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Legal Protection of Creditors Over Collateral in Bankruptcy

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ABSTRACT

Legal protection of creditors over collateral in bankruptcy requires a systematic interpretation of mortgage law, bankruptcy law, and banking asset-quality regulation. This article analyzes the legal position of separatist creditors holding mortgage rights and the protection of banks in resolving foreclosed collateral assets when debtors are declared bankrupt. The study uses normative legal research with statutory, conceptual, and case approaches, focusing on the interaction between Law Number 4 of 1996 concerning Mortgage Rights and Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The analysis shows that mortgage holders retain preferential and executorial rights, but those rights are procedurally restricted by bankruptcy law through a 90-day stay period and a two-month execution period after insolvency. Foreclosed collateral may be protected only when the takeover is valid, voluntary, properly documented, fairly valued, and not contrary to the collective nature of bankruptcy. The study argues that the principle of lex specialis derogat legi generali makes bankruptcy law prevail in bankruptcy proceedings, while preventive and repressive protection must be strengthened through harmonized regulation, authentic documentation, curator oversight, and clearer temporal standards for collateral execution.

Keywords: *Collateral, Foreclosure, Legal Protection, Mortgage Rights, Separatist Creditor*

INTRODUCTION

Legal protection for creditors, collateral, and bankruptcy constitutes a central issue in Indonesian banking law because these three elements determine the degree of certainty in the recovery of receivables when debtors can no longer fulfil their credit obligations. In banking practice, collateral does not merely function as a risk-mitigation instrument but also as a legal mechanism that guarantees the repayment of public funds channelled by banks through credit facilities. This position is consistent with the legal construction of Law Number 10 of 1998 concerning Banking, which places banks as intermediary institutions while simultaneously requiring the application of the prudential principle in credit extension. Therefore, when credit becomes non-performing, the legal status of collateral becomes the point of intersection between the private interests of creditors and the collective interests of all creditors within the bankruptcy regime.

In the law of security rights over property, a Mortgage Right is granted as a security right over land and objects related to land for the repayment of a specific debt. Its essential characteristics are that it provides a preferential position to certain creditors over other creditors and follows the secured object regardless of whose possession it is. This construction is reflected in Law Number 4 of 1996 concerning Mortgage Rights, which authorizes the holder of a Mortgage Right to sell the secured object when the debtor defaults.

Arifardhani, Anggriani, and Dantyana (2024) affirm that creditor protection in non-performing loans rests on the credit agreement, the imposition of Mortgage Rights, and the right to sell the secured object in accordance with the provisions of the Mortgage Rights Law. Hasibuan (2022) also shows that the settlement of credit defaults secured by Mortgage Rights is commonly carried out through collection efforts, auctions through the State Assets and Auction Service Office (KPKNL), or private sales based on an agreement between the creditor and the debtor.

In land law studies, Wijaya, Rideng, and Purnamawati (2022) emphasize that land utilization is not only related to economic aspects but also requires certainty regarding the legal position of the parties in a contract. This view is relevant in affirming that land used as collateral in a credit agreement must be placed within a clear legal construction, both in terms of the status of the object, the authority of the parties, and the legal consequences when the object is used as the basis for recovering the creditor's receivables.

Bankruptcy creates a different legal situation than insolvency. Article 1 point 1 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations defines bankruptcy as a general attachment over all assets of the bankrupt debtor, the management and liquidation of which are carried out by a curator under the supervision of a supervisory judge. Once a bankruptcy decision is rendered, the debtor loses the authority to control and manage their assets, including secured objects that become part of the bankruptcy estate. At this point, a normative issue arises: separatist creditors under security law possess strong execution rights, yet bankruptcy law shifts the orientation of settlement from a private relationship to a collective mechanism intended to protect all creditors.

The most evident conflict of norms arises in the relationship between Articles 6, 14, 20, and 21 of the Mortgage Rights Law and Articles 55–59 of the Bankruptcy and PKPU Law. The Mortgage Rights Law affirms the ease of execution and the preferential position of Mortgage Right holders, whereas the Bankruptcy and PKPU Law recognizes the rights of separatist creditors only with certain limitations. Article 55, paragraph (1) of the Bankruptcy and PKPU Law provides that creditors holding pledges, fiduciary security rights, Mortgage Rights, hypothecs, or other security rights over property may execute their rights as if bankruptcy had not occurred. However, this phrase is immediately limited by Article 56, which suspends execution for 90 days from the date the bankruptcy decision is pronounced, and Article 59, which restricts the implementation of execution after insolvency. Putro and Badriyah (2024) find that, in practice, the Bankruptcy and PKPU Law is positioned as lex specialis in relation to the Mortgage Rights Law, resulting in separatist creditors holding Mortgage Rights not receiving adequate legal protection in bankruptcy cases.

The problem becomes increasingly complex when the settlement of non-performing loans is carried out through Foreclosed Collateral, known in Indonesian banking practice as Agunan Yang Diambil Alih (AYDA). Under Financial Services Authority Regulation Number 40/POJK.03/2019, AYDA is defined as an asset acquired by a bank, either through an auction or outside an auction, based on the voluntary surrender of the collateral owner or a power of attorney to sell outside an auction when the debtor fails to fulfil their obligations to the bank. Prabandari, Nurdin, and Prasetyo (2021) explain that AYDA through auction constitutes one of the mechanisms for settling credit secured by Mortgage Rights. Kurniawaty, Abubakar, and Akyas (2022) highlight the dimension of legal certainty in the takeover of land and building collateral by banks through auction. Wulandari (2025) specifically examines the juridical consequences of settling non-performing loans through AYDA under the Mortgage Rights Law. However, some of these studies have not yet integrated the AYDA within the context of the tension between the executorial rights of separatist creditors and the general attachment of bankruptcy.

The research gap lies in the absence of a sufficiently clear formulation of the boundary between AYDA that has been legally completed before bankruptcy and AYDA that may still be drawn into the bankruptcy estate because it was carried out when the debtor had entered the PKPU process, the stay period, or a condition that harmed other creditors. Muis, Ikhwansyah, and Handayani (2022) emphasize the importance of the position of separatist creditors when collateral secured by Mortgage Rights becomes part of the bankruptcy estate. Soediro (2026) argues that AYDA conducted by separatist creditors in bankruptcy may generate uncertainty and disputes among creditors if it is not carried out in accordance with the proper procedure. Therefore, an analysis that connects the norms of security law, bankruptcy law, and AYDA regulation is needed so that legal protection for creditors remains aligned with the principles of certainty, justice, and proportionality.

The novelty of this study lies in its systematic mapping of legal protection for creditors over collateral in bankruptcy through three layers of analysis. First, this article distinguishes the legal positions of the debtor, separatist creditor, and curator after a bankruptcy decision is rendered. Second, it assesses the position of the AYDA as a credit-settlement instrument that receives protection only when it satisfies requirements relating to timing, form, documentation, and propriety in relation to the interests of the bankruptcy estate. Third, it formulates a model of preventive and repressive protection for banks as creditors based on the principle of lex specialis derogate legi generali. Based on this background, this study aims to analyze the legal positions of debtors and creditors in bankruptcy cases and examine the legal protection afforded to banks as creditors in the settlement of AYDA objects when debtors are declared bankrupt.

RESEARCH METHOD

This study uses a normative legal research method. The choice of this method is based on the nature of the issue examined, namely the conflict of norms between the law of security rights over property, bankruptcy law, and banking regulations concerning Foreclosed Collateral, known in Indonesian banking practice as Agunan Yang Diambil Alih (AYDA). Normative legal research is appropriate because the object of analysis consists of positive legal norms, legal principles, legal doctrines, and court decisions related to the position of creditors over collateral in bankruptcy cases. This study does not empirically measure the behavior of the parties but rather fouces on juridical reasoning to determine the applicable norms, legal consequences that arise, and forms of legal protection that may be granted to creditors.

The approaches used in this study are the statutory, conceptual, and case approaches. The statutory approach is used to examine Law Number 4 of 1996 concerning Mortgage Rights, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, Law Number 10 of 1998 concerning Banking, Financial Services Authority Regulation Number 40/POJK.03/2019 concerning Asset Quality Assessment for Commercial Banks, and Minister of Finance Regulation Number 122 of 2023 concerning Guidelines for Auction Implementation. The conceptual approach is used to explain the concepts of separatist creditors, preferential rights, droit de suite, bankruptcy estate, stay period, insolvency, actio pauliana, preventive legal protection and repressive legal protection. The case approach is used by examining the construction of the dispute in Decision No. 20/Pdt. Sus-Gugatan Lain-Lain-AP/2019/PN.Niaga.Jkt.Pst in conjunction with Decision Number 119/Pdt. Sus-PKPU/2018/PN.Niaga.Jkt.Pst illustrates the problem of AYDA transfer when the debtor is undergoing PKPU and bankruptcy proceedings.

The primary legal materials consist of relevant legislation and judicial decisions. Secondary legal materials include recent scholarly journal articles, books on security, banking, and bankruptcy law, and academic opinions explaining the conflict of norms between the Mortgage Rights Law and the Bankruptcy and PKPU Law. Tertiary legal materials are used in a limited manner to clarify legal terms. Legal materials were collected through document studies and systematic note-taking of relevant norms, principles, and arguments. Legal materials are analyzed qualitatively through grammatical, systematic, and teleological interpretations. Grammatical interpretation is used to examine the phrase “as if bankruptcy had not occurred” in Article 55 (1) of the Bankruptcy and PKPU Law. Systematic interpretation is used to connect articles 55 to 59 of the Bankruptcy and PKPU Law with Articles 6, 14, 20, and 21 of the Mortgage Rights Law. A teleological interpretation is used to assess the purpose of bankruptcy law as a collective liquidation mechanism and the purpose of security law as a form of protection for creditors holding collateral.

RESULTS AND DISCUSSION

The Legal Position of the Debtor, Separatist Creditor, and Secured Object After a Bankruptcy Decision

Bankruptcy fundamentally alters the legal relationship between debtors and creditors. Prior to a bankruptcy decision, the debtor, in principle, remains in control of their assets and may perform legal acts as long as such acts do not conflict with credit agreements, security laws, and banking regulations. Once a bankruptcy decision is pronounced, all assets owned by the debtor at the time of the bankruptcy decision, as well as any assets acquired during the bankruptcy process, fall under general attachment, as provided in Article 21 of the Bankruptcy and PKPU Law. Consequently, the debtor no longer has the authority to manage and control the assets that become part of the bankruptcy estate. This authority is transferred to the curator under the supervision of a supervisory judge. From the perspective of legal certainty, this transfer of authority is intended to ensure that the liquidation of the bankruptcy estate is not carried out sporadically by individual creditors but through an orderly and supervised collective mechanism.

Creditors holding Mortgage Rights retain their status as separatist creditors. This position derives from the nature of Mortgage Rights, which grant preferential rights and follow the secured object wherever it may be transferred. Under security law, separatist creditors are placed in a stronger position than concurrent creditors because they hold specific security rights over certain properties. Novita and Husna (2023) show that in bankruptcy, the classification of creditors determines the priority of debt repayment, particularly among preferred, separatist, and concurrent creditors. Nevertheless, separatist rights do not exist entirely outside the bankruptcy framework. Article 55, paragraph (1) of the Bankruptcy and PKPU Law recognizes the right of execution as if bankruptcy had not occurred; however, this recognition must always be read together with Articles 56, 57, 58, and 59 of the Bankruptcy and PKPU Law.

These provisions demonstrate that bankruptcy law does not eliminate the property-based rights of separatist creditors; rather, it suspends and regulates how those rights are exercised. The 90-day stay period under Article 56 of the Bankruptcy and PKPU Law prevents separatist creditors from immediately executing collateral after a bankruptcy decision is rendered. The rationale is to provide the curator with sufficient time to inventory the bankruptcy estate, assess the possibility of business continuity, and prevent the hasty sale of collateral that may harm the bankruptcy estate. Once insolvency begins, Article 59 gives separatist creditors the opportunity to execute their rights within two month. If this period is not used, the curator may request the surrender of the secured object to be sold under the mechanism for liquidating the bankruptcy estate. Putro and Badriyah (2024) argue that this construction makes the protection afforded to Mortgage Right holders not fully effective, as an executorial right that was originally intended to be direct and efficient becomes subject to the collective procedures of bankruptcy law.

Normatively, the conflict between the Mortgage Rights Law and the Bankruptcy and PKPU Law cannot be resolved by eliminating one of the legal regimes. The Mortgage Rights Law remains applicable as the legal basis for the creation of Mortgage Rights, preferential rights, executorial titles, and execution mechanisms when the debtor defaults. The Bankruptcy and PKPU Law applies when the debtor enters bankruptcy and all their assets are subject to general attachment. Therefore, the principle of lex specialis derogat legi generali does not mean that the rights of separatist creditors disappear, but rather that their implementation must follow bankruptcy law as long as the matter falls within the bankruptcy regime. Muis et al. (2022) emphasize that the main problem arises when collateral secured by Mortgage Rights becomes part of the bankruptcy estate, requiring separatist creditors to adjust their rights to the governance of bankruptcy estate liquidation.

From the standpoint of legal certainty theory, this conflict indicates the need for normative harmonization of laws. Legal certainty requires not only the existence of written norms but also consistency among norms, procedural clarity, and predictability of the legal consequences. When the Mortgage Rights Law promises ease of execution but the Bankruptcy and PKPU Law suspends execution, banks as creditors require clear parameters regarding when their rights may be exercised, what actions are prohibited during the stay period, and how collateral that has been or is being transferred through AYDA should be treated. Without such parameters, creditors face a dual risk: the risk that non-performing loans cannot be recovered promptly and the legal risk that the secured object may be disputed by the curator or other creditors.

AYDA as a Mechanism for Settling Non-Performing Loans Under the Shadow of Bankruptcy

AYDA essentially arises from the banking sector's need to reduce the risk of non-performing loans. Banks may acquire collateral through auctions or outside auctions based on the voluntary surrender of the collateral owner or a power of attorney to sell outside an auction. In a non-bankruptcy context, AYDA may serve as a faster solution than lengthy litigation. Sitorus (2022) emphasizes the importance of auctioning secured assets in settling credit defaults, while Hasibuan (2022) explains that creditors may resolve defaults through auctions or private sales with the debtor's consent. Prabandari et al. (2021) specifically position AYDA through auctions as a mechanism for settling credit secured by Mortgage Rights.

However, the character of AYDA changes when a debtor enters PKPU or bankruptcy proceedings. In such circumstances, the transfer of collateral can no longer be viewed as a private transaction between the debtor and the bank. Every transfer of the debtor's assets must be assessed in terms of its potential to harm the bankruptcy estate or the other creditors. If the surrender of AYDA is carried out before the bankruptcy decision but at a time when the debtor is already aware of PKPU proceedings or is in an insolvent condition, such an act may potentially be challenged as a transaction that harms other creditors. In the context of actio pauliana, Widyaningrum and Joesoef (2023) emphasize the importance of protecting good-faith purchasers, but such protection must be balanced against the interests of bankruptcy law in preserving the debtor's assets from transfers that may prejudice creditors.

The status of AYDA cannot be reduced to two extremes: always valid because it is based on an agreement or always void because bankruptcy exists. Its assessment must be based on the timing of the takeover, the legal basis for the transfer, the debtor's voluntariness, the fair value of the object, disclosure of information, and its impact on the bankruptcy estate. Wulandari (2025) shows that the settlement of non-performing loans through AYDA under the Mortgage Rights Law has juridical consequences that must be read together with the prohibition against the automatic ownership of the Mortgage Right object by the creditor. Under the Mortgage Rights Law, any clause granting the Mortgage Right holder the authority to own the secured object when the debtor defaults is, in principle, null and void. Therefore, the AYDA must be positioned as a temporary mechanism for realizing the value of collateral, not as a means for creditors to permanently own the collateral.

Timing is a crucial factor. AYDA that have been legally completed before the commencement of bankruptcy proceedings, supported by an authentic deed, fair valuation, proof of payment, and not intended to fraudulently reduce the bankruptcy estate, have a stronger basis for legal protection. Conversely, AYDA carried out during the 90-day stay period, after the debtor has been declared bankrupt without the curator's approval, or after the expiry of the two-month period following insolvency without execution by the separatist creditor, is vulnerable to being drawn back into the bankruptcy estate. Soediro (2026) warns that the AYDA in the context of separatist creditors may create injustice if execution is conducted hastily and without considering the fair value of the collateral. In such circumstances, legal protection is granted to banks and other creditors so that the value of the bankruptcy estate is not reduced by disproportionate transactions.

Banking regulations also treat AYDA as assets that must be liquidated. Financial Services Authority Regulation Number 40/POJK.03/2019 regulates asset quality and the treatment of AYDA in bank reporting, while Minister of Finance Regulation Number 122 of 2023 regulates auction implementation, including the possibility for financial service institutions to purchase their collateral, as long as it does not conflict with statutory regulations. Kurniawaty et al. (2022) show that the takeover of collateral by banks through auctions also raises issues of legal certainty concerning the obligation to pay Land and Building Rights Acquisition Duty (BPHTB) and the timing of the bank's designation as the purchaser. This indicates that AYDA is not merely a credit-recovery technique but a series of legal acts with implications for the status of rights, tax obligations, asset recording, and potential objections in bankruptcy.

Norm Synchronization and the Implications of Legal Protection

The resolution of the conflict of norms between the Mortgage Rights Law and the Bankruptcy and PKPU Law should begin by recognizing the different purposes of these two laws. The Mortgage Rights Law aims to provide a strong, simple, and easily executable security institution to ensure that creditors can recover their receivables. The Bankruptcy and PKPU Law aims to regulate collective settlements when a debtor is unable to pay debts to more than one creditor. This difference in purpose explains why the swift execution under the Mortgage Rights Law must be reorganized when the debtor enters bankruptcy. Accordingly, the lex specialis in bankruptcy cases is the Bankruptcy and PKPU Law, while the Mortgage Rights Law remains the basis for the validity of the security right and the priority of proceeds from the sale of collateral.

An appropriate synchronization model must not weaken the interest in an extreme manner. If all the execution rights of separatist creditors are set aside, the protective function of property security rights will lose its effectiveness and may increase banking credit risk. Conversely, if separatist creditors are free to execute all collateral without restrictions after a bankruptcy decision, the purpose of bankruptcy as a general attachment mechanism becomes ineffective. Therefore, legal protection must be understood as proportional protection: separatist creditors retain priority over the proceeds from the sale of collateral, but their execution actions must comply with time limits, supervision, and the interests of liquidating the bankruptcy estate.

The following table maps the relationship between the norms that form the basis for analyzing the legal protection of creditors over collateral in bankruptcy.

Table 1. Normative Mapping of Creditor Protection over Collateral in Bankruptcy

Normative Regime	Main Substance	Implications for Creditors
UUHT	Grants preferential rights, droit de suite, and executorial title to holders of Mortgage Rights.	Creditors have a strong legal basis to execute the secured object when the debtor defaults.
UUKPKPU Article 55	Recognizes that separatist creditors may execute their rights as if bankruptcy had not occurred.	Separatist rights remain recognized, but they cannot be read separately from the limiting provisions.
UUKPKPU Article 56-58	Establishes a 90-day stay period for execution from the date of the bankruptcy decision.	Execution of collateral must be suspended to protect the interests of the bankruptcy estate and the curatorial process.
UUKPKPU Article 59	Grants separatist creditors a two-month period after insolvency to carry out execution.	If it is not executed within that period, the curator may take over the sale of the collateral.
POJK 40/2019 and PMK 122/2023	Regulates AYDA as an asset acquired by a bank through auction or outside an auction, as well as the procedures for conducting auctions.	AYDA must be viewed as a credit recovery mechanism that is subject to procedures, recording requirements, and the obligation to re-liquidate the asset.

The table indicates that legal protection for creditors must be constructed in two layers. Preventive protection is carried out before bankruptcy by ensuring that the credit agreement, Deed of Granting Mortgage Rights, Mortgage Rights certificate, power of attorney to sell, deed of surrender, collateral valuation, and deeds related to AYDA are carefully prepared. Authentic documentation is important because, in bankruptcy disputes, the curator and other creditors assess whether the transfer of collateral was carried out lawfully, fairly, and without harming the bankruptcy estate. Puspita, Emirzon, and Elmadiantini (2025) position the role of notaries as an important element in the AYDA mechanism because authentic deeds function to strengthen proof of the parties' intentions and the certainty of legal acts in the AYDA mechanusm. In the banking context, preventive protection also includes examining the debtor's legal status, potential existence of a PKPU petition, litigation history, and solvency condition before the bank accepts AYDA.

Repressive protection is carried out after a dispute arises, particularly when the curator includes the AYDA object in the bankruptcy estate or considers the transfer of collateral to be an act that harms other creditors. Forms of repressive protection may include filing objections with the supervisory judge, proving the position of the separatist creditor in the debt verification meeting, defending the validity of the AYDA transfer, and demanding the fulfilment of preferential rights over the proceeds from the sale of the collateral. In this context, it is not sufficient for a bank to merely demonstrate the existence of a credit agreement or Mortgage Rights certificate. The bank must also prove that the implementation of AYDA falls within the corridor of bankruptcy law, does not violate the stay period, is not carried out after the execution period has expired without curatorial supervision, and does not contain elements of an act that harms the bankruptcy estate.

The principle of legal certainty requires that the phrase "as if bankruptcy had not occurred" in Article 55 (1) of the Bankruptcy and PKPU Law not be read separately. This phrase must be interpreted as a recognition of the existence of separatist rights, not as an absolute authorization to override the bankruptcy mechanism. This interpretation prevents Article 55 from directly conflicting with Articles 56–59. The right of execution remains, but its implementation must await the end of the stay period and comply with the time limit after the insolvency. This approach is more consistent with the objective of the Bankruptcy and PKPU Law, namely, to maintain a balance among separatist creditors, preferred creditors, concurrent creditors, debtors, and curators.

However, legal protection for banks must be strengthened because banks channel public funds. If collateral encumbered with Mortgage Rights cannot be executed effectively, credit risk increases and may disrupt the banking intermediation function. Arifardhani et al. (2024) emphasize that Mortgage Rights serve as a means of protection for creditors so that debt repayment can be carried out in accordance with legal provisions. Therefore, restrictions on bankruptcy should not be transformed into the elimination of rights but rather into a fair procedure for their implementation. The curator must respect the position of separatist creditors regarding the proceeds from the sale of collateral, while separatist creditors must respect the governance of the bankruptcy estate.

Decision Number 20/Pdt.Sus-Gugatan Lain-Lain-AP/2019/PN.Niaga.Jkt.Pst in conjunction with Decision Number 119/Pdt. Sus-PKPU/2018/PN.Niaga.Jkt.Pst demonstrates the juridical risks that arise when the transfer of AYDA is carried out close to the PKPU process. In such a construction, the issue does not only concern whether the bank has rights as the holder of Mortgage Rights, but also whether the debtor still had the authority to transfer the asset, whether the bank was aware of the debtor's legal condition, and whether the transaction had the potential to reduce assets that should have been available to other creditors. Accordingly, the standard of legal protection for AYDA in bankruptcy must include an element of temporal prudence: the closer the transaction is to PKPU or bankruptcy proceedings, the greater the bank's evidentiary burden to demonstrate good faith, fair value, and procedural compliance.

From the perspective of legal policy, the harmonization of the Mortgage Rights Law and the Bankruptcy and PKPU Law should be directed toward four matters. First, it must affirm that separatist rights continue to exist, but that the execution procedure in bankruptcy is subject to the Bankruptcy and PKPU Laws. Second, it must formulate the status of AYDA that has been completed before bankruptcy, is ongoing during PKPU, or is carried out after a bankruptcy decision has been rendered more clearly. Third, it must regulate the curator's obligation to provide information and coordination space to banks holding security rights so that the value of the collateral does not decline during the stay period. Fourth, it must establish valuation and documentation standards for AYDA that can prevent actio pauliana disputes. With such a formulation, legal protection would not merely be declaratory but also operational in the practice of liquidating the bankruptcy estate.

The theoretical implication of this study lies in strengthening the relationship between the theory of legal certainty and the theory of legal protection in the context of conflicting norms. Legal certainty is needed to determine which norm applies, while legal protection is required to ensure that the application of such norms does not create injustice for separatist or other creditors. The practical implication is that banks must improve their internal AYDA procedures by incorporating an examination of the PKPU or bankruptcy status as a mandatory stage before taking over the collateral. Notaries and auction officials must also ensure that deeds and auction minutes not only meet formal requirements but also do not conflict with the limitations imposed by bankruptcy laws. Curators, on the other hand, must carefully distinguish between valid AYDA and AYDA that may be properly disputed to avoid excessive asset withdrawals that undermine the certainty of separatist creditors.

This analysis shows that legal protection for creditors over collateral in bankruptcy cannot be based solely on the executory title of Mortgage Rights. Such a title is important, but it becomes less effective if not accompanied by compliance with bankruptcy procedures. The most realistic form of protection is procedure-based protection: banks obtain preferential rights over the proceeds of collateral, but they must carry out the execution within the time and in the manner determined by bankruptcy law. Thus, the principle of lex specialis derogat legi generali must be understood as an instrument of synchronization, not as a reason to eliminate property-based rights or to justify an execution that disregards the bankruptcy estate.

Model of Legal Protection for Banks over AYDA in Bankruptcy

More operationally, the model of legal protection for banks as creditors can be formulated through the pre-AYDA, AYDA implementation, and post-AYDA stages. At the pre-AYDA stage, banks must ensure that credit has genuinely reached a problematic quality and that reasonable restructuring efforts have been considered. This examination is important so that AYDA is not viewed as a shortcut to take over the object of Mortgage Rights, but rather as a credit recovery measure that remains oriented toward debt repayment. At this stage, banks must also conduct litigation and bankruptcy checks on the debtor, including whether there is a PKPU petition, other lawsuits, attachments, or indications of insolvency. Such status verification becomes a prudential standard because transactions that are formally valid under a credit agreement may still be challenged if they are carried out during a period that harms other creditors.

At the AYDA implementation stage, the main principles that must be maintained are formal validity and fairness of the value. Formal validity requires a clear legal basis for the obligation, the voluntary consent of the collateral owner if the transfer is carried out outside an auction, adequate authentic deeds, and compliance with auction procedures if the bank takes over the collateral through an auction. The fairness of value requires the use of an independent appraisal or a market-based measure that can be justified. An excessively low value may be challenged as detrimental to the bankruptcy estate, while an undocumented value weakens the bank's proof of good faith. Therefore, the AYDA must be understood as a legal act requiring a complete administrative trail, not merely a surrender agreement or power of attorney to sell.

Utama (2019) explains that a notarized banking credit agreement ensures the truth of the agreement's contents, strengthens evidentiary value, and safeguards the creditor's interests. Therefore, at the pre-AYDA stage, banks must ensure that the credit agreement, collateral binding, power of attorney to sell, and documents related to the takeover of collateral are properly prepared so that preventive protection for creditors is not merely formal but also carries evidentiary strength in the event of a bankruptcy dispute.

At the post-AYDA stage, banks remain obligated to re-liquidate the assets they have acquired. This principle distinguishes AYDA from the permanent ownership of a secured object. From the perspective of banking law, foreclosed collateral essentially serves as a temporary instrument to cover the debtor's obligations and reduce the number of non-performing loans. If the asset is not promptly liquidated, the bank faces the risks of asset depreciation, taxation issues, recording burdens, and bankruptcy disputes. Therefore, legal protection for banks must operate alongside the discipline of re-liquefying collateral. The longer an AYDA object remains under the bank's control without clear liquidation, the greater the possibility of objections from the debtor, curators, or other creditors.

In bankruptcy cases, the curator's function must not be understood as eliminating all the interests of separatist creditors. The curator has the authority to manage and liquidate the bankruptcy estate, but this authority remains limited by property-based rights attached before bankruptcy. In other words, the curator may coordinate the sale of collateral, assess the validity of the transfer, or request the surrender of the secured object after the execution period has expired. However, the curator cannot eliminate the rights of separatist creditors over the proceeds from the sale. This is where the balance of bankruptcy law lies: collateral is placed within the architecture of the bankruptcy estate for administrative and liquidation purposes, but its economic proceeds must still consider the priority of holders of security rights over property.

A recurring problem is the different ways in which preferential rights are interpreted. From the bank's perspective, preferential rights mean that collateral is the primary source for recovering receivables. From the curator's perspective, preferential rights must be positioned within the order of distribution of liquidation proceeds, considering bankruptcy costs and the rights of certain creditors granted priority by law. This tension cannot be resolved merely by declaring one party as superior. A more appropriate solution is layered proof: the bank proves the legal basis of its security right, the curator proves the legal grounds for including the AYDA object in the bankruptcy estate, and the supervisory judge assesses the proportionality of each party's action.

This construction of legal protection is also relevant to the principle of justice itself. Justice for banks does not always mean unrestricted freedom to execute collateral but rather certainty that security rights obtained lawfully will not be disregarded in bankruptcy liquidation. Justice for other creditors does not always mean that all debtor assets must be withdrawn without regard to property-based rights, but rather that no collateral transfer is carried out unfairly to reduce the bankruptcy estate. Justice for the debtor must also be considered, particularly when the value of the collateral substantially exceeds the secured obligation. In such circumstances, the remaining proceeds after the repayment of debt and legitimate costs must be returned to the bankruptcy estate or to the party entitled to them.

From the perspective of lawmaking, the ambiguity of the phrase "as if bankruptcy had not occurred" should not remain a recurring source of interpretation. This phrase can be clarified through statutory amendment or technical guidelines stating that the execution rights of separatist creditors remain recognized, but their implementation is subject to the stay period, coordination with the curator, and the time limit after insolvency. Similar guidelines are also needed for AYDA, particularly concerning the legal consequences of AYDA conducted before a PKPU petition, after a PKPU petition, during temporary PKPU, after a bankruptcy decision, and after insolvency. Without such temporal classification, court decisions tend to be made on a case-by-case basis, thereby keeping legal predictability for banks and curators low.

Based on the foregoing discussion, the ideal norm is not the absolute dominance of either the Mortgage Rights Law or the Bankruptcy and PKPU Law, but rather the functional integration of both. The Mortgage Rights Law is required to guarantee access to credit and protect security holders. The Bankruptcy and PKPU Law is needed to prevent the individual seizure of assets when a debtor can no longer fulfil obligations to multiple creditors. This integration will produce legal certainty if every stage of collateral transfer has clear standards: before bankruptcy, it must satisfy the requirements of obligation, documentation, and fair value; during bankruptcy, it must be subject to the stay period and curatorial supervision; after insolvency, it must comply with the execution time limit; and after the expiry of that time limit, it must be submitted to the bankruptcy liquidation mechanism without eliminating preferential rights over the proceeds of sale.

Another dimension that must be emphasized is the relationship between the AYDA and banking prudential principles. The prudential principle does not end when credit is granted; it continues through the stage of settling non-performing loans. A bank that accepts AYDA without examining the debtor's legal condition risks being considered imprudent, particularly when the debtor is facing a PKPU petition or has entered a state of cessation of payment. In such circumstances, legal protection cannot be granted merely because the bank holds Mortgage Rights. Protection requires proof that the bank acted properly and transparently and did not take advantage of the debtor's economically and legally vulnerable position.

The assessment of a bank's good faith must also be distinguished from the mere completeness of documents. Complete documents are important, but they are not necessarily sufficient if the substance of the transaction shows unfairness. For example, the surrender of collateral at a value far below the market price, carried out shortly before a bankruptcy decision, or without considering the interests of other creditors, may raise suspicion that AYDA was used to transfer assets beyond the reach of the bankruptcy estate. Therefore, the standard of good faith in the AYDA should include fair value, disclosure of the debtor's condition, absence of improper pressure, and compliance with the procedural sequence of securities and bankruptcy laws.

For debtors, bankruptcy does not imply the loss of all protection. The debtor loses the authority to manage the bankruptcy estate but remains entitled to a fair and transparent liquidation process. If the value of the collateral exceeds the amount of the secured obligation, the excess value must not be ignored. This is important because AYDA settlement is often understood as a practical settlement between the bank and the debtor, whereas after bankruptcy, the interests of other creditors are attached to the remaining economic value of the asset. Thus, legal protection in bankruptcy is multiparty in nature: it protects the bank as the security holder, protects other creditors as participants in the general attachment, and protects the debtor from a disproportionate settlement.

In auction practice, legal certainty also depends on coordination among banks, auction officials, notaries, curators, and supervisory judges. An auction conducted without clarity regarding bankruptcy status may give rise to subsequent disputes, whereas an auction that is delayed for too long may reduce the value of the collateral. Therefore, the 90-day stay period should be used for inventory, valuation, and communication among the parties rather than merely as a passive period that freezes the entire process. The curator must maintain the value of the collateral during the stay period, while the bank must prepare execution measures as soon as it is legally permitted.

In addition, the regulation of bankruptcy and collateral maintenance costs must be clarified. During the stay period, the object of Mortgage Rights may require security, maintenance, tax, and administrative costs. If these costs are not allocated transparently, new disputes may arise over who should bear the reduction in the collateral value. Within the framework of proportional protection, costs directly related to maintaining the value of collateral should be calculated transparently and considered in the distribution of sale proceeds without unjustifiably reducing the creditor's preferential rights.

Ultimately, the main objective of legal protection in this issue is to prevent these two extremes. The first is the dominance of separatist creditors, who may deplete bankruptcy estates through individual execution without supervision. The second is the dominance of the curator, who treats all collateral as if they were the debtor's unencumbered assets and disregards the property-based rights of creditors. Both extremes undermine the legal certainty. A more appropriate model is priority-based coordination: collateral is managed within the bankruptcy framework, but the creditor's preferential right over the proceeds of sale remains respected as long as the binding and execution meet the legal requirements.

The normative recommendation drawn from this analysis is the need for standard clauses in credit agreements and Mortgage Rights documents that anticipate PKPU and bankruptcy conditions. Such clauses must not conflict with the Bankruptcy and PKPU Law but may regulate the debtor's obligation to notify the bank of any PKPU petition, bankruptcy lawsuit, attachment, or dispute that may affect the collateral object. This notification obligation can strengthen the bank's position to act promptly, prevent risky transactions, and prepare evidence if the curator challenges the AYDA later.

In addition to contractual clauses, banks require internal standard operating procedures that distinguish ordinary non-performing loan settlements from non-performing loan settlements that intersect with bankruptcy. In ordinary non-performing loans, the bank's focus may be directed toward restructuring, Mortgage Right execution, auction, or AYDA. In non-performing loans that intersect with PKPU or bankruptcy, the bank must incorporate an analysis of the bankruptcy estate, potential actio pauliana, the curator's position and execution time limits. This distinction will reduce the risk of banks taking actions that are valid under securities law but weak under bankruptcy law.

Improvements are also needed in terms of institutional coordination. KPKNL, notaries, Land Deed Officials (PPAT), banks, and curators must share the same understanding of the status of collateral objects when there is a PKPU petition or a bankruptcy decision. Divergent understandings may result in an auction proceeding while, on the other hand, the curator considers the object part of the bankruptcy estate that may not be transferred. Certainty in coordination procedures will prevent auction cancellations, miscellaneous lawsuits, and decreases in collateral value caused by unproductive delays.

Thus, the harmonization agenda is insufficient if it is solely based on changes to written norms; it must also be directed toward the formation of consistent institutional practices. Sound legal protection must be predictable from the credit extension stage to the bankruptcy liquidation stage. If banks, debtors, curators, and auction officials understand the limits of their respective authorities, the AYDA can function as an instrument of credit recovery without sacrificing the principle of general attachment in bankruptcy.

CONCLUSION

Based on this discussion, the legal positions of debtors and creditors in bankruptcy cases change once a bankruptcy decision is rendered. The debtor loses the authority to manage and control assets that become part of the bankruptcy estate, while creditors holding Mortgage Rights remain positioned as separatist creditors with preferential and executorial rights. However, the exercise of these rights is not absolute because it is subject to Articles 56 to 59 of the Bankruptcy and PKPU Law, particularly the 90-day stay period and the two-month execution period after insolvency. Legal protection for banks in the AYDA settlement is effective only when the takeover of collateral is carried out lawfully, voluntarily, authentically documented, based on fair value, and not contrary to the interests of the bankruptcy estate. In the conflict of norms between the Mortgage Rights Law and the Bankruptcy and PKPU Law, the principle of lex specialis derogat legi generali places the Bankruptcy and PKPU Law as the regime governing execution when the debtor has been declared bankrupt, while the Mortgage Rights Law remains the legal basis for creating security rights and repayment priority. Therefore, normative harmonization should be directed toward clarifying the status of AYDA before and after bankruptcy, strengthening coordination between curators and separatist creditors, and establishing documentation and collateral valuation standards so that legal certainty and creditor protection can operate proportionally.

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