defined as "Collateral is additional security submitted by a debtor to a bank in order to provide credit or financing facilities based on Sharia principles." (Rachmadi Usman, 2016)

From the definitions of collateral and security above, it is clear that, in principle, collateral is only part of the guarantee, while security has a broader meaning, namely, not only limited to the object of security called collateral, but also including the debtor's potential ability to repay the debt. Therefore, the collateral submitted by a debtor to a creditor is always material, namely something that can be valued in money. Meanwhile, the concept of collateral is not only limited to something material, but also personal. On that basis, in collateral law, two types of collateral are recognized, namely material collateral and personal collateral (intangible). Based on this description, it can be understood that in principle, the bankruptcy institution was established by the state, solely intended not only to provide legal protection for bankrupt creditors, but also to provide legal protection to the bankrupt debtor himself. For bankrupt creditors, bankruptcy generally provides legal certainty protection that each creditor can receive receivables repayment together with a balance of the amount of their respective receivables and protects creditors from bad faith among creditors themselves or bad faith debtors. Meanwhile, for bankrupt debtors, bankruptcy generally provides legal certainty protection from creditor arbitrariness in collecting receivables repayment.

Based on the above background, the author formulates the following research questions: first, what is the legal status of secured creditors regarding collateral rights in bankruptcy? And second, what are the legal consequences for secured creditors regarding collateral rights in bankruptcy? This research aims to address

the unclear legal status of secured creditors in bankruptcy situations, particularly regarding the enforcement of their collateral rights. In the context of bankruptcy law, debate often arises regarding the extent to which secured creditors can exercise their rights independently without being affected by the debtor's bankruptcy proceedings. Therefore, a discussion of these two research questions is crucial to achieve legal clarity that can provide legal certainty for both secured creditors and other parties involved in the bankruptcy process.

This research aims to analyze and understand the legal status of secured creditors regarding collateral rights in bankruptcy proceedings and to examine the legal consequences for secured creditors when a debtor is declared bankrupt. Theoretically, this research is expected to enrich the body of legal knowledge, particularly in the fields of bankruptcy and collateral law. Practically, this research is useful as a reference for legal practitioners such as judges, curators, advocates, and creditors in handling bankruptcy cases involving secured creditors, in order to create legal certainty and justice. Furthermore, from a legal perspective, this research can contribute in the form of constructive input for policymakers to improve regulations governing creditors' rights in bankruptcy, particularly in strengthening legal protection for collateral holders.

2. Methods

This research uses a normative legal approach (normative law research), which focuses on the analysis of legal norms or rules contained in laws and regulations, court decisions, and legal doctrine. This research is library research, with secondary data sources consisting of primary, secondary, and tertiary legal materials. Primary legal materials include the Civil Code, the Commercial Code, the Fiduciary Law, the Mortgage Law, and the Bankruptcy Law. Secondary legal materials include books, articles, journals, and other scientific works discussing the issues of guarantees and bankruptcy. Meanwhile, tertiary legal materials such as legal dictionaries are used to support the analysis. Data collection techniques are carried out by exploring various legal literature relevant to the research topic. The obtained data are systematically collected and selected according to their relevance to the problem formulation. Data analysis techniques are carried out qualitatively, namely by describing and interpreting the contents of the legal data found, then analyzed using deductive reasoning (starting from general norms to concrete cases) and inductive reasoning as support, in order to obtain logical and argumentative legal conclusions. This research was conducted for two months.

3. Findings and Discussions

3.1 Legal position of secured creditors regarding collateral rights in bankruptcy

The term creditor is a term in collateral law used to refer to a party who is in debt in an agreement in the field of assets. In civil law, especially bankruptcy law, the term creditor is divided into several types, namely separatist creditors, preferred creditors and concurrent creditors. (Article 2 paragraph (1) of the KPKPU Law) The distinction between these three types of creditors is due to the prioritizing position of each creditor in the debt repayment process. This is as regulated in Book II Chapter XIX of the Civil Code concerning Receivables with Priority Rights. This means that the distinction between types of creditors based on their hierarchy is only possible when several creditors collect the debt repayment process together against a particular debtor, where this kind of situation only occurs in bankruptcy. Regarding the position of creditors prior to and being preceded as mentioned above,

in addition to being regulated in Book II Chapter XIX of the Civil Code, it is also regulated in laws and regulations outside the Civil Code, namely in laws and regulations on guarantee law, such as the Mortgage Law, the Fiduciary Guarantee Law, and also regulated by the employment law, namely Law Number 13 of 2003 concerning Employment as amended by Law Number 11 of 2020 concerning Job Creation. In fact, it is also regulated by laws and regulations related to taxation.

3.1.1 The position of secured creditors according to the Civil Code

The Civil Code, also known as the Burgelijke Wet Book, is a codification of civil law, containing both material and formal legal rules (procedural law), particularly regarding expiration and proof. Regarding the position of creditors who precede and are preceded in the repayment process of receivables, the Civil Code regulates this in Book II, Chapter XIX, concerning Receivables with Priority Rights, as outlined in Articles 1311 to 1149 of the Civil Code. Article 1131 of the Civil Code explicitly states that all movable and immovable assets belonging to the debtor, both existing and future, serve as collateral for the debtor's individual obligations. Furthermore, Article 1132 of the Civil Code states that these assets serve as joint collateral for all creditors, with the proceeds from the sale of these assets being divided according to the proportion of their respective receivables, unless there are legitimate reasons for priority among the creditors.

From the description of the two articles mentioned above, it is clear that in principle all the debtor's existing or future assets serve as collateral for the settlement of receivables. In the settlement of receivables, in principle, all creditors jointly have an equal position in the receivables settlement process with the same percentage according to the amount of their respective receivables. This type of receivables settlement process, in bankruptcy law, is referred to as the principle of paritas creditorium and parri passu pro rata parte. The principle of paritas creditorium implies that all of the debtor's assets, whether in the form of movable or immovable property, as well as assets currently owned by the debtor and assets to be acquired by the debtor in the future, are bound to the settlement of the debtor's obligations. (Tami Rusli, 2019). Meanwhile, the principle of parri passu pro rata means that the debtor's assets serve as joint collateral for the creditors, and the proceeds must be divided equally among them, unless there is a statutory provision between the creditors that requires priority in obtaining settlement of their claims. (Sudiarto, 2022).

Although generally, creditors receive settlement of their receivables jointly with the same percentage according to the amount of their receivables, Article 1132 of the Civil Code provides an exception, namely, if there are valid reasons, certain creditors have priority rights in the settlement of receivables. Regarding the legitimate reasons for this priority, it is emphasized by Article 1133 of the Civil Code which states that the legitimate reasons for certain creditors to be prioritized over other creditors are due to privileges, on pawns and on mortgages. The privileges explained by Article 1134 of the Civil Code are rights granted by law to a creditor that cause him to have a higher position than other creditors, due to the nature of his receivables. Furthermore, Article 1134 of the Civil Code states that pawns and mortgages are positioned above privileges, except in cases where the law expressly states otherwise.

The provisions of Article 1134 of the Civil Code provide a provision that creditors who hold privileges are determined by law, their position is higher or given priority over creditors who do not have privileges. Although they have a higher position or precede other creditors, Article 1134 of the Civil Code also emphasizes that the position of creditors with privileges is below the creditors holding collateral

rights, which in bankruptcy law are referred to as separatist creditors, unless the law expressly determines that the creditors holding privileges are above the separatist creditors. Regarding these privileges (preferences), Article 1138 of the Civil Code emphasizes that these privileges can be attached to certain goods or may also be attached to all movable and immovable goods in general, where the holders of privileges (preferences) attached to certain goods are given priority over the holders of privileges (preferences) attached to all movable and immovable goods in general. A careful examination of Article 1138 of the Civil Code clearly establishes that even among holders of privileged (preferential) rights, who are essentially equal in status, there may be precedence between preferred creditors over other preferred creditors, due to the nature of their receivables. The provisions regarding the precedence of one preferred creditor over another are detailed in Articles 1139 through 1149 of the Civil Code.

From the description of creditor positions in the Civil Code above, it can be concluded that the Civil Code provides a hierarchical classification of creditors in the receivables settlement process when these creditors jointly demand repayment from the same debtor (bankrupt debtor). This hierarchical position, based on precedence, can be described as follows: ***First***, secured creditors have precedence over preferred (privileged) creditors and concurrent creditors. However, the priority position of separatist creditors over preferred creditors can be set aside if there are preferred creditors who are expressly stated in the Law to be given priority over other creditors, including priority over separatist creditors; ***Second***, Preferred creditors, namely creditors with special rights who receive special rights due to the nature of their receivables. Sudiarto defines preferred creditors as creditors with priority rights due to the nature of their receivables, which are given a special position by law. (Sudiarto, 2022) Furthermore, Sudiarto stated that these preferred creditors consist of special preferred creditors as regulated in Article 1139 of the Civil Code and general preferred creditors as regulated in Article 1149 of the Civil Code. (Sudiarto, 2022) Regarding these two preferred creditors, Article 1138 of the Civil Code emphasizes that although their position is the same as preferred creditors, the position of special preferred creditors has priority over general preferred creditors. In bankruptcy, referring to the provisions of the Civil Code as described above, the position of preferred creditors in the settlement of receivables is below that of separatist creditors. However, if the Law explicitly states that their position must be prioritized over other creditors, including secured creditors, then the preferred creditor's position is prioritized over other creditors. This is as stated in Article 1134 of the Civil Code; ***Third***, concurrent creditors are creditors in general, without material security rights or special rights, who in the Civil Code have the same position and have equal (proportional) rights over their receivables. Sudiarto defines concurrent creditors as creditors with parri passu pro rata rights, meaning that all creditors receive repayment simultaneously, without any priority, which is calculated according to the size of each receivable compared to their receivables as a whole, against all the debtor's assets. Because these concurrent creditors do not hold special material security and do not have special rights, in the process of paying off their receivables, their position is at the bottom, namely after secured creditors and/or preferred creditors have paid off their receivables. (Sudiarto, 2022)

3.1.2 The Position of Separatist Creditors According to the Legal Regulations on Guarantees

In addition to being regulated generally in the Civil Code, the priority status of creditors in bankruptcy is also regulated in several laws and regulations. For secured creditors, as creditors holding collateral, their position in the debt repayment process is stated in the Law on Collateral. In Indonesia, collateral law is regulated both within the Civil Code and outside the Civil Code. Within the Civil Code, collateral is contained in Book II, Chapter XX concerning Pledges and Chapter XXI concerning Mortgages. Meanwhile, collateral law outside the Civil Code is regulated, among others, in the Mortgage Law and the Fiduciary Law. The position of secured creditors, as creditors holding collateral rights in the form of pledges and mortgages, remains subject to the provisions of the Civil Code. This is because, as explained above, collateral such as pledges and mortgages are contained in the Civil Code. Article 1150 of the Civil Code stipulates that a pledge is a right granted to a creditor over movable property, granted to him by the creditor, or through his proxy, as collateral for his debt, and authorizing the creditor to settle his receivables and the property before other creditors, with the exception of the costs of the sale as enforcement of the judgment regarding the claim regarding ownership or control, and the costs of securing the property, which are incurred after the property is pledged and must take priority.

A closer look at the provisions of Article 1150 of the Civil Code above, the position of the creditor holding collateral in the form of a pledge in the settlement of his receivables is clear. The provisions outlined in Article 1150 of the Civil Code are reinforced by Article 1132 of the Civil Code, which essentially states that creditors holding collateral in the form of a pledge and mortgage have a position above that of a preferred creditor in the settlement of receivables, unless expressly stated otherwise by law. This means that the secured creditor, in this case the lien holder, has a higher status than the preferred creditor, except for special preferred creditors in the form of payment of the lien execution costs and maintenance costs for the pledged object. Meanwhile, regarding the secured creditor holding a mortgage, Chapter XXI of the Civil Code concerning Mortgages does not provide a review of their position compared to other creditors. Regulations regarding the position of a creditor holding a pledged object are only regulated in Article 1132 of the Civil Code, which essentially states that their position takes precedence over other creditors, including preferred creditors, unless expressly stated otherwise by law.

Meanwhile, regarding the position of secured creditors regulated outside the Civil Code, this can be found in the following provisions: ***First***, secured creditors holding mortgage rights. Article 21 of the Mortgage Law expressly states that if the mortgagee is declared bankrupt, the mortgage holder retains the authority to exercise all rights acquired under this law. The explanation of Article 21 of the Mortgage Rights Law clearly states that this provision further strengthens the priority position of the Mortgage Rights holder by excluding the consequences of the bankruptcy of the Mortgage Rights provider against the object of the Mortgage Rights. If we carefully examine the provisions of Article 21 of the Mortgage Rights Law, including the explanation of the article, it can be understood that the position of this separatist creditor has a priority position over other creditors. In fact, the rights of separatist creditors to the Mortgage Rights can exercise their rights in the form of execution actions on the object of the mortgage Rights even though the Mortgage Rights provider (debtor) experiences bankruptcy. In other words, the provisions of Article 21 of the Mortgage Rights Law seem to exclude the existence of bankruptcy.

Second, the separatist creditor holding the fiduciary guarantee. Article 27 paragraph (1) of the Fiduciary Law states that the fiduciary recipient has priority rights over other creditors. Then, Article 27 paragraph (2) states that the priority right as outlined in paragraph (1) is the right of the Fiduciary Recipient to take payment of his receivables from the results of the execution of the Goods that are the object of the Fiduciary Guarantee. Furthermore, Article 27 paragraph (3) states that the priority right of the fiduciary recipient is not lost due to the bankruptcy and/or liquidation of the Fiduciary Provider. In the explanation of Article 27 of the Fiduciary Guarantee Law, especially paragraph (3), it states that the provisions in this paragraph relate to the provision that the fiduciary guarantee is a collateral right to the object for the payment of receivables. In addition, the provisions in the KPKPU Law state that the Goods that are the object of the Fiduciary Guarantee are outside of bankruptcy and/or liquidation. If we look closely at the description of Article 27 of the Fiduciary Law, it is clear that the position of the separatist creditor holding the fiduciary guarantee, his position is prior to other creditors in the settlement of receivables, including prior to preferred creditors. In fact, in the explanation of Article 27 paragraph (3) of the Fiduciary Law, it is emphasized that the object of the fiduciary guarantee is outside of bankruptcy or liquidation. The provision stating that the object of the fiduciary guarantee is outside of bankruptcy, clearly excludes all bankruptcy conditions. In the sense that the creditor holding the fiduciary guarantee is not affected by the bankruptcy of the debtor. In fact, the explanation of Article 27 paragraph (3) of the Fiduciary Law has also touched on the Bankruptcy Law as its basis, where when the Fiduciary Law was enacted, in bankruptcy the applicable regulation was PERPPU No. 1 of 1998 which had been ratified as Law No. 4 of 1998, where the provisions regarding the rights of separatist creditors in executing collateral objects, such as no bankruptcy, taking into account the stay period (suspension), are exactly the same as those stated in the KPKPU Law.

Based on the entire description of letter (b) above, it can be concluded that from the perspective of the Fiduciary Law, the position of separatist creditors holding fiduciary guarantees is higher than the position of other creditors, including preferred creditors. In fact, separatist creditors are exempt from bankruptcy. This means that separatist creditors holding fiduciary guarantees are not affected by the debtor's bankruptcy, because the object of the fiduciary guarantee is outside the bankruptcy chamber.

3.1 Law for secured creditors regarding collateral rights in the event of bankruptcy

As explained in the discussion on the position of separatist creditors above, the position of separatist creditors over collateral in bankruptcy is subject to legal uncertainty. On the one hand, separatist creditors have absolute rights to execute collateral when bankruptcy occurs and then take payment of receivables from the results of the execution on the basis of collateral law as regulated in the Mortgage Law, the Fiduciary Law, the Civil Code as stipulated in Article 1134 of the Civil Code and as stipulated in Article 55 paragraph (1) of the KPKPU Law. In the sense that collateral is outside the bankruptcy estate so that separatist creditors can execute collateral as if there were no bankruptcy. Meanwhile, on the other hand, the position of separatist creditors in executing collateral as if there were no bankruptcy event as stipulated in the collateral law or in Article 55 paragraph (1) of the KKPKU Law is limited by the provisions of Articles 56, 57 and 58 of the KPKPU Law. Even secured creditors can also lose their right to execute the collateral themselves when the two-month execution period granted by Article 59

of the KPKPU Law has expired and the Curator demands the transfer of the collateral from the secured creditor to the Curator. In such circumstances, the secured creditor loses its right to execute the collateral, and the Curator is the one who carries out the execution, with the results of the execution included in the bankruptcy estate. When the results of the execution have been included in the bankruptcy estate, the provisions of the KPKPU Law apply in the ranking of receivables, where the provisions of Article 60 paragraph (2) of the KPKPU Law place secured creditors below preferred creditors.

The above means that if such a situation occurs simultaneously with the presence of preferred creditors such as tax receivables and workers' wages, then workers' wages take priority based on the provisions of Article 1149 of the Civil Code in conjunction with Article 95 paragraph (4) of the Manpower Law. This is followed by tax receivables under Article 21 of the KUP Law. After the preferred creditors have fully repaid their receivables, the secured creditors receive their receivables. As stated above, the legal consequence for secured creditors regarding their collateral rights is the potential loss of their right to execute the collateral to settle the receivables, as if there had been no bankruptcy event. This situation can also give rise to the following derivative consequences:

First, the emergence of a dispute between the secured creditors and the receiver. Separating creditors, whose rights are protected by collateral law, will naturally seek receivables from the bankrupt debtor by using instruments stipulated in Article 1134 of the Civil Code, which places them above other creditors. They will also undoubtedly utilize legal collateral instruments, such as those stipulated in the Mortgage Law and the Fiduciary Law, which clearly benefit and protect the rights of secured creditors. Meanwhile, the curator, who manages and settles the assets of the bankrupt debtor to protect the rights of each creditor, will refer to the Corruption Eradication Commission (KPKPU) Law as the primary legal reference. Disputes between secured creditors and the curator during bankruptcy are not unheard of, and such disputes have even gone through litigation. Several cases have occurred between secured creditors and curators suing each other in court.

Second, the dispute that arises has implications for the emergence of disparity in court decisions. As explained in point (1) above, legal uncertainty regarding the position of secured creditors over collateral allows for disputes to occur between secured creditors and the Curator. In fact, such disputes have occurred, including a dispute between PT. Cimb Niaga Tbk as a secured creditor and the bankrupt debtor, namely PT. Jaba Gramindo and Djoni Gunawan. In this case, PT. Cimb Niaga Tbk as a creditor holding collateral rights objected to the details of the division of bankruptcy assets that had been submitted by the Curator Team and had been approved by the Supervisory Judge based on the Supervisory Judge's decision Number 04/PDT.Sus/PKPU/2015/PN. Niaga. Jkt. Pst. Jo. No.04/PDT.Sus/Pailit/2015/PN. Niaga Jkt. Pst. dated June 23, 2016, which had harmed the secured creditor in this case PT. Cimb Niaga Tbk. In response to the objection, the Central Jakarta Commercial Court issued Decision No. 04/Pdt.Sus/PKPU/2015/PN.Niaga.Jkt.Pst. Jo Decision No. 04/Pdt.Sus Bankruptcy/2015/PN.Niaga Jkt.Pst dated July 26, 2016, which essentially rejected the applicants' objections in their entirety. The applicants then filed an appeal to the Supreme Court against this decision, but the appeal was also rejected by the Supreme Court. (Muhammad Fadhli et al., 2024)

A closer look at the aforementioned case shows that the Court's decision places the secured creditor as a party subject to the KPKPU Law, and the collateral

is considered a bankrupt object. Therefore, the execution of the collateral is handed over to the receiver. This is evident in the rejection of the secured creditor's objection as the applicant. In addition to the aforementioned case, there are other previous cases that contradict the aforementioned decision. The opposite case is the case between PT. Bank Mega Tbk. as a separatist creditor (fiduciary security holder) against the Curator Team of PT. Tripanca Group. The case began with PT. Tripanca Group being declared bankrupt, where the bankruptcy decision was read on August 3, 2009. (Hery Shietra, 2016) After the bankruptcy statement decision was read, on October 1, 2009, PT. Bank Mega as a creditor holding a fiduciary security held an auction of 25,939,913 kilograms of coffee beans contained in the warehouse of PT. Tripanca Group (bankrupt debtor) through KPKNL Bandar Lampung. Because there were no interested parties in the auction, a re-auction was held on November 2, 2009, where the auction winner approved by KPKNL was PT. Perkebunan Indonesia. Although the auction was declared valid by the KPKNL, the Curator declared it invalid, arguing that the issuance of the decision occurred after the bankruptcy verdict was issued. (Hery Shietra, 2016)

A closer look at the incident shows that the auction was conducted by the KPKNL at the request of PT. Bank Mega, the secured creditor. The first auction occurred during the suspension period as stipulated in Article 56 paragraph (1) of the KPKPU Law, which stipulates that the execution of collateral by creditors is postponed for 90 days, or when the bankruptcy has ended or a state of insolvency has occurred, as outlined in Article 57 paragraph (1) of the KPKPU Law. The second auction took place despite the insolvency. The Curator argued that PT. Bank Mega should not have submitted an auction request to the KPKNL, and that the KPKNL should not have conducted the auction, considering that both PT. Bank Mega and the KPKNL were aware of the bankruptcy of PT. Tripanca Group. Therefore, the management and settlement of all debtor assets were handled by the Curator and PT. Bank Mega should comply with the Corruption Eradication Commission (KPKPU) Law. (Hery Shietra, 2016)

Due to the above circumstances, PT. Tripanca Group and PT. Bank Mandiri and Eximbank through the Curator then filed a lawsuit to the Central Jakarta Commercial Court by placing PT. Bank Mega as Defendant I, KPKNL as Defendant II and PT. Perkebunan Indonesia as the auction winner was placed as Co-Defendant. In the lawsuit, the Curator Team of PT. Tripanca Group quoted the description of Article 1 paragraph (1) and Article 29 and Article 31 of the KPKPU Law, which in essence states that bankruptcy is a general seizure of all assets of the bankrupt debtor whose management and settlement are carried out by the Curator under the supervision of the Supervisory Judge. In addition, the provisions of Article 29 and Article 31 of the KPKPU Law essentially argue that the cessation of all legal claims against the debtor caused by the bankruptcy decision has implications for all Court implementation decisions must be stopped and all seizures are removed. The legal uncertainty described above must be resolved so that business actors, lenders, and other parties involved in bankruptcy can obtain legal certainty. According to the author, the following solutions to resolve this legal uncertainty are:

First, through legal policy. Legal policy is the most concrete step in resolving legal uncertainty caused by conflicting norms between one statutory regulation and another. The government, broadly speaking (executive and legislative), should take concrete steps to comprehensively amend laws and regulations. Even more concretely, develop a single legislative method, such as an omnibus law, that combines the legal fields of security, bankruptcy, employment, taxation, and other legal areas that could be involved in bankruptcy. Relying solely on judicial review

at the Constitutional Court will only further exacerbate legal uncertainty. Because, judicial review in the form of a material test only tests certain articles of certain statutory regulations against the 1945 Constitution of the Republic of Indonesia, which may clash again with other judicial reviews or clash with other laws, as has happened between the judicial review of Article 95 paragraph (4) of the Manpower Law, which clashed with the provisions of Article 21 of the KUP Law.

Second, resolving conflicts between norms and legal principles. As long as legal political steps have not been taken, the status of secured creditors can be resolved through legal principles. Both the Guarantee Law and the Bankruptcy Law are statutory regulations that cannot be enforced under the principle of lex posterior derogate legi priori (new law overrides the old one). This is because, although the KPKPU Law is newer than the guarantee law regulations (the Civil Code, the Mortgage Law, and the Fiduciary Guarantee Law), they are not identical statutory regulations. The most likely principle to be applied in situations where norms conflict between the Guarantee Law and the KPKPU Law is the principle of lex specialis derogate legi generalis. Although the Guarantee Law and the KPKPU Law are not identical and not directly related, this argument can be drawn from the position of the Guarantee Law (the Fiduciary Law, the Mortgage Law, and other guarantee laws) as lex specialis of the Civil Code. Meanwhile, the Bankruptcy Law is a lex specialis of the Commercial Code, which in turn is a lex specialis of the Civil Code. (Titik Tejaningsih, 2016) This means that the Bankruptcy Law is more specific than the Guarantee Law. Therefore, if there is a conflict between the Guarantee Law and the Bankruptcy Law, the Bankruptcy Law should prevail.

Third, a legal language approach. Legal language can be a solution to resolve the conflict between the status of secured creditors regulated in the Guarantee Law and the Bankruptcy Law. From a legal linguistic perspective, the term "separated creditor" is a legal term used in bankruptcy law. This term emerged solely in the context of bankruptcy to determine the parties' positions (which creditors should take priority over others) in the settlement of receivables. This means that when bankruptcy does not occur, secured creditors, as distinguished from preferred and concurrent creditors, do not exist. Thus, the existence of the term separatist creditors should automatically be subject to the provisions of the Bankruptcy Law. Although separatist creditors are subject to the Bankruptcy Law, legally this does not mean they lose their rights as creditors separated from the bankruptcy. This is as stated in Article 55 paragraph (1) of the KPKPU Law. Even if we have to consider Articles 56, 57 and 58 regarding the suspension period, this only occurs if the collateral is in the possession of the debtor or the Curator, not in the possession of the separatist creditors.

4. Conclusion

This study concludes that the legal position of secured creditors over collateral rights in bankruptcy still faces legal uncertainty. Although normatively secured creditors have priority rights to execute collateral as if bankruptcy had not occurred (as regulated in the Civil Code, the Mortgage Law, and the Fiduciary Law as well as Article 55 paragraph (1) of the KPKPU Law), these rights are limited by the provisions of Articles 56, 57, and 58 of the KPKPU Law. Secured creditors are required to suspend execution for 90 days and are only given two months to execute, after which the collateral object is handed over to the Curator. In addition, in the settlement of receivables, the position of secured creditors is prioritized by preferred creditors. As a legal consequence, secured creditors may lose their right to execute and potentially face conflict with the Curator, because the collateral object becomes part of the bankruptcy estate. This often triggers disputes and

varying court decisions. Therefore, legal certainty is needed through regulatory reform to avoid conflicts between the Bankruptcy Law, guarantee law, the Civil Code, and other sectoral laws, such as taxation and employment. Legal harmonization can be achieved through a principled approach and legal language to prevent disparities in court decisions.

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