INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH AND ANALYSIS

ISSN(print): 2643-9840, ISSN(online): 2643-9875

Volume 08 Issue 06 June 2025

DOI: 10.47191/ijmra/v8-i06-78, Impact Factor: 8.266

Page No. 3693-3700

Implementation Regulation of Auctions of Rights of Suit Related to Grantors of Rights of Suit Declared Bankrupt

Agus Eka Putra[1], I Nyoman Putu Budiartha[2], Nengah Renaya[3]

[1,2,3]Student of Post Graduate Warmadewa University, Bali, Indonesia

ABSTRACT: Bankruptcy involving collateral in the form of mortgage rights gives rise to legal conflicts between Law No. 4 of 1996 on Mortgage Rights and Law No. 37 of 2004 on Bankruptcy and PKPU. The legal issues that arise are related to the overlapping authority between separate creditors and trustees, as well as the 90 day stay period for enforcement as stipulated in the Bankruptcy Law. This study aims to examine the auction procedures for enforcing collateral rights when the debtor is declared bankrupt, as well as to analyze the legal status of collateral that has been encumbered with collateral rights in bankruptcy. The research method used is a normative legal method with a legislative and conceptual approach. The results of the discussion show that in practice, the right of separate creditors to execute collateral through parate executie is often hindered by provisions in the Bankruptcy Law, which require the involvement of a trustee and set a specific time limit before execution can be carried out. This conflicts with Articles 6 and 21 of the Security Rights Act, which state that holders of security rights may still exercise their rights even if the debtor is bankrupt. Additionally, there is a normative gap in the alignment of procedures between the public auction under the Security Rights Act and execution under the bankruptcy regime. This study confirms that there is a conflict of norms between two laws that are equally binding and have equal hierarchical status. In this case, the principle of lex specialis derogat legi generali can be used to prioritize the Mortgage Law as a special regulation for land and buildings encumbered with collateral. Harmonization of norms is crucial to avoid legal uncertainty for separate creditors. Regulatory harmonization and the development of technical guidelines for the execution auction of mortgage rights in bankruptcy conditions are necessary to ensure legal effectiveness and protection for all parties involved.

KEYWORDS: Auction Execution, Mortgage Rights, Bankruptcy

I. INTRODUCTION

The monetary crisis that hit Indonesia in mid-1997 had a major and detrimental impact on the national economy. One of the most obvious consequences was the difficulty experienced by business actors in settling debt obligations that hampered the continuity of business activities. This situation also caused major losses for the wider community. In facing the crisis, various groups urged reform of the Bankruptcy Law which was considered inadequate in protecting the business world and accelerating national economic recovery. The think tank Econit Advisory Group even called 1997 the “Year of Uncertainty” and 1998 the “Year of Correction.”

One of the main causes of the crisis was the sharp depreciation of the rupiah exchange rate against the US dollar (USD). From around Rp2,300 per USD in March 1997, the rupiah plunged to around Rp5,000 per USD by the end of the year, even reaching Rp16,000 per USD in mid-1998. This depreciation had a wide impact, including a contraction in economic growth from the previous 6–7% to -13% to -14%, as well as a drastic increase in inflation from below 10% to around 70%. Many companies that had debts in foreign currency had difficulty paying their debts, leading to an increase in the number of bankruptcies or insolvencies.

This situation raises an urgent need for a legal system that is able to regulate debt settlement quickly, fairly, and efficiently. The old bankruptcy law is considered no longer relevant, because it is unable to solve these problems practically in the midst of an economic crisis. Meanwhile, in Indonesian civil law practice, the term default or broken promise is known, namely a condition when the debtor fails to fulfill his obligations. This form of default includes: not fulfilling the performance at all, being late in fulfilling the performance, or carrying out the performance improperly. In business practice, many companies take out foreign loans without careful calculation, so that when the rupiah depreciates sharply, they are unable to repay their debts, which results in major economic losses for creditors.

Implementation Regulation of Auctions of Rights of Suit Related to Grantors of Rights of Suit Declared Bankrupt

In response to this situation, the Indonesian Government issued Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law). According to Article 1 number 1 of this Law, bankruptcy is defined as a general seizure of all of the debtor's assets, where the management and settlement of the assets are carried out by the Curator under the supervision of the Supervisory Judge. The purpose of this system is so that the debtor's assets can be settled and used to pay obligations to creditors. This regulation is in accordance with Articles 1131 and 1132 of the Indonesian Civil Code which emphasize that all of the debtor's assets, both those that exist now and those that will exist in the future, become general collateral for all obligations that he has.

Article 1131 of the Civil Code gives all creditors the right to demand the fulfillment of their debts from all of the debtor's assets, without the need for a special agreement. Meanwhile, Article 1132 states that if there are no special provisions, all creditors receive payment based on the principle Pari Passo Pro Rata Parte, namely proportional payment according to the amount of each receivable against the total debtor's obligations. However, there is an exception in Article 1132 which states that there are legitimate reasons to prioritize certain creditors. This is where the concept of preferred or separatist creditors arises.

Separatist creditors are parties who have property rights to collateral, such as pawn holders, fiduciaries, mortgages, and mortgage rights. In the context of bankruptcy, they have a special legal position because they can execute their collateral as if there was no bankruptcy. This provision is regulated in Articles 55 to 59 of the Bankruptcy and PKPU Law. However, the execution of rights by separatist creditors is still limited by a waiting period of 90 days since the debtor was declared bankrupt. During this period, creditors may not sell the collateral object. If after 90 days there is no settlement, and the debtor is declared insolvent, then the execution process can be continued, with a maximum time limit of two months after the insolvency condition begins.

However, the provisions in the Bankruptcy Law have the potential to conflict with Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (Mortgage Law). According to Article 6 and Article 21 of the Mortgage Law, creditors holding mortgage rights have the right to execute collateral through a public auction even though the debtor is declared bankrupt, without a waiting period as stipulated in the Bankruptcy Law. This means that creditors have full and direct authority to sell collateral objects to pay off their debts. The dualism or conflict of norms between these two laws creates legal uncertainty, especially for economic actors who have the status of separatist creditors.

The conflict of norms becomes a significant legal issue because it creates ambiguity in the implementation of the execution of mortgage rights when the debtor is in bankruptcy status. In practice, the Curator can demand the surrender of the collateral object if the creditor does not execute within a certain time limit. On the other hand, the Mortgage Law actually gives stronger power to creditors to act without intervention. This difference raises the need to harmonize the two laws so as not to harm either party and to provide fair legal certainty, especially in unstable economic conditions.

In relation to the legal issues that have been described above, this problem is relevant for conducting legal research with the title **IMPLEMENTATION REGULATION OF AUCTIONS OF RIGHTS OF SUIT RELATED TO GRANTORS OF RIGHTS OF SUIT DECLARED BANKRUPT.**

II. METHOD

This study uses a normative legal research method, normative legal research is also called doctrinal legal research, also called library research or document study. Called doctrinal legal research, because this research is conducted or aimed only at written regulations or other legal materials. As a library research or document study because this research is more often conducted on secondary data. By using the Legal Concept Analysis approach (Analytical & conceptual approach) and the Statute Approach.The legislative approach is basically carried out by reviewing and analyzing laws and regulations that are related to the issues in this study. Furthermore, the legislative approach in normative legal research has practical and academic uses.

In practical activities, this statutory approach will open up opportunities for researchers to study the existence of consistency and conformity between a statute and another statute or between a statute and the Constitution or regulations and statutes. The results of this approach are arguments in solving the issues faced. In the statutory approach, research is conducted that aligns legislation both vertically and horizontally. The statutory approach in this paper is carried out by examining statutory regulations, namely the Bankruptcy and PKPU Laws and the Mortgage Rights Laws.

III. RESULTS AND DICUSSION

1. Procedures For Auctioning Execution of Mortgage Rights in Bankruptcy in Indonesia

a. Legal Regulations Regarding Execution of Collateral in The Event of a Debtor Going Bankrupt

The legal system in Indonesia has regulated in detail regarding the execution of collateral in the event that the debtor is declared bankrupt. This regulation is mainly stated in two main legal instruments, namely Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (Mortgage Law) and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law). Both laws provide provisions on how the creditor's rights to collateral can still be respected and implemented even though the debtor has been declared bankrupt. However, the emergence of regulations in two different laws also has the potential to cause conflicts of norms, especially in terms of who is authorized to execute collateral and under what conditions such execution can be carried out.

The Mortgage Law provides special rights to creditors holding mortgage rights, especially the first mortgage holder, to execute collateral directly (parate execution) if the debtor defaults or breaks a promise. Article 6 of the Mortgage Law explains that the right to sell collateral under one's own authority through a public auction is granted directly by law without the need for a court process. This right is emphasized in Article 20 paragraph (1) which mentions two methods of execution, namely parate execution and execution based on the executorial title of the mortgage certificate.

However, in practice, the implementation of the execution parate often encounters obstacles. One of them is the unpreparedness of the State Auction Office to carry out auctions without a court decision. In fact, the spirit of the Mortgage Law is to provide convenience and legal certainty for creditors so that they can execute collateral more quickly, without having to go through the court process which is time-consuming and expensive. This disagreement shows that there are differences in interpretation of the provisions of the legislation which ultimately lead to legal uncertainty in practice.

On the other hand, the Bankruptcy and PKPU Law introduces the concept of "general seizure" of all assets of the bankrupt debtor. In this case, all assets of the debtor, including those guaranteed through mortgage rights, are managed by the curator and are under the supervision of the supervising judge. However, this law still provides protection for separatist creditors (creditors with material guarantees such as mortgage rights, fiduciaries, pledges, or mortgages), as regulated in Article 55 paragraph (1). In this provision, it is stated that separatist creditors can exercise their rights as if there was no bankruptcy, but must still comply with the provisions in Articles 56, 57, and 58.

One of the important provisions in the Bankruptcy and PKPU Laws is the existence of a waiting period or "stay" period of 90 days since the debtor is declared bankrupt. During this period, the secured creditor is not allowed to execute its collateral. This provision aims to provide time for the curator to arrange the continuation of the bankruptcy process, including inventorying assets and making a debt settlement plan. If during this period the debtor is declared insolvent, the secured creditor's right to execute its collateral will be reopened.

The Bankruptcy and PKPU Laws also regulate the maximum execution time limit of two months after insolvency is declared. If within this period the creditor does not execute his rights, the curator can demand that the collateral be handed over to be sold to pay off the debt. This provision is a form of compromise between the individual rights of separatist creditors and the collective principle in bankruptcy, namely ensuring that no creditor benefits excessively from the losses of other creditors.

Problems arise when the provisions of the Mortgage Law, which give creditors direct rights to execute collateral without going through the courts, clash with the provisions of the Bankruptcy Law which require a waiting period and supervision by the curator. Each law has a strong legal basis, so this conflict of norms creates legal uncertainty. To resolve this conflict of norms, the principle of legal preference is used, namely the principle that determines which regulation must take precedence if there is a conflict between norms.

The principle of lex specialis derogat legi generalis states that special regulations override general regulations. However, in this context, although the Mortgage Law is more specific in regulating mortgage rights, the Bankruptcy and PKPU Laws are considered lex specialis in bankruptcy because they regulate special situations where the debtor has been declared bankrupt. Therefore, in the event of bankruptcy, the execution of mortgage rights must still be subject to the provisions of the Bankruptcy and PKPU Laws.

The position of collateral in bankruptcy is very important because it is one of the means of debt repayment. In the context of bankruptcy, all of the debtor's assets become collateral for the repayment of all debts to creditors. However, with the legal principles stipulated in Articles 1131 and 1132 of the Civil Code and the principle of pari passu prorata parte, debt repayment must be carried out proportionally according to the amount of receivables of each creditor. In this case, separatist creditors occupy a higher position because they have the right to execute the collateral directly, regardless of whether the debtor is in a state of bankruptcy or not.

However, as stated in Article 21 of the Mortgage Law, if the mortgagee is declared bankrupt, the mortgagee remains authorized to exercise all rights obtained according to the provisions of the Mortgage Law. This confirms that the debtor's bankruptcy status does not eliminate the rights of the separatist creditor. However, in its implementation, it must still pay attention to the provisions of the Bankruptcy Law and PKPU, especially regarding the procedures and deadlines for execution.

Thus, normatively the existence and position of creditors holding collateral rights in bankruptcy are still recognized and respected. Separatist creditors can still exercise their rights to execute collateral, but must comply with the bankruptcy procedures regulated in the Bankruptcy Law and PKPU. This is important to maintain a balance between protecting creditors' rights and the public interest in collective debt settlement.

Implementation Regulation of Auctions of Rights of Suit Related to Grantors of Rights of Suit Declared Bankrupt

Execution of collateral rights in bankruptcy conditions cannot be carried out immediately, even though the collateral holder has preferential rights. The execution must wait until the 90-day stay period ends or until the debtor is declared insolvent. After that, the creditor is given a maximum of two months to execute the collateral. If it fails, the curator can take over and sell the collateral. This procedure emphasizes the importance of synergy between the individual rights of creditors and the collective legal system in bankruptcy.

The conflict of norms between the Mortgage Law and the Bankruptcy and PKPU Laws reflects the challenges in the Indonesian legal system in ensuring legal certainty and protection, especially in the context of bankruptcy. Therefore, it is important for policy makers to harmonize regulations so that there are no discrepancies that are detrimental to interested parties. In the long term, more comprehensive regulatory updates and synchronization between the Mortgage Law and the Bankruptcy Law are needed so that the execution process in bankruptcy can run effectively, efficiently, and fairly.

Overall, the Indonesian legal system recognizes the execution rights of secured creditors, but in the context of bankruptcy, these rights must still be subject to the collective mechanisms regulated in the Bankruptcy Law and PKPU. Thus, although the execution rights remain attached, their implementation must be carried out within a legal framework that maintains a balance between individual rights and the collective interests of creditors. This is the foundation for balanced legal protection in the business world and the national financial system.

b. Procedures For Executing Mortgage Rights in Bankruptcy in Indonesia

The issue of execution of Mortgage Rights in bankruptcy in Indonesia has caused a conflict of norms between two different laws and regulations, namely Law Number 4 of 1996 concerning Mortgage Rights and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (PKPU). This conflict is related to the position and implementation of execution rights for creditors holding mortgage rights if the debtor is declared bankrupt. In this case, based on the principle A special law overrides a general law (specific law overrides general law), then the Bankruptcy and PKPU Laws are more appropriate to use because they specifically regulate the legal conditions when bankruptcy occurs, including the procedures for executing collateral that is part of the bankrupt's assets. Although the Mortgage Law still recognizes and guarantees the creditor's right to execute its collateral, the implementation of this right must still follow the special provisions stipulated in the Bankruptcy and PKPU Laws, considering the nature of bankruptcy as a "general seizure" of all the assets of the bankrupt debtor.

Article 55 paragraph (1) of the Bankruptcy and PKPU Law states that creditors holding collateral such as pawns, fiduciaries, mortgages and security rights can still execute their rights as if bankruptcy had not occurred, but must pay attention to the provisions of Articles 56, 57 and 58 which regulate the postponement of execution (period stay) for 90 days since the debtor is declared bankrupt or until the debtor's assets are declared insolvent. This provision is a compromise mechanism between the protection of the rights of separatist creditors and the principle of collective debt settlement in bankruptcy. After the 90-day period ends or the debtor is declared insolvent, the separatist creditors are given 2 months to execute the collateral object. If within that period the creditor does not execute it, then the responsibility for the sale shifts to the Curator who will do so in accordance with the provisions of Article 185 of the Bankruptcy and PKPU Law, namely through a public auction.

Article 185 paragraph (1) of the Bankruptcy and PKPU Law stipulates that all objects in the bankrupt's estate must be sold in public, which in practice refers to an auction regulated by the Minister of Finance Regulation Number 122 of 2023 concerning Guidelines for the Implementation of Auctions. Auctions of collateral in the context of bankruptcy not only require mortgage documents, but must also be accompanied by documents related to the bankruptcy case as a form of accommodation for the interests of all parties. In fact, Article 36 of the Minister of Finance Regulation emphasizes that the implementation of auctions of mortgages in bankruptcy cases must be carried out with reference to the provisions of the Bankruptcy and PKPU Law. This shows that the implementation of the execution of mortgage rights in the midst of bankruptcy is indeed normatively subject to the bankruptcy legal system which regulates collective and organized debt repayment.

If the sale through auction is unsuccessful or is deemed ineffective, then Article 185 paragraph (2) of the Bankruptcy and PKPU Law allows the Curator to conduct a private sale with permission from the Supervisory Judge. After the sale is carried out and generates funds, then payment of debts to separatist creditors is made from the proceeds of the sale. If the proceeds are insufficient, then the remaining unpaid receivables will be categorized as concurrent debts and paid together with general creditors in accordance with the remaining bankrupt assets available. Thus, the creditor's rights are still respected, but are subject to the priority system and customs in bankruptcy law.

In addition to the provisions in the Bankruptcy and PKPU Laws and the Regulation of the Minister of Finance, the Supreme Court has also issued Decree of the Chief Justice of the Republic of Indonesia Number 109/KMA/SK/IV/2020 which contains the Guidelines for Settlement of Bankruptcy and PKPU Cases. Although it does not specifically regulate the implementation of the execution of mortgage rights in bankruptcy, this guideline regulates the general procedure for the sale of bankrupt assets, including objects used as collateral. The guideline emphasizes several important things such as all bankrupt objects must be sold by auction, the sale announcement must be uploaded to the court information system, the price assessment must be carried out by a certified appraiser, and the sale by the secured creditor must be carried out within two months from the time the debtor is declared insolvent. If the execution is not carried out within that time, the Curator will take over and sell the collateral. In the case of a sale through auction failing twice, a private sale can be carried out with the permission of the Supervisory Judge and while still considering the market price or the highest liquidation value.

Such a procedure shows that bankruptcy does present a special legal framework that cannot be ignored by secured creditors. The collateral sales process cannot only rely on the Mortgage Law, but must follow the flow determined by the Bankruptcy Law and its derivative regulations, including intervention from court institutions and curators. The goal is not only to ensure that creditors' rights are protected, but also so that the collective debt settlement process runs transparently, orderly, and fairly for all parties, including concurrent creditors.

However, the problems that often occur in the field are delays in the process or lack of coordination between creditors, curators, and judicial institutions in carrying out this execution procedure. This often creates legal uncertainty and economic risk for separatist creditors. Therefore, it is necessary to align and strengthen coordination between institutions and increase the technical capacity and legal understanding of all related parties so that the execution of collateral rights in bankruptcy situations is not hampered by complicated administrative procedures. In addition, reformulation in the form of revising the Law or preparing new implementing regulations that are more assertive and systematic is very important to eliminate overlapping norms and strengthen legal protection for holders of collateral rights. Thus, the execution system in bankruptcy can function effectively in realizing justice and legal certainty which are the main spirit of national bankruptcy law.

2. The Position of Collateral That Has Been Encumbered With The Right of Liability When The Debtor Goes Bankrupt

a. Existence And Position of Mortgage Creditors in Bankruptcy

Mortgage is a form of collateral that provides a special (preferential) position to certain creditors for the repayment of debtors' debts by making land rights the object of collateral. Based on Article 1 number 1 of Law Number 4 of 1996 concerning Mortgage Rights (UUHT), mortgage rights are defined as collateral rights imposed on land rights, including objects attached or not, to guarantee the repayment of certain debts, which provide a priority position to creditors holding mortgage rights compared to other creditors. Thus, there are important elements in mortgage rights, namely that the object of the collateral is land rights, the debt guaranteed is specific, and creditors holding mortgage rights receive priority in debt repayment if the debtor defaults.

In the context of implementing mortgage rights, there are several methods of execution as regulated in Article 20 and Article 21 of the UUHT. Article 20 stipulates that the execution of mortgage rights can be carried out through a public auction based on the sole authority of the first mortgage holder as regulated in Article 6 of the UUHT, or through the implementation of the executorial title contained in the mortgage certificate as stated in Article 14 paragraph (2) of the UUHT. In addition, execution can also be carried out through a private sale based on an agreement between the grantor and the mortgage holder, provided that this is carried out with certain procedures such as notification to the relevant parties and announcement in the newspaper. This execution is a manifestation of the principle of efficiency and legal protection for creditors.

However, in the event that the debtor is declared bankrupt, legal issues arise regarding the implementation of the execution of the mortgage rights. Article 21 of the UUHT explicitly states that the bankruptcy of the debtor does not eliminate the rights of the creditor holding the mortgage rights to continue to execute in accordance with the provisions of the UUHT. This means that the creditor holding the mortgage rights can still execute the land guarantee that is charged even though the debtor has been declared bankrupt. However, problems arise when this provision conflicts with Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law and PKPU), especially Articles 55 to 59, which regulate the mechanism for implementing the right of execution for separatist creditors (including mortgage holders) in the bankruptcy process.

Article 55 paragraph (1) of the Bankruptcy and PKPU Law provides authority to separatist creditors to execute their collateral rights as if there had been no bankruptcy, but this right is limited by the provisions in Article 56 to Article 59. Article 56 specifically states that the implementation of the right of execution is suspended for a maximum of 90 days since the bankruptcy declaration decision is pronounced. This suspension is intended to provide an opportunity for the curator to optimize the bankrupt's assets, achieve peace, and carry out the bankruptcy process effectively and fairly for all creditors. However, this provision clearly contradicts Article 21 of the UUHT which guarantees that creditors' execution rights can still be exercised without conditions.

After the 90-day suspension period ends, as stipulated in Article 59 of the Bankruptcy and PKPU Law, the secured creditors are still given 2 months to carry out the execution independently of the collateral object. If within that period the creditor does not carry out the execution, the curator is authorized to take over and sell the collateral object through a public auction as stipulated in Article 185 of the Bankruptcy and PKPU Law. The sale by the curator must still pay attention to the rights of creditors holding collateral rights over the proceeds of the sale. This provision practically limits the creditors' room to exercise their rights as guaranteed by the UUHT, and creates legal uncertainty because it creates a dualism of conflicting regulations.

The conflict of norms between UUHT and the Bankruptcy and PKPU Laws creates a legal dilemma in practice, especially regarding the principle of lex specialis derogat legi generalis. In this case, the Bankruptcy and PKPU Laws can be considered as lex specialis in the context of bankruptcy, which overrides the general provisions in UUHT if the object of the mortgage is included in the bankrupt estate. However, the position of the creditor holding the mortgage is still recognized as a separatist creditor who has a special position, as emphasized in various legal provisions and jurisprudence, including in the Bankruptcy and PKPU Case Settlement Guidelines issued by the Supreme Court.

The implementation of the execution of collateral objects in bankruptcy must also follow the technical provisions in the Regulation of the Minister of Finance Number 122 of 2023 concerning Guidelines for the Implementation of Auctions. Article 36 of this regulation emphasizes that auctions of collateral objects that are part of the bankrupt's assets must comply with laws and regulations in the field of bankruptcy. This emphasizes the supremacy of the Bankruptcy Law and PKPU in regulating the execution of collateral rights that are part of the bankruptcy process. The auction procedure is carried out through an assessment by a certified appraiser, announcements in the mass media, and permission from the supervising judge if carried out underhand. This is done to ensure transparency and fairness for all parties, as well as to avoid potential misuse of the auction process.

However, in conditions where the proceeds from the sale of the collateral object are insufficient to pay off the entire debt, the separatist creditor will change status to become a concurrent creditor for the remaining unpaid receivables. This is in accordance with the provisions of Article 189 of the Bankruptcy and PKPU Law. In practice, this is a disadvantage for the separatist creditor, who initially benefited because of his preferential position, but then had to compete with other creditors for the repayment of the remaining receivables.

The existence of dualism of regulation between UUHT and Bankruptcy Law and PKPU is what gives rise to legal uncertainty and hinders legal protection that should be given to creditors holding mortgage rights. On the one hand, UUHT provides certainty and privileges to creditors with material collateral, but on the other hand, Bankruptcy Law and PKPU limit these rights within the framework of collective bankrupt estate management. In this context, it is important to harmonize laws and regulations to avoid conflicts of norms and provide legal certainty for business actors, banks, and other creditors who rely on mortgage rights as the main collateral in providing credit.

As an effort to improve the legal system, a consistent legal interpretation is needed by commercial judges in resolving bankruptcy cases involving mortgage rights. In addition, more comprehensive regulatory reform through the revision of the UUHT or the Bankruptcy and PKPU Law to accommodate the interests of separatist creditors is also an important step that must be considered by lawmakers. Firmness in the regulation and synchronization between norms is very much needed so that legal protection for creditors is not only formal, but also real and effective in practice.

Thus, the execution of mortgage rights in bankruptcy is a complex issue that requires caution in its implementation. On the one hand, the rights of separatist creditors must be maintained so that they are not eroded by the bankruptcy mechanism which prioritizes the collectivity of debt repayment. On the other hand, the management of bankrupt assets fairly and efficiently must remain a priority. Therefore, a fair, transparent legal approach that is in favor of the principle of legal certainty is urgently needed to address the problematic overlapping regulations between the Mortgage Law and the Bankruptcy Law and PKPU.

b. The Position of Collateral That Has Been Encumbered with The Right of Liability When the Debtor Goes Bankrupt

In the practice of debt agreements between debtors and creditors, unavoidable problems often arise, one of which is when the debtor cannot fulfill his obligations for various reasons, resulting in default, even bankruptcy. Although neither party wants a failure to pay, in reality this condition often occurs. To anticipate the possibility of default, a debt agreement is usually formed with collateral in the form of Mortgage right. In the Indonesian legal system, this guarantee can be formed through Power of Attorney to Encumbrance Dependent Rights (SKMHT)which must then be followed by the creation of Deed of Grant of Mortgage Rights (APHT)no later than one month, or a maximum of three months for land that has not been registered, as regulated in Regulation of the Minister of Agraria/Head of BPN No. 4 of 1996. If it is not continued with APHT, then the SKMHT is null and void by law.

The purpose of binding the mortgage is to provide a special position to the creditor in the event that the debtor fails to fulfill his obligations. This facilitates the execution of the collateral object in order to accelerate the return of the creditor's receivables. However, in reality, debtors often have more than one creditor. If one of the creditors files a bankruptcy petition to the court, and the court declares the debtor bankrupt based on the provisions Article 2 of the Bankruptcy and PKPU Law, then all of the debtor's assets (including those that are the object of the mortgage) become bankrupt assets (bankruptcy estate), except for assets that are excluded in Article 22 of the Bankruptcy and PKPU Law.

Implementation Regulation of Auctions of Rights of Suit Related to Grantors of Rights of Suit Declared Bankrupt

In the event of a debtor going bankrupt, the creditor holding the mortgage rights has the following position: secured creditors, namely creditors with collateral rights who should still be able to execute the collateral even though the debtor has gone bankrupt. This is emphasized in Article 55 paragraph (1) of the Bankruptcy and PKPU Law which states that the separatist creditor has the right to execute the collateral object as if there had been no bankruptcy. However, this right is limited by the provisions in Article 56 paragraph (1)which suspends the execution rights for 90 days since the bankruptcy decision was pronounced. This suspension is intended to increase the possibility of achieving peace, optimizing the bankrupt assets, or so that the curator can carry out his duties effectively.

This provision on suspension of execution creates contradictions and legal uncertainty. On the one hand, the Mortgage Law states that the mortgage holder still has the right to execute even if the debtor is bankrupt (Article 21 UUHT), but on the other hand, the Bankruptcy and PKPU Laws limit these rights through a suspension and takeover mechanism by the curator if the execution is not carried out within a period of two months (Article 59 paragraph (1) and (2)). This inconsistency is an important issue in the law of collateral in Indonesia, because it creates ambiguity regarding the preferential rights of creditors holding collateral rights.

Furthermore, in Indonesian civil law (Indonesia Civil Code), it is stated that creditors who have collateral such as mortgages have the right to be given priority in paying off their debts compared to other creditors. This is known as the termpreferred creditor, as regulated in Articles 1133 and 1134 of the Civil Code. Thus, the creditor holding the collateral should receive the right to the proceeds from the sale of the collateral object before other creditors, including concurrent creditors (creditors without collateral). However, in practice, there are exceptions to this priority, namely when dealing with state receivables, such as taxes, which legally have a higher status than mortgage rights.

According to several legal experts such as Satrio And Shahdeini, the preferential rights of the mortgage holder should be guaranteed and protected consistently by law. However, the delay in execution and the inclusion of collateral objects into the bankruptcy estate create uncertainty and weaken the position of the preferred creditor. The Bankruptcy Law and PKPU actually show their inconsistency in providing legal protection to mortgage holders, whereas the main principle of mortgage rights is to provide legal certainty and security for creditors.

The conflict of norms between the Mortgage Law and the Bankruptcy and PKPU Law is very detrimental to creditors. For example, Article 56 of the Bankruptcy and PKPU Law states that collateralized objects are also included in the bankrupt's assets, which is contrary to the principle "separatist" which stipulates that collateral objects are not included in the bankrupt estate. When the curator is given the authority to take over and sell collateral if the creditor does not exercise his rights within two months, this weakens the creditor's position and creates uncertainty in the implementation of the collateral execution.

In practice, during the 90-day suspension period, creditors cannot file lawsuits or take enforcement action against the collateral. This creates a situation status quo(standstill or automatic stay), which should only apply during the negotiation period or before bankruptcy is decided, not after the debtor is officially declared bankrupt. This opinion is also supported by Sutan Remy Sjahdeini, who argues that the principle of bankruptcy should not provide room for peaceful efforts after a bankruptcy decision is issued.

Ultimately, although the law explicitly grants the right of execution to the mortgage holder, the implementation of this right is hampered by the mechanisms in the Bankruptcy Law and PKPU. The provisions of Article 59 paragraph (2) which force the curator to take over and sell the collateral object after two months, even though the creditor is still entitled to the proceeds of the sale, remain a form of intervention against the exclusive rights of the separatist creditor. This further emphasizes that the role of collateral law in guaranteeing debt repayment has not been optimally protected in the Indonesian legal system.

In closing, there needs to be harmonization between the provisions of the Mortgage Law and the Bankruptcy and PKPU Laws in order to provide legal certainty to the parties. This disharmony has weakened the basic principle of material guarantees, namely to provide protection and certainty to creditors in the event of default by the debtor. Therefore, legal reform that reaffirms the position of preferred creditors in bankruptcy cases is very necessary to ensure the effectiveness of guarantee institutions in Indonesia and maintain trust in the national financing and banking system.

IV. CONCLUSIONS

The procedure for auctioning the execution of mortgage rights in bankruptcy in Indonesia is regulated by two main regulations, namely the Mortgage Law and the Bankruptcy and PKPU Law. Although the Mortgage Law grants the right to creditors holding mortgage rights to carry out execution independently (parate execution), in the context of bankruptcy, its implementation must be subject to the Bankruptcy Law and PKPU. This procedure involves a 90-day suspension of execution after the debtor is declared bankrupt, and if the debtor is declared insolvent, the separatist creditors must execute the collateral object within 2 months. Otherwise, the curator will take over the sales process through a public auction in accordance with the provisions of Article 185 of the Bankruptcy and PKPU Law.

Implementation Regulation of Auctions of Rights of Suit Related to Grantors of Rights of Suit Declared Bankrupt

The position of collateral that has been burdened with mortgage rights if the debtor goes bankrupt, namely the collateral that has been burdened with mortgage rights remains part of the bankrupt estate, but the creditor holding the mortgage rights has a preferential right to execute the collateral object. This right is guaranteed by Article 21 of the Mortgage Law, which states that the bankruptcy of the debtor does not eliminate the creditor's right to execute the collateral. However, the implementation of this right is limited by the Bankruptcy Law and PKPU, especially through the suspension period and the obligation to execute within a certain period after insolvency.

REFERENCES

1) Atmadja, I Dewa Gede dan I Nyoman Putu Budiartha, 2018, Teori-Teori Hukum, Setara Press, Malang.
2) Bambang Sunggono, 2007, Metodelogi Penelitian Hukum, PT. Raja Grafindo, Jakarta
3) Budiartha, I Nyoman Putu, 2016, Hukum Outsourcing: Konsep Alih Daya, bentuk Perlindungan, dan Kepastian Hukum, Setara Press, Malang.
4) Gunawan W dan Kartini M, 2003, Jual Beli, Cetakan Pertama, Raja Grafindo Persada, Jakarta
5) H. Juhaya S. Praja, 2016, Teori Hukum dan Aplikasinya, CV Pustaka Setia, Bandung
6) Hilman Hadikusuma, 1995, Metode Pembuatan Kertas Kerja atau Skripsi Ilmu Hukum, Mandar Maju, Bandung
7) Ian Mcleod, 2012, Legal Theory, Palgrave Macmillan Law Masters, Stirling Law School University of Stirling
8) Marihot Pahala Siahaan, 2010, Hukum Pajak Formal, Graha Ilmu, Yogyakarta
9) Mukti Fajar ND, 2010, Yulianto Achmad, Dualisme Penelitian Hukum Normatif dan Empiris, Pustaka Pelajar, Yogyakarta
10) Munir Fuady, 2014, Konsep Hukum Perdata, Rajawali Pers., Jakarta
11) Sinaga, N. A., & Sulisrudatin, N. (2018). Hukum Kepailitan dan Permasalahannya di Indonesia. Jurnal Ilmiah Hukum Dirgantara, Vol. 7, No. 1.
12) Dewi, Luh Putu Ari Tiarna. 2020. Eksekusi Hak Tanggungan yang Dipailitkan, Acta Comitas: Jurnal Hukum Kenotariatan, (Online), Vol. 5, No. 1, (https://doi.org/10.24843/AC.2020.v05.i01.p09, diakses 10 Juni 2025).
13) Nugrohandini, Dwi, dan Etty Mulyati. 2019. Akibat Hukum Gugatan dan Perlawanan terhadap Lelang Eksekusi Hak Tanggungan, Jurnal Bina Mulia Hukum, (Online), Vol. 6, No. 1, (https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/63,jurnal.f
14) Direktorat Jendral Keuangan Negara, "Tata Cara Lelang Online" HTML: https://www.lelangdjkn.kemenkeu.go.id/prosedur , diakses pada tanggal 2 Maret 2025, Pukul 20:30