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CREDITOR OF FIDUCIARY FACING BANKRUPTCY, WHAT SHOULD THEY DO?

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Abstract

This study investigates the legal framework surrounding fiduciary guarantees in Indonesia, elucidates the position of secured creditors when debtors face bankruptcy, and scrutinizes the procedural regulations for enforcing fiduciary liens in the aftermath of bankruptcy proceedings. The research utilizes a normative legal methodology and an analytical-descriptive approach, referencing foundational doctrines in the Civil Code and the provisions of Law No. 37 of 2004 regarding the Suspension of Debt Payment Obligations and Bankruptcy. Data were gathered from primary legal texts, particularly Law No. 42 of 1999 on Fiduciary Guarantees. They were further supported by secondary literature in legal scholarship and relevant non-legal sources that provide insights into practical enforcement trends. The examination starts by delineating the legal framework of fiduciary security: identifying qualifying collateral (including movable and specific immovable assets), specifying registration and perfection criteria, and differentiating fiduciary liens from traditional pledges and mortgages. The focus then shifts to the point of insolvency, examining the classification of fiduciary creditors within the bankruptcy hierarchy—distinguished as preferred or concurrent claimants—and the rights they maintain to identify and reclaim collateral beyond the general estate. The study delineates the procedural steps required by Law No. 37/2004 for post-bankruptcy enforcement, encompassing notice provisions, valuation, auction sale, and distribution of proceeds. The findings indicate that Indonesian law establishes a structured framework for fiduciary guarantees; however, there are notable tensions between the insolvency moratorium and the secured creditor's entitlement to timely enforcement. Furthermore, instances of priority conflicts can emerge in practice, highlighting the necessity for more explicit guidelines regarding the ranking of creditor claims. This study integrates doctrinal theory, statutory text, and procedural detail to provide a thorough reference for practitioners and policymakers. It proposes specific reforms to enhance predictability and boost creditor confidence in Indonesia's secured lending framework.

***Keywords**: Bankruptcies; Concurrent Creditors; Fiduciary Guarantees; Preferred Creditors.*

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1. Introduction

In principle, any person with legal and financial capacity can provide loans of funds or money to other parties under a debt-to-debt agreement. The agreement involves two parties: the creditor, as the person providing the loan, and the debtor, as the person receiving the loan. In practice, the form and type of loans are very diverse and have grown rapidly, especially with the advancement of digital technology. Today, many online lending applications (online lending platforms) allow debtors or creditors to access online lending services for twenty-four hours without stopping, using digital devices such as smartphones.

This differs from banking institutions' credit or financing facilities, where the loan application process generally requires debtors to come directly to the targeted bank office and meet specific administrative and procedural requirements. One of the most striking aspects distinguishing

online loan services from bank financing is the provision of collateral. In online loan services, the provisions concerning collateral are often not strictly regulated or even abolished altogether. In contrast, in banking practice, lending is almost always accompanied by collateral as a form of protection for creditors for the risk of default.[1]

Conventional debt-to-debt agreements often include collateral contracts to provide legal certainty for creditors. One commonly used form of insurance is fiduciary insurance. This guarantee is regulated in Law Number 42 of 1999 concerning Fiduciary Guarantee (UUJF). Based on Article 1, point 1 of the UUJF, a fiduciary is the transfer of ownership rights for an object based on a belief that the object whose ownership rights are transferred remains in the possession of the object owner. Meanwhile, Article 1 point 2 of the UUJF explains that fiduciary guarantees are the right to guarantee movable property, both tangible and intangible, and immovable objects that cannot be burdened with the liability as defined in the Law on Liability, which remains under the debtor's control as the owner of the property, giving the fiduciary beneficiary the priority over other creditors.

Fiduciary guarantees benefit creditors because they prioritize payment in the event of the debtor's performance or failure to pay. Items that can be used as fiduciary collateral include tangible moving objects such as vehicles, machines, or merchandise supplies, or intangible objects such as business receivables. However, fiducials cannot be imposed on objects regulated under other special guarantee systems, such as mortgages (for ships), liabilities (for land and buildings), or mortgages. The essence of the fiduciary concept is that there is a trust between the creditor and the debtor, in which the property rights of the object are transferred to the creditor. Still, physical control remains in the debtor's hands.[2] Thus, freely borrowing funds between parties requires legal protection of each party's rights and obligations through written agreements and guarantee mechanisms, especially for significant loan amounts. Using fiduciary guarantees, as a form of legal protection, provides certainty and security for creditors while also providing freedom to debtors in managing guaranteed objects.

Filing for a debtor's bankruptcy is an alternative for creditors to settle debts when the debtor cannot repay overdue obligations. A court-declared bankruptcy affects creditors, as all debtor assets are seized, in line with Article 21 of Law No. 37/2004 on Bankruptcy. This law states that bankruptcy includes all debtor property at the time of declaration and acquired during the bankruptcy. The declaration impacts both debtors and creditors, complicating debt repayment. Article 55 (1) of the Bankruptcy Act does not fully protect creditors, as secured movable assets may no longer be in the debtor's possession, causing fiduciary creditors to incur losses.[3]

Based on the above description, the author is interested in conducting research in the form of an article entitled "Creditor of Fiduciary Facing Bankruptcy, What Should They Do?" with the following problem formulation: 1. How is the Fiduciary Guarantee regulated in Indonesian law? 2. What is the creditor's position as the beneficiary of the fiduciary guarantee against the debtor's declared bankruptcy? 3. What is the legal arrangement for executing fiduciary guarantees after the debtor is declared bankrupt?

2. Method

This study, titled "Creditor of Fiduciary Facing Bankruptcy: What Should They Do?" utilizes a normative legal methodology to examine the treatment of fiduciary security interests under Indonesian law in the context of debtor insolvency. The research employs a descriptive approach to systematically examine the legal framework governing fiduciary guarantees, the changing status of secured creditors following their debtors' bankruptcy declaration, and the procedures for enforcing those guarantees in the wake of insolvency. The data collection involved a

[1] Ubaidillah Kamal and Ayup Suran Ningsih, "The Urgency of Revising The Finance Services Authority Regulation Number 77/POJK. 01/2016 As an Umbrella Law in Practicing Peer to Peer Lending Based on Financial Technology in Indonesia," *Pandecta: Research Law Journal* 16, no. 1 (2021).

[2] Tim Anotasi Mahmakah Konstitusi, "Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *MKRI.Id*, 2018.

[3] Munir Fuady and Hukum Pailit, "Dalam Teori Dan Praktek," *Cet II,(Bandung: Citra Aditya Bakti, 2002)*, 1998.

comprehensive examination of pertinent legislation, focusing specifically on the provisions of the Civil Code related to accessory security rights and Law No. 37 of 2004, which addresses the Suspension of Debt Payment Obligations (PKPU) and Bankruptcy. The primary sources comprised the original text of Law No. 42 of 1999 concerning Fiduciary Guarantees, the specific articles within the Civil Code addressing pledge and mortgage, and the implementing regulations that outline the protocols for registration and enforcement. The secondary data included scholarly commentary in legal journals, textbooks addressing Indonesian secured transactions, and comparative analyses of bankruptcy regimes across different jurisdictions. In instances deemed appropriate, non-legal materials—including industry reports on credit markets and practice notes from bankruptcy trustees—were utilized to provide context for theoretical findings about practical applications.

The study's normative orientation indicates a focus on the prescriptions of the law rather than on the empirical measurement of outcomes. The descriptive lens focuses on mapping the statutory landscape: identifying who qualifies as a fiduciary creditor, clarifying the distinctions between fiduciary security interests and traditional mortgages or pledges, and outlining the formal requirements for the valid registration and perfection of those interests. Next, it examines the moment of bankruptcy declaration, inquiring into the treatment of secured interests within the assembly of the debtor's estate, the rights retained by fiduciary creditors, and the conditions under which they may pursue collateral without the encumbrance of general creditors' claims. The research meticulously examines the post-bankruptcy enforcement regime, outlining the procedural steps—notice, valuation, sale, and distribution of proceeds—that fiduciary creditors must adhere to to secure their interests while complying with insolvency law.

The inquiry is grounded in classical Civil Law doctrines related to accessory security, alongside contemporary principles of secured transactions that highlight the importance of debtor access to credit and the predictability for creditors. The study examines the relationship between these theories and the explicit statutory text of Law No. 37/2004, highlighting areas of agreement, such as the secured creditor's right of removal and sale, as well as points of conflict, particularly regarding the insolvency moratorium's potential to hinder immediate enforcement and the priority disputes that may occur among various classes of creditors. The study examines the overarching policy objectives of Indonesian insolvency law, specifically the equilibrium between debtor rehabilitation and creditor recovery. It assesses whether the existing fiduciary framework supports these aims or necessitates reform.

3. Results and Discussion

3.1. Regulation of Fiduciary Guarantee in Indonesian Law

A fiduciary guarantee institution has been legally recognized since Law No. 42 of 1999 on Fiduciary Guarantees was enacted. Before this, it was known by various names— "*Fiducia cum creditore*" in Roman times, "zekerheids-eigendom" (property rights as collateral) by Asser Van Oven, "*bezitloos zekerheidsrecht*" (guarantee rights of possession) by Blom, "*Verruimd Pandbegrip*" (extended pawn sense) by Kahrel, and "*eigendoms overdracht tot zekergeid*" (submission of property rights as collateral) by Veenhooven.[4] Commonly called "fidusia" in Indonesia, it is also referred to as "*trust transfer of property*," "*Fiduciare Eigendoms Overdracht (FEO)*" in Dutch, and "*Fiduciary Transfer of Ownership*" in English.[5]

Article 2 of Law No. 42 of 1999 on Fiduciary Guarantees delineates the scope and boundaries of the statute's applicability. It specifies that the law applies to any contractual arrangement involving an object encumbered by a fiduciary guarantee, irrespective of whether ownership of that object is transferred to the creditor. This expansive definition indicates the legislature's objective to provide secured creditors with an efficient method for recovering

[4] Rachmadi Usman, "Makna Pengalihan Hak Kepemilikan Benda Objek Jaminan Fidusia Atas Dasar Kepercayaan," *Jurnal Hukum Ius Quia Iustum* 28, no. 1 (2021), https://doi.org/10.20885/iustum.vol28.iss1.art7.

[5] Cok Istri Dian Laksmi Dewi, "Pengikatan Jaminan Kebendaan Dengan Fidusia," *Jurnal Yustitia* 13, no. 1 (2019).

collateral while allowing the debtor to retain possession and use of the pledged asset. Article 3 of the same law specifies particular objects not included within its parameters. Firstly, it addresses liabilities associated with land and buildings when other legislation requires formal collateral registration. However, it allows for an exception where buildings on land owned by third parties, which cannot be encumbered under Law No. 4 of 1996 on Mortgages, may be used as objects of fiduciary insurance. Secondly, mortgages on ships of twenty gross tons or more are still subject to maritime mortgage regimes. Thirdly, security interests in aircraft remain under the purview of aviation legislation. Lastly, pawn transactions are explicitly excluded, maintaining the distinct pawn framework established by pawnshop regulations. The law delineates these exceptions to maintain the integrity of specialized regimes, each designed to address the distinct characteristics and risks associated with real property, maritime vessels, aircraft, and pawned goods. This approach effectively mitigates regulatory overlap and potential conflicts of law. [6]

With the implementation of Law No. 42/1999, the definition of "objects" eligible for fiduciary guarantees has considerably broadened, moving beyond the previously restricted scope of movable chattels associated with earlier security interests. The law's authors have distinctly categorized these objects into two main groups: (a) movable assets, which include both tangible items—such as industrial machinery, commercial inventory, and motor vehicles—and intangible assets—such as machinery leases, intellectual property rights, receivables, debt instruments, and shares in corporate entities; and (b) non-movable objects that are not subject to encumbrance under the traditional mortgage statute, particularly buildings situated on leased or otherwise non-freehold land. This divided definition highlights the law's twofold objective: to provide businesses and individuals with enhanced access to credit by allowing a broader array of assets to secure financing and to unify registration, priority, and enforcement processes under one legislative framework. A creditor can establish a security interest in factory equipment or software licenses by registering at the Fiduciary Registry at the District Court, which secures priority over later secured parties and facilitates enforcement. Likewise, a developer with a long-term lease can use a constructed building as collateral, even if traditional real-estate law prohibits mortgaging it, thereby accessing capital without converting leasehold interests into freehold estates.

Law No. 42/1999 promotes transparency and legal certainty by aligning procedural requirements, including the necessary notarized deed, verified proof of debtor and asset identities, and prompt registry filing. Additionally, its exclusion clauses allow for the continued application of specialized regimes when their substantive rules more effectively address the specific characteristics of land, maritime, and aviation collateral or pawn agreements. This legislative framework effectively addresses the need to expand secured lending options while ensuring that regulatory silos remain intact for sectors where specialized security instruments have historically played a crucial role in promoting economic stability and commercial predictability.

Bankruptcy under Law No. 4/1998 often sparked controversy at the Commercial Court, Cassation, and Supreme Court levels due to differing interpretations of debt. The law lacks a definition of debt, creating practical issues as parties interpret it differently, resulting in broad, narrow views that cause legal uncertainty.[7] Law No. 4/1998 also fails to define debtors, creditors, or the distinctions between preferred, separatist, and concurrent creditors. Additionally, it does not clarify when debts are due and collectible, raising questions about whether collectible but not yet due debts can justify bankruptcy, particularly in banking credit agreements. A due debt arises when the credit agreement period ends, allowing creditors to collect, though defaults may enable earlier billing.

The Supreme Court argued that laws should provide protection guarantees for the fulfilment of workers' rights, as these rights have been guaranteed in the 1945 Constitution, and that the socioeconomic position of workers is weaker than that of entrepreneurs. A worker's wages should

[6] Lydia Kurnia Putri Rosari, Imam Nur Koeswahyono, and Diah Aju Wisnuwardhani, "Implikasi Yuridis Parate Eksekusi Obyek Hak Tanggungan," *Jurnal Cakrawala Hukum* 13, no. 1 (2022), https://doi.org/10.26905/idjch.v13i1.5189.

[7] William W. Bratton, "Corporate Debt Relationships: Legal Theory in a Time of Restructuring," *Duke Law Journal* 1989, no. 1 (1989), https://doi.org/10.2307/1372588.

be paid before his sweat dries.[8] Liabilities to the state are placed upon the payment of workers' salaries. The state still had other sources of income beyond bankruptcy, while workers relied on wages as the only source to sustain their lives and families. The Supreme Court emphasized that workers' salaries should precede payment when the company is declared bankrupt.[9]

The Supreme Court ruling positively impacted the fact that the payment of state bills and separatist creditors was no longer a top priority when workers submitted wage bills. The Constitutional Court determined that workers' wages were paid ahead of all other bills. Wage positions beat state bills and separatist creditors. From the above explanation, it can be concluded that in Supreme Court Decision Number 18/PUU-VI/2008, if bankruptcy occurs in the company, then the first obligation is the bill to the state, while the wages of workers and other creditors are finalized after the bill to the state is met.[10] Furthermore, in the Supreme Court Decision Number 67/PUU-XI/2013, it can be concluded that if a company experiences bankruptcy, then the obligation that takes precedence is workers' wages, while other creditors and bills to the state are met after the needs of workers/labour are met.[11]

3.2. Creditors' Position as Beneficiaries of Fiduciary Securities against Debtor Declared to Be Insured

In general, creditors have the same position and are entitled to the results of bankruptcy executions following the size of their respective bills (*pari passu pro rata parte*). Based on the type of debt repayment from the debtor, creditors may be categorized as follows:[12]

3.2.1. Preferred Creditors (Unique or Privileged) Consist of:

First: Preferred creditors under the Law, namely creditors under the Law, are given higher priority than other creditors based solely on the nature of receivables stipulated in Article 1139 and Article 1149 of the Civil Code. *Second;* Separatist (secured creditors), which can sell their collateral as if there were no bankruptcy, means that separatist creditors can still exercise their execution rights even though the debtor is declared bankrupt.[13]

In the context of preferred creditors, Jerry Hoff categorizes them into three categories: 1) Creditors with statutory priority rights, 2) Creditors with priority rights outside the provisions of the law, and 3) Creditors related to the inherited property (estate creditors).[14]

Creditors holding collateral rights, called preferred creditors, have privileges and positions as separate creditors. The difference between the rights and the positions of creditors and the receivables guaranteed by the entity's rights is that the rights are preferred because the law classifies them as creditors whose payments take precedence. Meanwhile, his position as a separatist creditor is because he has a right to separate from other preferred creditors; his receivables are guaranteed with a right of substance. It is called a separatist because the creditor's position is separated from the other creditors in that he can sell his collateral, and his

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8 William E. Forbath, "Workers' Rights and the Distributive Constitution," *Dissent* 59, no. 2 (2012), https://doi.org/10.1353/dss.2012.0030.

9 Erwin Chemerinsky, "Constitutional Law : Principles and Policies," *Aspen Student Treatise Series*, 2015.

10 Ayup Suran Ningsih, "The Legal Protection For Debtors In The Execution Of Mortgage At The Semarang State Assets And Auction Service Office," *Jurisdictie: Jurnal Hukum Dan Syariah* 12, no. 1 (2021).

11 Kurnia Toha and Sonyendah Retnaningsih, "Legal Policy Granting Status of Fresh Start to the Individual Bankrupt Debtor in Developing the Bankruptcy Law in Indonesia," *Academic Journal of Interdisciplinary Studies* 9, no. 2 (2020), https://doi.org/10.36941/ajis-2020-0033.

12 Binti Ida Umaya, "Analisis Terhadap Putusan Mahkamah Konstitusi Nomor 18/PUU-VI/2008 Dan Putusan Nomor 67/PUU-XI/2013 Atas Kedudukan Pekerja Dalam Kepailitan," *Universitas Nusantara PGRI Kediri* 01 (2017).

13 Tris Sadini Prasatinah Usanti. Bintang aulia Hutama, "Perlindungan Hukum Pemegang Jaminan Kebendaan Pasca Putusan Mahkamah Konstitusi No 67/ PUU-XI/ 2013," *Jurnal Hukum Bisnis* II, no. April (2018).

14 Royke A. Taroreh, "Hak Kreditor Separatis Dalam Mengeksekusi Benda Jaminan Debitor Pailit," *Fakultas Hukum Unsrat* II, no. 2 (2014).

proceeds are not mixed with other bankruptcies.[15] Due to the nature of his right, which is protected preferentially, the creditor of this right holder may execute his right as if there were no bankruptcy because it was considered "separatist" (standalone).

3.2.2. Concurrent Creditor (Unsecured Creditor)

It is a creditor who does not fall into the separatist or preferred creditors category. Their payment of receivables is taken from the rest of the proceeds from the sale or auction of bankruptcy property after the separate and preferred creditors' share is taken. The rest of the proceeds from the sale of the bankruptcy estate are divided according to the size of the receivables of each concurrency creditor.[16] Article 2, paragraph 1 of the Bankruptcy Law does not distinguish the types of creditors who can apply for bankruptcy, including separatist creditors. Creditors with collateral rights do not need to apply for bankruptcy because they are already secured with collateral goods that are burdened with collateral rights. Based on Article 1131 of the Civil Code, all debtors' wealth, whether moving or not moving, both existing and future, is guaranteed for all bonds made by debtors with their creditors.[17] This stipulation explains that if the debtor fails to fulfil his debt obligations, the proceeds from the sale of all the debtor's property, without exception, will be used to pay off the debt.

The principle in force in the securities law states that creditors cannot ask for a pledge to have secured objects for debt repayment. This provision prevents injustice if the creditor has a collateral object of greater value than the debtor's. Therefore, the collateral must be sold, and the creditor has the right to receive the money from the sale to repay their debt. If there is an excess of the proceeds from the sale, then the excess must be returned to the debtor.[18] Article 1131 of the Civil Code protects creditors. According to Article 1132 of the Civil Code, the debtor's property is a joint guarantee for all creditors. Suppose the debtor fails to pay off the debt. In that case, the proceeds from the sale of the debtor's property will be distributed proportionally (pari passu) according to the size of each creditor's bill unless there is a valid reason to prioritize a particular creditor.

In the Code of Civil Procedure, two types of preferential rights give the holder the right to receive repayment of debtors' debts through the auction of collateral goods preferentially. These rights are: a. Mortgages to moving tangible and intangible objects; b. Hypotics over immovable objects other than soil, both tangible and intangible.[19] According to Article 1134(2) of the Civil Code, the right to guarantee privileges ranks higher unless stated otherwise by law. Privileges exceeding collateral rights include auction costs ordered by the court, which are paid from the sale proceeds before other creditors, including collateral holders. Creditors without special privileges are concurrent creditors holding equal standing with others, including banks. Creditor classification in bankruptcy follows Articles 1131–1138 of the Civil Code and Law No. 37/2004 on Bankruptcy and PKPU.

Under the foregoing statutory framework, creditors fall into five distinct categories. First are those whose claims rank above any security interest in property—typically tax authorities—whose priority derives from Article 21 of the General Tax Provisions (KUP) in conjunction with Article 1137 of the Civil Code. Second are the “separatist” or secured creditors, whose rights attach directly to specific assets; under Article 1134(2) of the Civil Code, these include holders of

[15] Rizal Syah Nyaman and Cokorda Istri Dian Laksmi Dewi, “Prosedur Hukum Permohonan Pailit Dalam Hukum Kepailitan Di Indonesia,” *Jurnal Hukum Saraswati (JHS)* 5, no. 2 (2023).

[16] Fratiwi and Rafiqa Sari, “Dampak Kepailitan Bagi Kreditur Konkuren Di Indonesia,” *Bullet: Jurnal Multidisiplin Ilmu* 2, no. 3 (2023).

[17] Afilia Dinda Dhiya Ulhaq, “The Position of Creditors of Individual Collateral Holders In Insolvency Law,” *YURISDIKSI : Jurnal Wacana Hukum Dan Sains* 19, no. 1 (2023), https://doi.org/10.55173/yurisdiksi.v19i1.173.

[18] Budi Supriyatno et al., “Reconstruction of Legal Protection of Debtors in the Execution of Mortgage Guarantee Object Based on the Value of Pancasila Justice,” *Scholars International Journal of Law, Crime and Justice* 4, no. 1 (2021), https://doi.org/10.36348/sijlcj.2021.v04i01.002.

[19] Faishal Fatahillah, “Perbandingan Konsep Hukum Kepailitan Amerika (Chapter 11) Dan Hukum Kepailitan Indonesia,” *Jurnal USM Law Review* 6, no. 3 (2023), https://doi.org/10.26623/julr.v6i3.7906.

pledges, fiduciary liens, mortgages, and ship mortgages. Third are claims arising from bankruptcy administration—namely, bankruptcy costs, curators' fees, and employees' wages incurred both before and after the declaration of bankruptcy—along with post-bankruptcy building lease obligations, as set out in Articles 39(2) and 38(2) of Law No. 37/2004 on Bankruptcy and Suspension of Debt Payment Obligations. Fourth come the privileged or preferred creditors: special preferred creditors under Article 1139 of the Civil Code, whose claims enjoy statutory priority over general preferred creditors as defined in Article 1149. Finally, any remaining creditors—those whose claims are neither secured by specific assets nor accorded preferred status—are classified as concurrent creditors, governed by Articles 1131 and 1132 of the Civil Code, and share ratably in the debtor's residual estate. Together, these five classes establish a clear order of precedence designed to balance the interests of the state, secured lenders, administrative claimants, and general creditors in both voluntary enforcement and insolvency proceedings. [20,21]

Of the five creditor groups mentioned above, based on Article 1134 paragraph 2 in conjunction with Article 1137 of the Civil Code and Article 21 of the KUP Law, creditors with tax receivables have higher positions than non-tax creditors.[22] However, if a separatist creditor executes its object of guarantee under Article 55 paragraph (1) of the Bankruptcy Act, then the position of the tax bill on the separatist creditor becomes lost. Article 21, paragraph 3 of Act No. 3 28/2008 states that "*the right of precedence to tax exceeds all other precedence rights except against*": a) Costs of a case solely attributable to a penalty for auctioning off a movable and/or immovable item; b) Expenses spent saving the goods and/or; c) Case costs are solely attributable to the auction and settlement of an inheritance.[23]

During the suspension period, all lawsuits for collecting receivables could not be filed in court, and creditors and third parties were prohibited from executing or applying to confiscate collateral objects. Creditors with mortgage, fiduciary guarantees, liabilities, mortgages, or collateral rights on other objects can still manage their rights as if bankruptcy did not occur, following Article 55 paragraph (1) of Law No. 1, 37/2004.[24]

3.3. Legal Regulations Against the Execution of Fiduciary Guarantee After the Debtor has been Deferred to be Insured

According to Law No. 37 of 2004 concerning the KPKPU, it is stated that the bankruptcy decision automatically causes the bankrupt to lose all civil rights to control and manage the property that has been included in the bankruptcy model. The freezing of civil liberties is regulated by Article 22 of Law Number 37 of 2004 KPKPU, valid since the decision to declare bankruptcy was made. This provision applies to married couples and bankrupt debtors who marry in a community of property. In principle, as a consequence of the provisions of Article 22, any bond between a debtor declared bankrupt and a third party after the declaration of bankruptcy cannot be paid out of the bankruptcy estate unless the bond provides benefits to the property. Therefore, lawsuits aimed at obtaining the fulfillment of bankruptcy bonds, while in bankruptcy, can only be

[20] Aloysius Harry Mukti and Aldino Putra Aji, "Relevance Of The Implementation Of Law No . 37 Of 2004 : Concerning Bankruptcy And Postponement Of Debt Payment Obligations In Accounting Perspective," *Journal of Legal Studies and Research* 9, no. 1 (2023).

[21] Thomas H. Jackson, "Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors' Bargain," *The Yale Law Journal* 91, no. 5 (1982), https://doi.org/10.2307/796070.

[22] Ayumi Claudia, Padma D. Liman, and Aulia Rifai, "Responsibilities of Individual Guarantor (Personal Guarantee) Declared Bankrupt," *ARRUS Journal of Social Sciences and Humanities* 3, no. 3 (2023), https://doi.org/10.35877/soshum1826.

[23] Gede Nira Wicitra Yudha, I Nyoman Putu Budiartha, and I Made Minggu Widyantara, "Akibat Hukum Penolakan Rencana Perdamaian Debitur Oleh Kreditur Dalam Proses Penundaan Kewajiban Pembayaran Utang," *Jurnal Konstruksi Hukum* 3, no. 1 (2022), https://doi.org/10.22225/jkh.3.1.4447.196-200.

[24] Dulyono, Muhammad Zilal Hamzah et al., "Deregulation Policy of Bankruptcy Regulation in Effort To Promote The Indonesian Ease of Doing Business," *International Journal of Academic Research in Business and Social Sciences* 13, no. 8 (2023), https://doi.org/10.6007/ijarbss/v13-i8/18029.

filed as a report for matching.[25] If the match is not approved, the party who refuses the match legally takes over the bankrupt debtor's position in the ongoing lawsuit. Although the lawsuit only results in a game, it is sufficient to serve as evidence to prevent the expiration of the rights in the lawsuit.

Since the bankruptcy decision was pronounced, the debtor has lost the right to take care of his property (standby persona included), as stipulated in Article 12 of Law No. 1, 37/2004 on KPKPU. The management and control of property turned to curators, who were considered to have independence and bankruptcy management capabilities that had been agreed upon by all parties. If no curator is specifically appointed, the Court will appoint the BHP (Legal Treasure Hall) to act as curator.[26] A bankrupt debtor can still perform legal acts related to property, such as making agreements, provided that such acts benefit the bankrupt boedel. However, if the act harms the boedel, the loss does not bind the boedel.

Act No. 37/2004 on KPKPU, the role of curators has become more significant in managing and settling bankruptcy assets, making curators a new feature compared to the Faitlissements Verordening. With the appointment of a curator through a Court decision, the debtor is under the supervision of the curator, so it no longer has the legal capacity to take action against its property. As a result, debtors cannot sell, grant, or guarantee their property, as all of their assets are already under public foreclosure. According to the provisions of Article 1132 of the Civil Code, the debtor's property is used as a joint guarantee for all parties who provide loans to debtors.[27] This means that if the debtor fails to pay off the debt, the proceeds from the sale of his property will be proportionally divided (pari passu) based on the size of each creditor's receivables unless there is a valid reason to prioritize payment to a given creditor over the others.

The privilege to take precedence is given to creditors who have the right to guarantee certain assets belonging to debtors, both movable and immovable assets. This protection is governed by Article 1132 of the Civil Code, which allows a creditor to get priority payments over other creditors. Obtaining this priority right is described in Article 1133 of the Civil Code, which states that the right to take precedence between creditors arises from Privileges, Gadai, and Hypothec. Based on Article 1134 of the Civil Code, a privilege is a right granted by law to a creditor so that the creditor's position is higher than that of other creditors, based only on the nature of the creditor's receivables.

According to Article 1134 Paragraph (2) of the Criminal Code, the position of the Right to Guarantee is higher than that of the Privilege unless otherwise regulated by the law. A higher privilege than the right to bail is, for example, the cost of cases arising from the punishment for auctioning, moving, or immovable objects. This fee is paid from the proceeds of the item's sale before it is paid to other creditors, including the creditor with the right to collateral security. From this explanation, it is found that there are two types of creditors.[28] *First*, creditors take precedence over other creditors to receive repayment from the proceeds from the sale of the debtor's property on the condition that the property has been burdened with certain collateral rights for the creditor's interests. Creditors of this type are called Preferred Creditors. The English term for Preferred Creditors is Secured Creditor.

Second are those who share proportionally, or passionately, based on the size of each of their receivables, from the proceeds from the sale of unsecured debtors' property. These creditors are known as concurrency creditors. In English, they are called Unsecured Creditors. According to Article 1 and Article 2 of the Bankruptcy Act No. 1 37/2004, a creditor is a party with receivables

[25] Nia Okta Riani, Agus Saiful Abib, and Dewi Tuti Muryati, "Akibat Hukum Kepailitan Terhadap Harta Warisan Ditinjau Dari Undang-Undang No.37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Semarang Law Review (SLR)* 4, no. 1 (2023), https://doi.org/10.26623/slr.v4i1.6672.

[26] Herlina Basri, Evita Israhadi, and Riswadi Riswadi, "Legal Protection of Creditors in Implementing Bankruptcy Redemption," 2023, https://doi.org/10.4108/eai.6-5-2023.2333453.

[27] Frank H. Easterbrook, "Criminal Procedure as a Market System," *The Journal of Legal Studies* 12, no. 2 (1983), https://doi.org/10.1086/467725.

[28] Christopher F. Symes, *Statutory Priorities in Corporate Insolvency Law: An Analysis of Preferred Creditor Status*, *Statutory Priorities in Corporate Insolvency Law: An Analysis of Preferred Creditor Status*, 2016, https://doi.org/10.4324/9781315242415.

under an agreement or law that may be prosecuted in a court of law. Article 1, 8 of the Fiduciary Trust Act states, "*A creditor is a party who has receivables under an agreement or law*." Creditors that receive priority are called Preferred Creditors, while those that do not are called nonpriority creditors.[29]

Based on the above explanation, the Author may conclude that although verifying or matching receivables takes a long time and insolvency has yet to occur, creditors with fiduciary or other separatist creditors may begin to uphold their rights. This opinion states that the right of execution for separatist creditors or the end of the suspension period for them will only appear after the period of insolvency, as stipulated in the Explanation of Article 56 (1) of the Bankruptcy Act.

Under bankruptcy law, a security interest confers a distinct, in-rem status upon the creditor who holds it, ensuring that the encumbered property remains outside the debtor's bankruptcy estate if insolvency is declared. The secured creditor enjoys the exclusive right to enforce the security through a judicial order or by statutory authority to sell the collateral and apply the proceeds to satisfy the outstanding debt. This priority position guarantees that secured claims are paid before the claims of unsecured creditors. As an accessory right, the security interest derives from a principal obligation: once the underlying debt is extinguished, the security interest automatically lapses. Moreover, because the security interest is connected to the collateral itself rather than the person of the debtor, it "runs with the asset," binding subsequent owners and preserving the creditor's enforcement rights despite any transfer of title. The Civil Code's Article 528 codifies these principles, defining the nature and effects of the security interest and underscoring its role in protecting both debtor and creditor interests within the insolvency framework.

According to Article 185, paragraph (1) of the Bankruptcy and Pending Debt Payment Obligations Act (PKPU Law), all bankruptcy assets must be sold through a public auction mechanism following the applicable regulations. The auction preparation process for the execution of bankruptcy property at the KPKNL involves several essential steps, such as auction application, location and time determination, auction condition determination, auction announcement, request for a Land Statement (SKT) from the local Land Office, and the deposit of auction security money.

During the initial preparation phase of an auction organized by the KPKNL, a sequence of meticulously planned steps is essential to guarantee adherence to legal standards and maintain procedural clarity. The process begins when the curator, acting as the auction's applicant or the de facto seller, formally presents a written request for the auction to the Head of KPKNL. This request requires a thorough collection of documents stipulated by Finance Minister Regulation No. 213/PMK.06/2020, which outlines explicit guidelines for executing public auctions. The documents generally encompass proof of the curator's legal authority to commence the auction, including a letter of appointment or court order, precise identification of the assets being auctioned, and relevant court rulings or administrative decisions supporting the property's right to sell.

Following the curator's request, the Head of KPKNL assigns the responsibility of document review to the appointed Auction Officials. The officials are tasked with thoroughly reviewing the submission to ensure it is complete and confirming the formal legality of the subject, the party initiating the auction, and the object, which is the asset to be sold. At this stage, the officials will verify each item against the criteria established in the regulation: proof of ownership or enforceable right to auction, valid tax clearance certificates, and any encumbrance certificates, among others, if the initial dossier is found to be lacking—whether due to a missing signature, an expired certification, or the absence of a crucial court order—officials will formally request the curator to address the identified deficiencies. The ongoing exchange may persist until the curator submits all pending materials or until the officials request clarifications from relevant entities like the local land registry or corporate affairs office.

[29] Rahayu Hartini, "Legal Status Of Bank Guarantee On Behalf Of Third Parties In Bankruptcy Perspective," *Yustisia Jurnal Hukum* 6, no. 1 (2017), https://doi.org/10.20961/yustisia.v6i1.11530.

After the dossier is complete and all legal requirements are fulfilled, the Head of KPKNL will finalize the auction schedule. This scheduling decision involves identifying the exact date, time, and location for the auction event while considering public holidays, the accessibility of auction facilities, and possible conflicts with other planned sales. The selected timeline should provide adequate lead time for public announcement—typically at least fourteen days—to give potential bidders sufficient preparation opportunities. Upon establishing the date, the Head of KPKNL formally communicates with the curator through a memorandum detailing the auction timetable and outlining additional procedural necessities, including the format for notices and the collection of advance security deposits.

Once the schedule is established, the curator takes on the duty of formally announcing the forthcoming auction to the public. This announcement is generally communicated via various channels, including official government gazettes, recognized newspapers, the KPKNL website, and, when applicable, physical postings in the area where the property is situated. The announcement should precisely describe the asset, which may include real estate, machinery, or other movable goods. It must specify the date and location of the auction and detail the terms of sale, including reserve prices or minimum bid increments. At this juncture, clarity is essential: a comprehensive and explicit announcement draws in legitimate bidders and bolsters public trust in the integrity of the auction process.

Alongside the public announcement, the curator must inform the debtor—whose assets are subject to auction—about the forthcoming sale. Notification may be executed through registered mail, courier delivery accompanied by proof of receipt, or, when required by law, through personal service. This step serves a critical function, as it is mandated by law to uphold due process. It offers the debtor a conclusive chance to address outstanding debts, explore alternative solutions, or present objections within a judicial context. By formally notifying the debtor, the curator ensures adherence to procedural justice principles while reducing the likelihood of post-auction litigation that may challenge the sale or postpone the transfer of title.

In cases where the auctioned asset consists of immovable property, such as land or buildings, the Head of KPKNL needs to secure an SKT from the local Land Office. The SKT functions as a definitive certification regarding the legal status of the property, encompassing its boundaries, any current liens, and the rightful ownership. Securing the SKT typically requires collaboration with the National Land Agency and maintaining current records. The absence of this document will halt the auction process, as it is essential for buyers to have confidence that the property they wish to acquire is devoid of any undisclosed encumbrances or conflicting claims.

Prospective auction participants aiming to bid for the bankruptcy estate or any state-mandated sale must deposit a specified security amount into a designated escrow account managed by KPKNL. The announcement includes comprehensive banking details, outlining the account number, the precise amount of the deposit (typically a percentage of the asset's assessed value), and the payment deadline. The security deposit fulfills two essential functions: it showcases the bidder's financial capacity and dedication while safeguarding the integrity of the auction by discouraging unserious or speculative bids. Bidders who do not maintain their winning bid will lose their deposit, which will subsequently be used to offset administrative expenses or applied to the outstanding debt.

During these preparatory steps, it is crucial to maintain clear communication and strictly follow regulatory guidelines. By carefully adhering to each phase—from the curator's initial request, through document verification and schedule establishment, to public announcement, debtor notification, land certification, and security deposit collection—the Auction Office fosters an atmosphere of legal certainty, competitive fairness, and public trust. This approach not only adheres to legal requirements but also strengthens the overarching goals of transparency and accountability in the administration of public assets.

Furthermore, the auction stage for the execution of bankruptcy property at the KPKNL concerns the determination of auction participants, the execution of auction offers, and the appointment of auction buyers. Then, the post-auction stage for executing bankrupt property at the KPKNL concerns the payment of auction prices, the deposit of auction results, and the creation of the Auction Treatise.

4. Conclusion

The Fiducia Guarantee provisions in Indonesian law are designed to meet the community's legal needs, ensure legal certainty, and protect interested parties. The position of Trustee Guarantee after the implementation of Law No. 37/2004 on Bankruptcy and PKPU showed differences in application following applicable regulations. Law No. 37/2004 states that the rights of separatist creditors take precedence over those of other creditors if a company goes bankrupt. However, Supreme Court decision Number 18/PUU-VI/2008 stipulates that in the case of corporate bankruptcy, the State Rights Bill has a higher priority than other creditors' rights. Executions are carried out by curators, especially from fiduciary rights providers such as banks, usually through auction offices (KPKLN). Alternatively, the sale may be made underhand, where the buyer may come from the trustee or the beneficiary of the fiduciary right, provided that it is efficient in cost and beneficial to the trustee.

In the future, it is hoped that the Commercial Court can directly explain the Fiducia Guarantee Law to the general public, law enforcement, and other circles so that all parties understand and apply it correctly. In addition, in examining bankruptcy cases, the Panel of Judges of the Commercial Court should still pay attention to applicable legal rules, including the subject of the dispute, so that related parties better understand how to apply for bankruptcy properly.

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