

Legal Certainty of Execution of Bankrupt as Collateral Charged by Mortgage Rights

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Abstract:

Bankruptcy is often considered an efficient mechanism for resolving debt disputes. However, this situation can have detrimental implications for creditors holding collateral when the debtor is declared bankrupt. The legal framework governing bankruptcy and mortgage rights has been stated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as: KPKPU Law) and Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (hereinafter referred to as UUHT). Normatively, the two regulations are designed to complement each other. However, in its implementation, there is disharmony between Article 56 paragraph (1) of the KPKPU and Article 6 and Article 21 of the UUHT. Therefore, this study focuses on the analysis of legal protection for creditors holding mortgage rights in the condition of debtor bankruptcy and reviews the aspect of legal certainty in the process of executing collateral assets. This study adopts three main approaches, namely the legislative approach, the conceptual approach, and the case approach.

Keywords: Legal Certainty, Execution, Collateral, Mortgage Rights.

INTRODUCTION

Debts are common in today's ever-evolving era. With the increasing needs of humans to live, they are required to be able to meet these various needs in order to survive. Therefore, many people compete to build or establish their own businesses to achieve it. A business is an activity that aims to produce goods, import or export goods, and conduct trade, which is carried out by an entrepreneur, either an individual, a legal entity, or a non-legal entity.¹ With the increasing needs of humans to live, they are required to be able to meet these various needs in order to survive. Therefore, many people compete to build or establish their own businesses in order to achieve it. A business is an activity that aims to produce goods, import or export goods, and conduct trade, which is carried out by an entrepreneur, either an individual, a legal entity, or not a legal entity. A debt agreement contains the rights and obligations of the parties involved, providing binding legal certainty. In addition, this agreement also includes the payment procedure mechanism and debt repayment period.²

With the increasing needs of humans to live, they are required to be able to meet these various needs in order to survive. Therefore, many people compete to build or establish their own businesses in order to achieve it. A business is an activity that aims to produce goods, import or export goods, and conduct trade, which is carried out by an entrepreneur, either an individual, a legal entity, or not a legal entity. A debt agreement contains the rights and obligations of the parties involved, providing binding legal certainty. In addition, this agreement also includes the payment procedure mechanism and debt repayment period.³ In the practice of credit agreements, the existence of collateral is a crucial aspect to ensure legal certainty for the parties involved. Among the various types of collateral, collateral on land is considered to have the highest level of security

¹ H. Zainal Asikin, *"Hukum Dagang"* (PT RajaGrafindo Persada, 2014), 9.

² Rio Christiawan, *"Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang"* (Rajawali Press, 2020), 1.

³ Rachmad Rahardjo, *"Benda Jaminan Yang Dibebeani Hak Tanggungan Dalam Hal Debitur Dinyatakan"*

because its economic value is stable and tends to increase.⁴ This land collateral is legally known as a mortgage, based on UUHT. The existence of collateral in a credit agreement has a strategic role in ensuring the fulfillment of debt obligations when due.

If the debtor is unable to fulfill his obligations in accordance with the agreement, the creditor has the right to execute the mortgage rights in order to obtain debt repayment, based on legal regulations.⁵ Mortgage Rights cover various objects, including land rights, business use rights, and building use rights. Creditors who have collateral in the form of property rights, such as mortgage rights, are known as separatist creditors. These creditors have the authority to execute the collateral they own if the debtor cannot fulfill their debt payment obligations. In addition to separatist creditors, there are also concurrent creditors, whose position is equal to other creditors without certain priority rights, and preferred creditors, who have the right to obtain payment first based on the special nature of their receivables in accordance with applicable laws.⁶ In business activities, challenges and obstacles, both internal and external, can cause business decline and lead to bankruptcy.

This can fulfill obligations to creditors, which leads to a bankruptcy decision by the Commercial Court. Bankruptcy not only has a negative impact on the company, but also affects the collateral in the credit agreement. The KPKPU Law has implications for the mechanism for implementing collateral.⁷ In the regulation, there are specific provisions related to the execution procedure regulated in Article 56 paragraph (1), which requires a waiting period of 90 days before the execution process can be carried out. This provision is contrary to the

⁴ Misbah Imam Subari & Justicia Firdaus Kurniawan, *Penggunaan Klausula Proteksi Diri Bagi Notaris Dalam Akta Partij Ditinjau Dari Undang-Undang Jabatan Notaris*, Jurnal Ilmu Kenotariatan, Vol. 4, No. 2, (2023), h. 144-161.

⁵ Christiawan, *Kepailitan Dan PKPU*, 2.

⁵ Uswatun Hasanah, *"Hukum Jaminan: Konsep Dan Pengaturannya Di Indonesia"* (Setara Press, 2021), 71.

⁶⁶ Sri Redjeki Hartono, *"Hukum Kepailitan"* (Universitas Muhammadiyah Malang, 2017), 3.

⁷ Sri Redjeki Hartono, *"Hukum Kepailitan"* (Universitas Muhammadiyah Malang, 2017), 3.

principles regulated in Article 6 and Article 20 of the UUHT, which provide direct authority to creditors to execute the mortgage rights without having to be bound by the waiting period based on the KPKPU Law. The execution of the guarantee when the debtor is sentenced to bankruptcy still does not have legal certainty because there is a lack of synchronization of the regulations regarding this matter in the two laws that regulate it, and later it can cause difficulties in the execution procedure for the guarantee imposed on the mortgage rights themselves.

METHOD

This research applies the normative legal method, namely an approach that examines law from an internal perspective with legal norms as the main focus. This research specifically uses the type of normative legal research (legal research), namely research based on legal norms as the object of study to provide legal arguments when there is a conflict, ambiguity, or legal vacuum. This legal analysis utilizes 2 main approaches, namely legislation (statute approach) and conceptual (conceptual approach). Data are analyzed descriptively qualitatively by examining secondary data sources, which include narratives, theories, definitions, and the substance obtained from various literature, which is then studied further.

DISCUSSION

a. Legal Protection for Creditors Holding Mortgage Rights When the Debtor Goes Bankrupt

Since ancient times, there has been an ancient view that states that law only exists in civilized societies. However, this view does not mean that primitive societies do not have legal rules, but rather that even though they are primitive, there are still rules or daily customs that are respected and maintained. Law can be found throughout the world, as long as there is a society or humans in it. J. Van Aperlidoorn once said, "Recht is over de gehele wereld; overal waar een samenleving van mensen is," which means, "Law exists throughout the world; wherever there is human society." Law itself lives and is inherent in society. This

modern view was then widely accepted and influenced the development of legal science today.⁸ Legal protection is needed to create a sense of security for the community, in accordance with the principles of the rule of law, and to protect the rights of each party involved in the legal relationship, so that there are no violations of rights that can cause problems.

According to Mertokusumo, legal protection must pay attention to the balance between three main aspects, namely legal certainty (*rechtssicherheit*), benefit (*zweckmassigkeit*), and justice (*gerechtigkeits*). The principle of legal protection in Indonesia is rooted in the concept of *rechtstaat* and the rule of law, with Pancasila as the fundamental foundation.⁹ In this context, legal protection is directed at the recognition and fulfillment of human rights, which reflect the values of Pancasila and the principles of the rule of law. Legal protection can be preventive, namely aimed at anticipating and preventing the possibility of violations in society. This effort is realized through the preparation of regulations that set legal boundaries to prevent actions that have the potential to violate applicable provisions. In addition to preventive legal protection, there is also repressive legal protection, which focuses on taking action after a violation occurs.¹⁰

This repressive legal protection is the last protection that can be given if a violation has occurred, namely in the form of fines, imprisonment and additional penalties. This repressive legal protection in its resolution can be through litigation or non-litigation and is carried out by an agency that has authority both absolutely and relatively.¹¹ The case of execution of bankrupt assets as collateral that is burdened with mortgage rights even though it really needs legal

⁸ R. Soeroso, *"Pengantar Ilmu Hukum"* (Sinar Grafika, 2018), 44-45.

⁹ Sudikno Mertokusumo, *"Mengenal Hukum: Suatu Pengantar"* (Liberty, 1991), 57, dikutip oleh Burhan Sidabariba, *"Lelang Eksekusi Hak Tanggungan; Meniscayakan Perlindungan Hukum Bagi Para Pihak"* (Papas Sinar Sinanti, 2019), 21 dan 24-25.

¹⁰ Annisa Mila Zakiya, *"Perlindungan Hukum Terhadap Kreditur Pemegang Jaminan Fidusia Dalam Hal Debitur Dinyatakan Pailit Berdasarkan Putusan Pengadilan Niaga,"* (Universitas Sriwijaya, 2022), 9, diakses pada tanggal 19 November 2024,

¹¹ Annisa Mila Zakiya, *"Perlindungan Hukum Terhadap Kreditur Pemegang Jaminan Fidusia,"* 10.

protection itself, the form of preventive legal protection in the case of execution of bankrupt assets as collateral that is burdened with mortgage rights is the KPKPU Law and UUHT. The KPKPU Law does not explain and classify the types of creditors in detail, but based on general civil law, creditors are divided into 3 (three types), namely:

1. Concurrent Creditors (Unsecured Creditors), concurrent creditors are regulated in Article 1132 of the Civil Code. This type of creditor has an equal position, with the right to receive payment without priority, based on the amount of each receivable. They have paripassu and pro rata rights and distribution of payment.¹²
2. Preferred Creditors (Privileged), preferred creditors are regulated in Article 1134 of the Civil Code. These creditors are classified as types of creditors who are given the privilege to be prioritized based on the Law and because of the nature of their receivables can be prioritized for repayment. These creditors have a higher position than other creditors.¹³
3. Separatist Creditors, these creditors are included in the type of creditors who hold property security rights such as mortgage rights and the creditors can take action themselves.¹⁴

Separatist creditors in the KPKPU Law obtain legal protection to execute bankrupt assets that are used as collateral for mortgage rights when the debtor is declared bankrupt, based on Article 55 paragraph (1) of the KPKPU Law and Article 21 of the UUHT, the bankruptcy of the mortgagee does not eliminate the rights of the mortgage holder to execute the collateral. Article 21 emphasizes that creditors remain authorized to carry out execution in accordance with applicable legal regulations, even though the debtor is bankrupt. The execution by creditors

¹² Yuhelson, "*Hukum Kepailitan Di Indonesia*" (Ideas Publishing, 2019), 46-47

¹³ *Ibid*, 49-50.

¹⁴ *Ibid*, 53-54.

holding mortgage rights is generally carried out through an auction mechanism, which must meet the principles of effectiveness, convenience, legal certainty, simplicity, justice, and transparency for the public. In the auction procedure, the auction minutes are important documents that function as administrative and legal evidence of the ongoing process, with the main objective of obtaining the highest price for the collateral object.

Execution of mortgage rights can be carried out through the parate executie mechanism based on Article 20 paragraph (1) letter (a) of the UUHT, which gives authority to the first-ranking mortgage holder to conduct an auction against the collateral object without having to go through the courts. The proceeds from the auction are then used to pay off their receivables directly. The documents required for the auction consist of two types, namely General Documents (list of goods to be auctioned, information regarding the delivery or deposit of auction proceeds, and additional auction requirements) and Special Documents (such as a copy of the credit deed, a copy of the APHT, and a copy of the SHT burdened with mortgage rights).¹⁵ The auction procedure in the execution parate begins with the submission of a written auction application to the KPKNL. By attaching the auction requirement documents, the KPKNL determines the schedule and location of the auction, which is then announced by the seller in accordance with applicable provisions. Auction participants are required to deposit a bid guarantee in accordance with the regulations.

The next auction process is carried out by an auction official who has been appointed by the State Asset and Auction Service Office (KPKNL). The auction winner is obliged to pay off the auction transaction value along with auction fees within a maximum of 5 days after the auction is held. After the payment obligation is fulfilled, KPKNL is tasked with distributing the auction results to the seller and depositing the auction fees into the state treasury. Furthermore, the

¹⁵ Ferdiansyah Putra Manggala, "Dinamika Pembebanan Jaminan Fidusia Terkait Dengan Prinsip Spesialitas," t.t.

documents and goods that are the objects of the auction are handed over to the winner, accompanied by an auction report which serves as a legal basis in the process of changing the name of the certificate for the auctioned object.¹⁶

In the context of fiat execution, the auction procedure begins with the submission of an application for *aanmaning* to the Head of the authorized District Court, by attaching a mortgage certificate as a supporting document. After receiving the application, the Head of the District Court will verify the mortgage file. The next stage is the implementation of the *aanmaning* hearing, which aims to provide a warning to the defendant in execution to fulfill his obligations voluntarily within eight days before further execution actions are taken.¹⁷

If the debtor does not fulfill the obligation within the time limit, an execution seizure is carried out with a period of 7 days to complete the obligation. If the settlement is not achieved, the execution auction is carried out after a written announcement in accordance with applicable regulations. Execution through underhand sales according to Article 20 paragraph (2) of the UUHT can only be carried out if there is an agreement between the creditor and the debtor. This method generally provides a greater opportunity to obtain a more optimal selling value compared to other execution mechanisms. This is due to the flexibility that allows debtors and creditors to directly offer collateral objects to potential buyers without having to go through an open auction process. Meanwhile, in the context of civil law, Article 1341 of the Civil Code stipulates *actio pauliana*, a legal instrument that gives creditors the right to file for cancellation of legal actions carried out by the debtor if the action is considered detrimental to the creditor and should not be carried out.

The provisions of *actio paulina* in bankruptcy cases basically have similar substance to the provisions in the Civil Code, with the main difference in the time

¹⁶ Sidabariba, *Lelang Eksekusi Hak Tanggungan*, 246.

¹⁷ Fay Alejandra Amadis dkk., "Kepastian Hukum Perjanjian Kredit Tanpa Disertai Perjanjian Jaminan," *Journal of Economic and Business Law Review* 4, no. 2 (22 Oktober 2024): 91, <https://doi.org/10.19184/jebblr.v4i2.50093>.

period. In the bankruptcy process, the action that causes the loss must occur within one year. while in the Civil Code, the time limit is 4 years. One example of a debtor's actions that are detrimental to creditors is when the debtor, a party who is aware of the possibility of being declared bankrupt, takes legal action, such as transferring some of his assets, which has the potential to harm creditors. This *actio paulina* is designed to provide legal protection for the interests of creditors.¹⁸ Such legal action takes place in circumstances where the debtor and the parties involved know/should be aware that such action has the potential to harm the creditor:

- a. The legal act must be carried out by the debtor, namely an act that has legal consequences.
- b. This legal act does not constitute an obligation that must be carried out by the debtor, or is known as *overplicht verruchte handelingen*, namely a legal act that is not required by law to be carried out.
- c. The legal action is taken in circumstances where the debtor and the parties involved know or should be aware that the action has the potential to harm the creditor.
- d. The act must fulfill the requirements set out in Article 42 Letters (a) to (g) of the KPKPU Law.¹⁹

b. Legal Certainty of Execution of Bankrupt Estate as Collateral Encumbered by Mortgage Rights

Along with the rapid development of technology and the progress of society, the importance of law in social life is increasingly apparent. Law acts as a liaison between individuals and each other, as well as between humans and objects around them. These relationships cover various aspects of life, from birth,

¹⁸ Serlika Aprita, "*Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (Perspektif Teori)*" (Setara Press, 2018), 226.

¹⁹ Serlika Aprita, "*Hukum Kepailitan Dan Penundaan Kewajiban Pembayaran Utang (Perspektif Teori)*", 231

marriage, services, to trade. Law provides guidance for an orderly and orderly life, by setting limits on the act of declaring on legal provisions. Justice, peace, benefits and legal certainty are the goals of the law itself, so that the goals of the law can be realized, the law itself must first be implemented properly. One of the laws is legal certainty.²⁰ Law without legal certainty will result in the loss of the meaning of the law itself, especially for written legal norms. Fuller argues that in order for regulations and their implementation to provide certainty, there are 8 principles that must be met by law, namely:

The legal system that is formed must be based on regulations, not on erroneous decisions for certain problems.

- a. After the regulations are drafted, they must be published to the public.
- b. In order for the system to remain consistent, regulations must not be retroactive.
- c. Regulations must be drafted with clear formulations that are easy for the public to understand.
- d. Regulations that are drafted must support each other and must not be contradictory.
- e. Regulations must not require the implementation of actions that exceed existing capabilities.
- f. Changes to regulations must not be made too often.

Regulations must be in line with their application in everyday life.²¹ Bankruptcy was initially regulated in the Civil Code, specifically in Articles 1131 and 1132. Article 1131 stipulates that all debtor assets, both movable/immovable, including those currently/in the future, become collateral to fulfill personal obligations. Article 1132 stipulates that the debtor's assets become joint collateral for all creditors, and the proceeds from the sale will be distributed proportionally in line

²⁰ Soeroso, "*Pengantar Ilmu Hukum*", 52 dan 54-56.

²¹ L.L. Fuller, "*The Morality Of Law*" (Yale University Press, 1971), dikutip oleh Fathiya

with the total of all receivables of each creditor, unless there are legal provisions that prioritize the rights of certain creditors. Based on these two articles, it is clear that creditors have the right to auction off the debtor's assets, and the proceeds must be distributed fairly among them.²² On April 9, 1996, Law Number 4 of 1996 concerning Mortgage Rights was officially ratified in the era of President Soeharto. Article 21 of the UUHT provides legal certainty for creditors holding mortgage rights when the debtor goes bankrupt, who remain authorized to carry out execution by auctioning off the bankrupt assets used as collateral. 8 years later, on 18 October 2004, President Megawati Soekarnoputri ratified Law No. 37 of 2004 concerning the KPKPU, which stipulates that bankruptcy focuses on postponing creditors' execution rights for 90 days after a bankruptcy decision. The provisions in Article 56 paragraph (1) of the KPKPU Law suspend creditors' execution and have the potential to cause conflict with the UUHT.

The suspension risks harming the secured creditors because they cannot immediately exercise their execution rights, which can result in losses such as the loss of potential buyers who are attracted by high prices or a decrease in the price of collateral assets. This reduces the effectiveness of the creditor's right to obtain repayment of their receivables in a bankruptcy situation.²⁰ In the practice of implementing legal rules, problems such as conflicts of norms or inconsistencies in these regulations often cannot be avoided. The steps that can be taken to resolve legal problems like this are by implementing the principle of legal preference. The principle of legal preference is also known as legal remedies or legal remedies because this principle is a legal principle that plays a major role if there is a legal event that is concerned or subject to several regulations that cause a conflict between these legal rules, where this principle of legal preference plays a role in indicating and ensuring which legal regulations are prioritized to be enforced. There are 3 (three) principles of legal preference, namely:

²² Asikin, "*Hukum Kepailitan*", 28.

a. *Lex superior derogat legi inferiori*

This principle states that if there is a discrepancy between lower and higher regulations, then the higher regulation must take precedence. This principle applies when two regulations conflict and have an unequal hierarchical position. In Indonesia, the hierarchy of laws and regulations starts from the 1945 Constitution of the Republic of Indonesia, followed by the MPR Decree, Law/Perppu, Government Regulation, Presidential Regulation, Provincial Regulation, and Regency/City Regulation. For example, the contents of a Law must not conflict with the 1945 Constitution, and the regulations below it must be in line with the higher regulations.

b. *Lex specialis derogat legi generali*

This principle mandates that if there is a conflict between more specific regulations and general regulations, the more specific regulations override the general regulations. For example, the rules regarding principal and additional penalties contained in the Criminal Code can certainly be set aside in criminal cases committed by children, the provisions of principal and additional penalties in this case will follow the regulations of Law No. 3 of 1997 concerning the Juvenile Criminal Justice System.

c. *Lex posterior derogat legi priori*

The principle of *lex posterior derogat legi priori* states that in the event of a conflict between a newer statutory regulation and a previous regulation, the provisions in the newer regulation will override the old one. The application of this principle can be found in the validity of the UUHT, which explicitly replaces the provisions in Book II of the

Civil Code insofar as they relate to the imposition of mortgage rights on land rights and the objects attached to them.²³

Applying the principle of legal preference to determine the applicability of which Law is most appropriate in the case of the execution of bankrupt assets as collateral that is burdened with a mortgage is the right step. The application of the principle of *lex superior derogat legi inferiori* certainly cannot be applied because the KPKPU Law and the UUHT have equal hierarchical status.²⁴ The application of the principle of *lex specialis derogat legi generali* can be seen in the judge's consideration in decision number 26/Pdt.Sus-Other Claims, the panel of judges is of the opinion that the UUHT contains general regulations regarding the provisions of collateral burdened with mortgages and the debtor in this case is not in a state of bankruptcy, while the KPKPU Law specifically regulates matters of bankruptcy and postponement of debt payment obligations where this law also contains regulations regarding provisions if the debtor goes bankrupt. Thus, in the case that is rolling, the judges are of the opinion that the UUHT is of a general nature and the KPKPU Law is of a special nature.²⁵ Although the principle of *lex specialis derogat legi generali* is often used in determining applicable legal rules, its application in this context is considered inappropriate.

This is due to the difficulty in determining which is special and which is general. In the Indonesian legal system, the KPKPU Law specifically regulates aspects of bankruptcy and suspension of debt payment obligations, while the UUHT

²³ Hukum Online, "3 Asas Hukum: Lex Superior, Lex Specialis, Dan Lex Posterior Beserta Contohnya," diakses pada tanggal 20 November 2024, <https://www.hukumonline.com/klinik/a/3-asashukum-ilex-superior-i--ilex-specialis-i--dan-ilex-posterior-ibeserta-contohnya-cl6806/>.

²⁴ Ferdiansyah Putra Manggala, "Legal Protection For Third Parties Who Are Provided As Individual Guarantees By Fintech Peer-To-Peer Lending," *Jurnal Justiciabelen* 6, no. 2 (19 Desember 2023): 1, <https://doi.org/10.30587/justiciabelen.v6i2.6992>.

²⁵ Direktori Putusan Mahkamah Agung, "Putusan Nomor 26/Pdt.Sus-Gugatan Lain-lain," diakses pada tanggal 20 November 2024, <https://putusan3.mahkamahagung.go.id/direktori/putusan/zaedb654cc80b3f09132313131313234.html>.

regulates mortgage rights on land and objects related to land.²⁶ Thus, both regulations are equally special in their respective scopes, so that the use of the *lex specialis* principle can cause legal uncertainty. To ensure legal certainty in the execution of assets used as collateral for mortgage rights in bankruptcy, the more relevant principle to apply is *lex posterior derogat legi priori*, which states that newer regulations override older regulations if there is a conflict between the two.

Therefore, it is necessary to clearly see which law was enacted first. In addition, the UUHT also contains provisions regarding the execution of mortgage rights in general, and also regulates the provisions for the execution of mortgage rights when the debtor goes bankrupt. After that, when the KPKPU Law was enacted, it was regulated more clearly regarding the execution of mortgage rights when the debtor goes bankrupt, however, this law does not explain that with the enactment of this law, the mortgage law, more specifically Article 21, is no longer valid, therefore there is a conflict of rules between these two laws.

The 90 (ninety) day suspension or stay period rule contained in the KPKPU Law has indeed raised pros and cons because it is considered detrimental, especially for creditors or debtors. The existence of this article is considered to reduce the authority and violate the position of creditors holding mortgage rights who are prioritized over other creditors, however, with the enactment of the suspension period, curators will be more optimal in carrying out their duties and responsibilities in managing bankrupt assets so as to minimize problems in the future after the execution is carried out. It is better to be a little late but give good results than to rush and cause problems in the end.

The duties and functions of the curator in bankruptcy are as a representative of the bankrupt debtor to manage from the beginning to the end all bankruptcy problems of the debtor, especially regarding the cleaning of the bankrupt estate

²⁶ zMisbah Imam Soleh Hadi & Bayu Indra Permana, *Konstruksi Hukum Pembebasan Pajak Penghasilan Terhadap Peralihan Hak Atas Tanah Dalam Pembagian Hak Bersama Waris*, Jurnal Ilmu Kenotariatan, Vol. 3, No. 1, (2022), h. 1-13.

to pay all existing receivables to all creditors based on applicable laws and regulations for the benefit of all parties. The KPKPU Law contains the duties and functions of the curator in Article 69. The curator in carrying out all his duties to clean up the bankrupt estate must be independent without siding with the creditors or the bankrupt debtor. This curator's duties have been in effect since the bankruptcy declaration decision was issued by the commercial court, although there are still further legal efforts against the decision. This 90-day suspension or stay period not only has the potential to harm the interests of creditors holding mortgage rights who should receive priority according to their preferential nature based on the UUHT, but also indirectly limits the execution rights of separatist creditors. The objective to be achieved by implementing the 90 (ninety) day suspension or stay period regulation is to increase the chances of achieving peace or to optimize the curator's performance in carrying out his functions and duties in managing all bankrupt assets of the debtor, both in the form of immovable objects and movable objects included in the bankrupt estate.²⁷

The provisions regarding the suspension period or stay period in the bankruptcy process are not absolute for 90 (ninety) days, but there are exceptions based on Article 57 paragraph (1) of the KPKPU Law. In addition, the period based on Article 56 paragraph (1) will end automatically if the bankruptcy process is completed sooner or when the state of insolvency is declared to have begun, based on Article 178 paragraph (1). If in the receivables verification meeting there is no submission of a peace plan, or the plan has been submitted but rejected through a decision that has permanent legal force, then legally the bankrupt estate will shift into a state of insolvency. However, the execution rights held by the separatist creditors are not immediately lost, but can still be carried out after the 90 (ninety) day suspension period ends or when the bankrupt estate is declared in a state of insolvency.

²⁷ Alfrits Adrian Tumbel, "Penangguhan Eksekusi Barang Jaminan Oleh Pengadilan Negeri Terhadap Hak Kreditur Menurut Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan"

Separatist creditors can carry out one of the 3 (three) types of execution that have been discussed previously, namely fiat execution, parate execution and private execution. Of course, the execution period carried out after the insolvency situation begins is also This provision is stated in Article 59 paragraph (1) of the KPKPU Law, which states that while still referring to Article 56, Article 57, and Article 58, creditors holding rights based on Article 55 paragraph (1) are required to exercise their rights within a maximum time limit of two months from the start of the insolvency situation based on Article 178 paragraph (1).²⁸ If the deadline given for 2 (two) months to execute the mortgage rights themselves has passed but the creditor is unable to complete it, then the object of the mortgage rights must be handed over to the curator to be sold as stated in Article 59 paragraph (2) of the KPKPU Law, which states that after the period stipulated in paragraph (1) ends, the Curator is required to file a claim to obtain the transfer of assets used as collateral. Furthermore, the assets must be sold in accordance with the mechanism stipulated in Article 185, while still respecting the rights of creditors holding collateral to the proceeds from the sale of the assets.

Execution can also be carried out by separatist creditors before the determination of insolvency, namely on the condition that permission has been obtained from the curator, supervisory judge or commercial court as regulated in Article 57 paragraph (2) and (3) of the KPKPU Law. The permission that can be requested is permission to shorten the suspension period or stay period and permission to sell or execute several objects of mortgage rights.

CONCLUSION

A business that experiences bankruptcy or insolvency can have an impact on creditors who hold collateral from the debtor. In this case, legal protection for creditors is regulated by the KPKPU Law and the UUHT. This legal protection includes the right of execution granted to separatist creditors, which can be

²⁸ Vinka Kurnia Dewi dan Ferdiansyah Putra Manggala, "URGENSIPEMBEBANANJAMINANFIDUSIA PADAKONTENYOUTUBEYANGTELAH MEMILIKI IKLAN(ADSENSE)," t.t.

carried out through three types of execution, namely fiat execution, parate execution, and underhand execution. In addition, there is also protection in the form of actio paulina, which allows creditors to cancel the debtor's detrimental and illegal actions.

There is a lack of synchronization between the KPKPU Law and the Mortgage Law regarding the execution of mortgage rights when the debtor goes bankrupt. In the KPKPU Law, there is a 90-day stay period before the execution can be carried out. Meanwhile, the UUHT gives full rights to separatist creditors to execute mortgage rights without any suspension period. This inconsistency causes differences in the implementation of mortgage execution.

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