



## Legal Protection For Creditors Who Hold Credit Rights Where The Sales Value of The Collateral Is Smaller Than The Debt Of The Bankrupt Debtor Based On Law No. 37 Of 2004 Concerning Bankruptcy and PKPU

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**Abstract:** The dynamic growth of business activities in Indonesia has increased debt-credit transactions, which can lead to disputes when debtors fail to meet obligations, particularly in bankruptcy. Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations provides a framework for asset settlement and protection for secured creditors (separatist creditors). However, issues arise when the collateral's execution value is insufficient to cover the debtor's total debt, leaving a shortfall unpaid. This study examines the legal protection for separatist creditors in such cases and remedies available when the curator fails to pay the remaining debt. Using a normative juridical method with statutory and conceptual approaches, the research is based on primary, secondary, and tertiary legal materials analyzed qualitatively. The findings show that the Bankruptcy Law does not clearly regulate the procedure for claiming such shortfalls, creating legal uncertainty and inconsistent commercial court practices. The study concludes that the law should be reformed to expressly allow the shortfall to be claimed as a concurrent debt and that the Supreme Court should issue guidelines to ensure consistent interpretation and strengthen legal protection for separatist creditors.

**Keyword:** Bankruptcy, Security Rights, Separatist Creditors, Legal Protection, Curator

### INTRODUCTION

The development of the business sector in Indonesia has experienced significant growth over the past two decades. The expansion of the trade, service, and industrial sectors has not only accelerated capital circulation but also increased the intensity of financial transactions, including debt and credit activities between business actors and financial institutions (Simanjuntak, 2025). In business practice, the provision of credit or financing serves as an essential instrument to expand business capital; however, it simultaneously carries the risk of default, which can have serious legal implications.

When a debtor is unable to fulfill debt repayment obligations, one of the legal mechanisms available is bankruptcy. Based on Law No. 37 of 2004 concerning Bankruptcy

and Suspension of Debt Payment Obligations (hereinafter referred to as the Bankruptcy Law), Article 1 point 1 defines bankruptcy as a general seizure of all assets of the bankrupt debtor, the administration and settlement of which are carried out by a curator under the supervision of a supervisory judge (Law No. 37, 2004). The primary objective of the bankruptcy mechanism is to resolve debt issues in a timely, transparent, and equitable manner for both debtors and creditors.

One category of creditors holding a privileged position in bankruptcy proceedings is the *secured creditor (kreditur separatis)*, namely, those holding security rights over property, such as mortgage (*hak tanggungan*), fiduciary transfer, hypothec, or pledge. Article 55 of the Bankruptcy Law affirms that secured creditors may execute their rights as if bankruptcy had not occurred. However, this right is not absolute, as Articles 56 and 57 impose a stay period of up to 90 days to allow the curator to conduct a comprehensive inventory of the bankrupt estate (Munir, 2020).

Problems arise when the sale value of the secured asset is lower than the outstanding debt. In such circumstances, secured creditors are entitled to submit the shortfall as a concurrent claim, which will be paid based on the principle of *pari passu pro rata parte* together with other concurrent creditors, as stipulated in Articles 1131 and 1132 of the Indonesian Civil Code (KUHPPerdata, 1847). In practice, however, the settlement of such residual claims often encounters obstacles, including lack of transparency from the curator, delays in asset liquidation, or even unjustified rejection of creditor claims (Subekti, 2019).

Normative conflicts further complicate the matter. Article 21 of the Mortgage Law (Law No. 4 of 1996) states that the holder of a mortgage right is entitled to execute the collateral even if the debtor is bankrupt. Conversely, Article 59 of the Bankruptcy Law stipulates that if execution is not carried out within two months from the declaration of insolvency, such right is transferred to the curator. These differing provisions have the potential to create legal uncertainty and disputes between secured creditors and curators (Fuady, 2018).

The case of *CV. Dewi Jaya Lestari* illustrates this issue. The company obtained credit facilities from Bank Negara Indonesia and Bank Syariah Mandiri, secured by mortgage rights. After being declared bankrupt through the Central Jakarta Commercial Court Decision No. 50/Pailit/2010/PN.Niaga.Jkt.Pst, the curator auctioned the secured assets; however, the sale proceeds were insufficient to cover the entire debt. The remaining debt was then submitted as a concurrent claim. This process raised concerns regarding legal certainty and creditor protection, especially when the curator failed to provide clear assurances regarding the timing and mechanism of payment.

This phenomenon reveals a gap between normative provisions and practical implementation. Normatively, the Bankruptcy Law provides a legal framework for the protection of secured creditors, including the execution mechanism and the recognition of residual claims as concurrent debts. In practice, however, the enforcement of these provisions is often hindered by differing interpretations, administrative barriers, and potential conflicts of interest between curators and creditors.

The urgency of this study lies in the need to provide a more comprehensive understanding of how Indonesian positive law protects secured creditors when the sale value of collateral falls short of the outstanding debt. This is essential to ensure that the principles of legal certainty, justice, and legal utility are achieved in a balanced manner.

This research stems from the existence of legal uncertainty in the implementation of protection for mortgage holders when the sale value of the collateral is lower than the debt of the bankrupt debtor, coupled with the lack of clarity regarding legal remedies available to creditors against curators who refuse to settle the residual debt. Therefore, this study aims to analyze, from a juridical perspective, the forms of legal protection available and the most

effective legal measures for secured creditors within the framework of Indonesian bankruptcy law.

## METHOD

This research uses a normative juridical method with a descriptive–analytical approach, examining legal norms from legislation and doctrines to describe the issues in detail (Marzuki, 2017; Soekanto, 2014). The study is limited to legal protection for mortgage holders when collateral value is less than the debtor’s debt, and legal remedies against curators who refuse to pay the residual claim.

## RESULTS AND DISCUSSION

### Legal Protection for Creditors When the Collateral Sale Value Is Less Than the Debtor’s Debt

In bankruptcy practice, creditors often have agreements secured by property rights in the form of mortgages (*hak tanggungan*). When the debtor is declared bankrupt, questions arise regarding the rights and legal standing of such creditors in executing the agreed collateral. The affirmation of the mortgage holder’s legal standing is crucial, as they enjoy special rights distinct from concurrent and preferred creditors in the settlement of bankruptcy assets.

The position of mortgage holders as separatist creditors is explicitly stipulated in Article 55(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU), which provides that “each creditor with a security right, including mortgage, may execute their rights as if bankruptcy had not occurred, subject to Articles 56 and 57 of the same law” (Undang-Undang Nomor 37 Tahun 2004, 2004). Furthermore, Article 21(1) of Law No. 4 of 1996 on Mortgage Rights stipulates that a mortgage grants priority to the creditor to obtain repayment from the proceeds of the sale of the secured property (Undang-Undang Nomor 4 Tahun 1996, 1996). Article 56(1) of the Bankruptcy Law further limits the separatist creditor’s right of execution by imposing a stay period of up to 90 days from the bankruptcy decision, allowing for a comprehensive management of bankruptcy assets.

Separatist creditors derive their status from civil law relationships formalized in loan agreements secured by property rights. Their key characteristic is the ability to execute specific collateral without being bound by the general bankruptcy settlement procedure. However, Article 56 of the Bankruptcy Law balances this right with the general interests of all creditors, granting the curator a temporary stay to inventory and secure the bankrupt estate.

Sri Redjeki Slamet explains that, although separatist creditors may execute their collateral, bankruptcy law places them under judicial oversight, with curators and supervisory judges ensuring that execution aligns with the interests of all parties (Slamet, n.d.). Similarly, Arina Salsabila Munajat, in her case study, notes that execution over mortgaged assets already seized by the curator remains possible for separatist creditors, but the proceeds must first satisfy their claims; any surplus is added to the bankruptcy estate, and any shortfall may be claimed as a concurrent debt (Munajat, n.d.). Thus, the legal standing of mortgage holders as separatist creditors is recognized and protected, though subject to regulated execution to ensure fairness among creditors.

Collateral execution in bankruptcy is a crucial aspect of creditor protection, particularly for separatist creditors holding security rights such as mortgage, fiduciary security, pledge, or hypothec. Article 55(1) of the Bankruptcy Law confirms that they may execute collateral as if bankruptcy had not occurred. However, Article 56 imposes a 90-day stay from the start of insolvency, and Article 59 requires execution within two months; otherwise, the execution right is transferred to the curator (Undang-Undang Nomor 37 Tahun 2004, 2004). There are three main mechanisms:

1. Parate Execution – execution by the creditor based on the executorial power of the mortgage or fiduciary certificate without court intervention, possible only before bankruptcy. Once bankruptcy is declared, execution is stayed and must be conducted by the curator under court supervision.
2. Execution by Curator – after bankruptcy, all execution over the bankrupt estate is conducted by the curator, including third-party collateral. The curator may redeem the collateral by paying the lesser of its value or the secured debt (Article 59(3) UUK-PKPU).
3. Execution by Court Order – court-issued execution orders apply in disputes or when creditors fail to comply with execution time limits, as in Supreme Court Decision No. 269 K/Pdt.Sus-Pailit/2024 (Mahkamah Agung, 2024).

A normative conflict exists between Article 21 of the Mortgage Law, which preserves the mortgagee's rights despite bankruptcy, and Article 59 of the Bankruptcy Law, which transfers execution rights to the curator after two months. This inconsistency creates legal uncertainty and risks downgrading separatist creditors to concurrent creditors.

The Bankruptcy Law provides preventive protection (execution rights under Article 55) and repressive protection (remedies such as objections, cassation, or settlement petitions). Harmonizing the Mortgage Law and Bankruptcy Law is essential for fair and certain execution rights.

When execution proceeds do not fully satisfy the debt, the unpaid balance remains the debtor's liability and may be claimed as a concurrent debt (Pasal 1131 KUH Perdata, 1847). In bankruptcy, the creditor's status shifts from separatist to concurrent for the shortfall, meaning repayment follows the *pari passu pro rata parte* principle.

As Anisa Rua Ratu Liu et al. note, improper execution—such as selling collateral without debtor consent or outside legal auction procedures—can harm the debtor and complicate repayment (Liu et al., n.d.). Courts have also found that unregistered or improperly documented security interests, as in Karanganyar District Court Decision No. 46/Pdt.G/2018, undermine creditor claims.

The Bankruptcy Law does not explicitly address unpaid shortfalls after bankruptcy settlement. While Article 1131 KUH Perdata provides that all debtor assets serve as security, when insufficient, creditors—particularly concurrent ones—remain in a weak position. Remedies include filing new civil suits post-bankruptcy discharge, executing any remaining collateral, or obtaining voluntary debt acknowledgments.

Muhammad Ackbar criticizes this legal gap, noting that it leaves creditors vulnerable, especially when debtors act uncooperatively (Ackbar, n.d.). Reforming the Bankruptcy Law to explicitly regulate shortfall claims would strengthen creditor protection and ensure equitable treatment in bankruptcy proceedings.

### **Legal Remedies Available to Creditors Against Curators Who Refuse to Pay the Remaining Debt**

Legal protection for separatist creditors holding mortgage rights is an important aspect in the settlement of debts when the debtor is declared bankrupt. Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law) provides a clear legal basis regarding the position of separatist creditors (Sutedi, 2018). Article 55 of the Bankruptcy Law stipulates that creditors holding security rights over property have the right to execute as if bankruptcy had not occurred (Indonesia, 2004a). This provision is intended to protect creditors' rights so that they can still obtain repayment from the collateral previously agreed upon. However, such protection is limited by Article 56, which imposes a 90-day stay period from the date the bankruptcy ruling is issued, and Article 59, which requires

execution to be carried out within two months (Indonesia, 2004a). If the creditor fails to execute within this period, the execution right is transferred to the curator (Hutabarat, 2019).

In addition to being regulated in the Bankruptcy Law, the rights of separatist creditors are also guaranteed under Law Number 4 of 1996 concerning Mortgage Rights (Indonesia, 1996). This law affirms that holders of mortgage rights have a preferential right to be repaid first from the proceeds of the sale of the collateral object (Satrio, 2017). In practice, execution of mortgage rights can be carried out in three ways: direct *parate execution* by the creditor based on the mortgage certificate, execution by the curator during bankruptcy proceedings, or through a court order (Sutedi, 2018).

Nevertheless, problems arise when there is a conflict of norms between the Mortgage Law and the Bankruptcy Law. The Mortgage Law grants the holder the freedom to execute at any time after debtor default, whereas the Bankruptcy Law imposes a stay period and execution deadline (Satrio, 2017). This difference in regulation can create legal uncertainty and inconsistencies in commercial court practice (Hutabarat, 2019).

The issue becomes more complex when the proceeds from the sale of the collateral are insufficient to fully repay the debtor's obligations. In this case, the remaining debt or shortfall is legally classified as a concurrent claim, the payment of which follows the principle of *pari passu pro rata parte* as stipulated in Article 1131 of the Indonesian Civil Code (Indonesia, 1847). This means that separatist creditors must share proportionally with other concurrent creditors from the remaining bankrupt estate (Sutedi, 2018). However, the Bankruptcy Law does not explicitly regulate the mechanism for separatist creditors to claim such a shortfall, creating a legal loophole and inconsistency in court decisions (Hutabarat, 2019).

Therefore, a reformulation of the Bankruptcy Law is needed to explicitly stipulate that any shortfall after execution of collateral may be submitted as a concurrent claim in bankruptcy proceedings. In addition, the Supreme Court should issue guidelines or circulars containing technical instructions for commercial court judges and curators to ensure uniform interpretation and legal certainty (Satrio, 2017). Such legal reform is expected to optimize protection for separatist creditors without ignoring the principle of fairness for other creditors, while also fostering a healthier and more predictable business climate in Indonesia (Sutedi, 2018).

## CONCLUSION

The provisions under Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations do not provide clear legal certainty regarding the rights of creditors holding mortgage rights when the execution value of the collateral is lower than the debtor's total debt. The absence of explicit regulation on the mechanism for submitting such shortfall claims has the potential to create injustice and hinders creditors in securing certainty over the protection of their rights. There is, therefore, an urgent need to strengthen the legal protection of separatist creditors through clearer and more comprehensive regulations. This normative ambiguity opens the door to multiple interpretations and inconsistent practices in commercial courts, making legal reformulation or clarification essential to ensure equality and fairness in bankruptcy proceedings.

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