

**ANALYSIS EXECUTION PERIOD RIGHT DEPENDENTS
DURING THE INSOLVENCY PERIOD FOR CREDITORS
SEPARATIST**

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ABSTRACT

Term time execution object right liability regulated in Article 55 paragraph (1) of Law No. 37 of 2004 concerning Bankruptcy and Postponement Obligation Debt Payment . Execution right the responsibility is given term 2 months time after commencement of insolvency as in Article 59 paragraph (1) of Law no. 37 of 2004, term time execution does not provide protection to creditors separatist in carry out his rights , so that creditors separatist can experience loss . This study uses method study legal normative referring to norms law with study library , this research is of a descriptive and method descriptive data analysis qualitative . Research Results find If term the time stipulated in Article 59 paragraph (1) of Law No. 37 of 2004 does not provide protection and justice for creditors separatists , this is supported by auction data in period 2019-2023 period owned by KPKNL Medan and creditor data separatist based on this data, creditors separatist need time up to 3 months up to 4 months to implement execution auction guarantee right liability , because there is requirements administrative as well as procedure bureaucracy that must be passed by creditors separatist.

Keywords : Time Period , Execution, Insolvency, Creditors Separatist .

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INTRODUCTION

Bankruptcy law is basically contain two important elements namely element justice and balanced protection between debtors and creditors .¹ Constitution Number

¹ Sunarmi, *Hukum Kepailitan*, (Depok: Kencana, 2017),p. 28.

37 of 2004 (hereinafter referred to as called (UUK and PKPU) explains 3 types creditors including is creditors preference, creditor separatists, and creditors concurrent . Creditors separatist have right guarantee material on debts owed debtors who have bound by Rights Liability can execute his rights without agreement debtor based on Article 20 paragraph (1) of the Law Number 4 of 1996 concerning Right Liability for Land and Objects Related to Land (UUHT) ², in 2 ways that is :

- a. Article 6 which reads "If the debtor injury promise , holder Right Liability First have right to sell object Right Liability on power Alone through auction general as well as take settlement his receivables from results the sale ”
- b. Article 14 paragraph (2) which reads " Certificate Right Liability as referred to in paragraph (1) contains irrah-irah with the words "For the sake of justice Based on Almighty God One " inner " this is creditor can execute object guarantee must request fiat from chairman court , and must follow rule in civil procedure law .³

Then the creditor separatist as holder right liability entitled to sell object Right Liability through auction general without need approval again from giver Right Liability and further take settlement his receivables from results the sale was first than other creditors .

Creditors separatist must carry out right execution no later than 2 months since treasure bankrupt is at in insolvency .⁴If the creditor separatists failed sell the guarantee is the result cost bankruptcy including cost curator and debt assets bankrupt must also get paid creditors separatists , even position bill creditors separatist be under tax debt because it has to be paid in advance is a tax debt before budel shared even before given to creditors separatist .⁵

Term The 2 months given by the law is not enough it's time for creditors separatists to carry out rights when linked to the provisions the entire implementation process auction execution right liability based on Article 6 of the UUHT through the KPKNL which begins with preparation and implementation auction in accordance with the Regulation of the Minister of Finance Number 122 of 2023 concerning Instruction Implementation Auction . If the creditor separatists do not act in term at that time , the

² Pasal 20 Ayat (1) Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah.

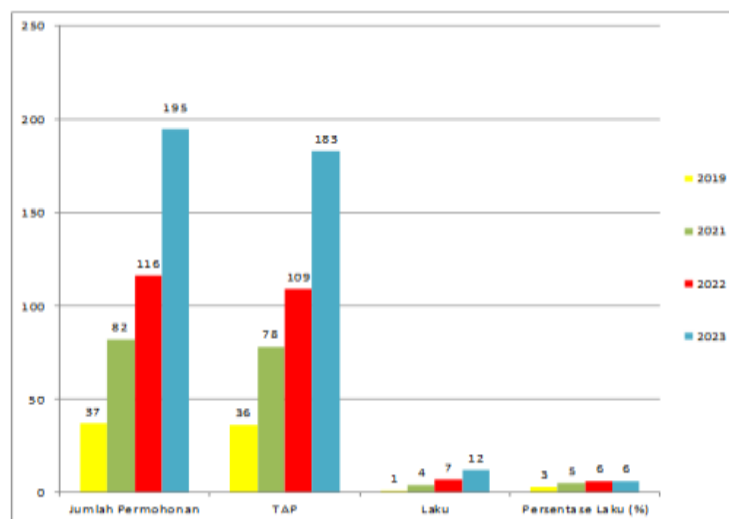
³ Pasal 14 Ayat (2) Undang-Undang Nomor 4 Tahun 1996 Tentang Hak Tanggungan Atas Tanah Beserta Benda-Benda Yang Berkaitan Dengan Tanah.

⁴ Antonius Alreza Pahlevi, [Haruskah Kreditor Separatis Mendaftarkan Diri Dalam Proses Kepailitan? | Klinik Hukumonline](#) Diakses Tanggal 12 Juni 2024 Pukul 21.00 Wib

⁵ *Ibid.*, p. 164

curator can force handover goods guarantee for sale in accordance with the procedures set out in Article 185 of the Bankruptcy and PKPU Law.⁶

This is reflected via frequency data implementation auction execution treasure bankruptcy filed by the Curator or the Office Treasure Heritage (BHP) at KPKNL Medan in period time 2019 to 2023 as per outlined in the graph following :⁷



Graph 1. Frequency Implementation Auction Execution Treasure Bankruptcy filed by the Curator or the Office Treasure Legacy (BHP)

In general the percentage is only 3% to 6% application auction requested by the Curator or BHP that is sold and executed. The auction was held during the period 6 months time up to 1 year, while application auction execution right liability for collateral property by creditors separatists during the period of insolvency in period 2019 to 2023 twice, but the auction was cancelled before implementation auction.

METHOD

As for the types study the law used by the author in compiling This research is study law normative. It is said that's it Because This research has the relationship with law or *legal research* which will always lead to the nature of normative and proper put forward What just approach as well as material the law. ⁸Therefore, the author use technique studies library research to collect research data, namely by conducting search and data collection or source readings of a nature scientific and still similar or

⁶ Sunarmi, *Hukum Kepailitan*. Depok, Kencana, 2022, p. 214.

⁷ Data Lelang Hak Tanggungan Kantor Pelayanan Kekayaan Negara dan Lelang Medan

⁸ Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2019)p.58

in line with the title this research , so that Can used as a research basis as well as analysis of the problems faced . As study law normative then it is certain to use approach statute *approach* .⁹

DISCUSSION

Position Creditors Separatist In Bankruptcy

The position of separatist creditors in bankruptcy can be referred to through 2 special regulations that are connected to the bankruptcy law, namely the position of Separatist Creditors as reviewed from the Mortgage Rights Law and the Position of Separatist Creditors as reviewed from the Fiduciary Law. The position of Separatist Creditors when viewed from the Mortgage Rights Law and with the existence of the principle of "droit de preference" which is regulated legally in provision 20 paragraph (1) of the Mortgage Rights Law, there is a wording of the first mortgage holder as the owner of the rights in selling the collateral as regulated in Article 6, or in addition, the executorial title of the mortgage certificate based on Article 14 paragraph (2), in carrying out the mortgage auction.

Article 14 paragraph 2 is the difficulty implementation auction remember existence determination court . In addition, the possible resistance There is will hinder convenience editorial provision 20 paragraph (1) of the Human Rights Law Liability.¹⁰

In general simply , the existence of Article 56 paragraph (1) of the Bankruptcy and PKPU Law is form concrete the complexity editorial provision 20 paragraph (1) of the Human Rights Law Liabilities , such as existence suspension for a period of maximum period of 90 days (stay period) if right liability is at in mastery creditors suspended and is in supervision curator (Object right dependents). Thus , you can it is said that Article 20 paragraph (1) and Article 21 of the Human Rights Law Liability is form protection holder right liability , but the protection is not created when Article 56 paragraph (1) of the Bankruptcy and PKPU Law comes into force provision the article that correlates to the rights creditors holder right liability (Article 20 paragraph (1) and Article 21 of the Child Rights Law Liability) becomes weak Because limitations action . Although provisions of Article 6 of the Human Rights Law Liability state that levels First holder right liability can " master " selling and making settlement his debt (*Parate Execution*) with prerequisites existence injury promise .

⁹ Bambang Synggono, *Metode Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 2016), p . 45

¹⁰ Nurlia Latukau, Bambang Winarno, Bambang Sudjito, Perlindungan Hukum Bagi Kreditor Atas Objek Jaminan Fidusia Yang Dibebani Fidusia Ulang Oleh Debitor Yang Sama, *Jurnal Hukum*, 2015.p.93

In addition to Separatist Creditors regulated in the Mortgage Law, the regulation of the position of separatist creditors is also regulated in the Fiduciary Guarantee Law. Article 27 paragraph (3) of the Fiduciary Guarantee Law basically regulates that separatist creditors have priority if the debtor is declared bankrupt. In the explanation of Article 27 paragraph (3) of the Fiduciary Guarantee Law, it is stated that the provisions in this paragraph relate to the provision that fiduciary guarantees are collateral rights over property for debt repayment. Normatively, both the Mortgage Law and the Fiduciary Law guarantee the rights of separatist creditors to execute property rights they control as collateral for payment of their receivables even if bankruptcy occurs.

This is also regulated in the Bankruptcy and PKPU Law, namely Article 55 paragraph (1) which stipulates that creditors separatist can execute as if it didn't happen bankruptcy. Thus Article 55 paragraph (1) states that "Without fail... notice provision as mentioned in Article 57, Article 57, and Article 58, each Creditor holder pawn, collateral fiduciary, rights Liability, mortgage or right collateral on material others, can execute his rights as if it didn't happen bankruptcy." Sularto says that based on the provisions of Article 55 paragraph (1) state that creditors separatist can sell Alone items that become guarantee its existing receivables in his mastery.¹¹

When examined the provisions of Article 56 paragraph (1) as if Creditors separatist lost his right to execute goods or objects that are in mastery. The provisions of Article 56 paragraph (1) stipulate that Right execution Creditors as meant in Article 55 paragraph (1) and rights party third to sue his wealth is there in mastery Debtor Bankrupt or Receivership, suspended for a period maximum time 90 days since date decision statement bankrupt spoken.

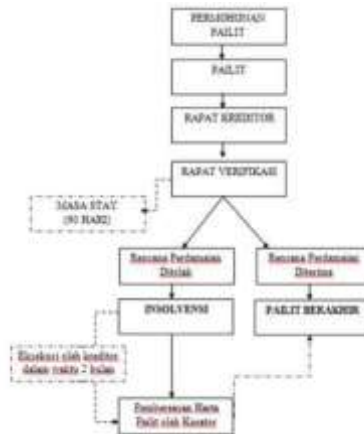
Right Creditors Separatist In Times of Insolvency

Phase treasure bankrupt stated insolvent is a very decisive phase for creditors separatist, because at that time the stay period ended by law and creditors separatist by law Already can execute his right to fulfill payment his receivables that have been matched and has been given status in the accounts receivable list as receivables recognized and has been approved by the supervising judge.¹²

Based on This is a picture of a state of insolvency in the process of implementation bankruptcy. This chart explains there is a 90 day waiting period and a state of insolvency after the peace process was not accepted, the following picture:

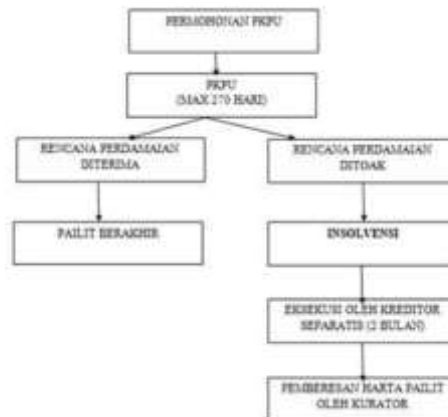
¹¹ Sularto. *Perlindungan Hukum Kreditor Separatis Dalam Kepailitan*. Mimbar Hukum, 2012, p.24.

¹² Elyta Ras Giting, *Hukum Kepailitan Teori Kepailitan*. (Jakarta, Sinar Grafika), 2018, p. 203,



Application Process Flow Bankrupt

In contrast to the bankruptcy process, PKPU has a more concise process , as follows : an image that explains the state of insolvency in the Postponement process Obligation Debt Payment (PKPU):



Application Flow Delay Obligation Debt Payment

After the treasure bankrupt insolvent , creditors separatist given chance for 2 months counted since commencement of insolvency to sell Alone goods guarantee and take fulfillment on the bill that has been matched and approved the amount from sale goods guarantee , this is as follows has described in Figure 1 and Figure 2 in this study .

If in 2 months time since treasure bankrupt insolvent has passed by and it turned out creditors separatist still not successful sell goods guarantee his receivables (in the form of aircraft air) which is tied to the mortgage , then the creditor separatist must deliver goods guarantee to curator for sale by the curator himself for interest

creditors separatist in accordance with the provisions of Article 185 of the Bankruptcy and PKPU Law. The provisions grace period 2 months to sell Alone goods guarantee by creditors separatist considered unrealistic in practice business .

This is because preparation sale goods guarantee such as making an assessment on goods guarantee and apply application auction need not a small amount of time . Meanwhile , it is counted since debtor stated bankrupt , everything activity or action law on treasure bankrupt frozen for 90 days or up to debtor stated insolvent .¹³

Based on provisions of Article 55 Paragraph (1) of the K PKPU Law, what is meant by creditors separatist is creditors who can execute Alone his rights as if it didn't happen bankruptcy . Creditors separatist including in creditors who have privileges, as per Article 1134 of the Civil Code , namely a position special from a collectors provided by law based on characteristic receivables . Privilege rights to goods moving , development law national know guarantee fiduciary as set up in provisions of Article 1 number 2 of the Guarantee Law Fiduciary .

Subekti explain that a holder guarantee on object own right to sell Alone the collateral . They seem not to be involved mix in affairs bankruptcy . They can sell Alone items that are made liability their receivables . Taking Alone from income what is the sale their rights as settlement their receivables , and if Still There is the rest , this rest is submitted to hall treasure legacy .

If income sales are insufficient to cover debt their receivables , for the deficiency can applicable as debt collector concurrent , namely together with the billers otherwise they will accept payment according to big small respective billing . People who owe money to this group are called *separatists* , namely people who can act alone and as if stand outside the business bankruptcy .¹⁴

Analysis Justice Time Frame To Run Execution For Creditors Separatist

J. Satrio that since decision statement bankrupt spoken based on Article 59 paragraph (1) of the Bankruptcy and PKPU Law, Creditors Separatist must Already start carry out right the executive to execute guarantee that becomes his rights in term maximum time of 2 months .¹⁵

¹³ Izan Virginia Baginda, Pelaksanaan Hak Kreditur Separatis Terhadap Harta Debitur Pailit Insolven, *Lex Privatum* Vol. VIII/No. 1/Jan-Mar/2020, p 99.

¹⁴ Subekti, Pokok-Pokok Hukum Perdata, Jakarta, p.87-88.

¹⁵ J. Satrio, *Hukum Jaminan Hak-Hak Jaminan Kebendaan*, (Bandung: Citra Aditya Bhakti, 2007),p 327.

Objects right liability is part from treasure bankrupt , then the creditors holder right responsibility to carry out right the execution required to provide accountability to curator about results sale object right responsibility and surrender remainder results sale after reduced amount of debt, interest and fees to curator this is as regulated in Article 60 paragraph 1 of the Bankruptcy and PKPU Law.

Following table surge case Delay Obligation Debt Payments throughout Court Trading in Indonesia:¹⁶

Court Commerce	Year 2022	Year 2023
Medan	48	50
Central Jakarta	346	389
Semarang	27	40
Surabaya	84	116
Makassar	6	18

Table 1. Increasing Trend PKPU Case in Court Commerce

As for the matter bankruptcy , if totaled amount cases filed in five courts business throughout January - November 2023 totaling 86 cases . This number decreased by 13 cases from 2022 in the same period . Here are picture surge case Bankruptcy throughout Court Trading in Indonesia:¹⁷

Court Commerce	Year 2022	Year 2023
Medan	4	9
Central Jakarta	49	46
Semarang	21	12
Surabaya	21	16
Makassar	4	3

Table 2. Increasing Trend Case Bankruptcy in Court Commerce

¹⁶ M. Agus Yozami dan Ferinda K Fachri, *Edisi Khusus: Tren Perkara Kepailitan dan PKPU 2023 Urgensi Revisi UU Kepailitan di Tengah Melonjaknya Perkara PKPU*, Hukum Online, 15 Desember 2024, [Urgensi Revisi UU Kepailitan di Tengah Melonjaknya Perkara PKPU](#), diakses pada 26 April 2025.

¹⁷ *Ibid*

Referring to the data, which is linked to the implementation process right execution object guarantee the property he holds refers to Article 59 paragraph (1) of the Bankruptcy and PKPU Law which states that to execute object guarantee in 2 months time and seen in the practice refer to from this article creditors separatist in carry out very limited execution only for 2 months and the reality creditors separatists are in great difficulty prepare documents for requirements auction execution eat quite a long time .¹⁸

Term the time given by law to execute object the guarantee he holds very much short and unrealistic . The terms term time carry out execution for 2 months for Creditors Separatists are very narrow and limited Because stages that must be done Enough long starting with preparation and implementation auction that begins with a request auction to KPKNL in accordance with PMK No. 122 of 2023.¹⁹

Can seen If in term 2 months time creditors separatist must take care of these 2 stages , each stage takes time long time , therefore , the term time carry out auction for 2 months very much not enough although creditors separatist Already maximize his rights by using method preventive conduct appraisal before existence insolvency.

This is in line with the implementation data. auction at KPKNL Medan as in graph 1 above and this is reinforced by what was experienced by creditors separatist PT. Bank Mandiri Tbk ., in this is Mr Rudy Fransisco The Simanjuntak as Vice President of Regional Special Asset Management Medan PT. Bank Mandiri (Persero), Tbk . explained If common obstacles faced by PT. Mandiri Bank Tbk . as creditors separatist in take advantage of the insolvency period is limited insolvency period that is for 2 months .

Common problems happen is determination of insolvency period counted since when , constraints in to obtain document official determination of insolvency period from Court Commerce , as well as limited time for the insolvency period to be fulfilled document condition auction and implementation targets the auction itself , generally as many as 2 times , namely auction with market value and value liquidation , above it 's a creditor separatist need time at least 4 to 6 months for the insolvency period to obtain operate execution of guarantee material owned by debtor , as table following :

¹⁸ Dicki Nelson dan Romy Alfius Karamoy, *Problem Jangka Waktu Hak Eksekusi Kreditor Separatis Atas Jaminan Kebendaan*, Article, Hukum Online, 5 September 2024, diakses pada 23 April 2025. [Problem Jangka Waktu Hak Eksekusi Kreditor Separatis Atas Jaminan Kebendaan](#)

¹⁹ Peraturan Menteri Keuangan (PMK) Nomor 122 Tahun 2023 tentang Petunjuk Pelaksanaan Lelang

Stage Preparation Auction :

No.	Process	Day
1.	Seller review and prepare document beginning application auction	30 days Work
2.	Seller appointing an Appraisal Services Office Public or Appraiser to carry out an assessment of the object to be auction	15-30 days Work
3.	Seller review and prepare document application auction following the attachments to be uploaded to the DJKN <i>website</i> as organizer auction	10 days Work

Stages Implementation Auction :

No.	Process	Day
1.	Seller wait verification document condition auction from KPKNL	5-7 days
2.	Determination timetable auction by KPKNL	1-2 days
3.	The seller makes an announcement auction First through flyers or printed media with announcements auction second rise	15 days
4.	The seller makes an announcement auction second before implementation auction	14 days
5.	Seller look after letter information registration land (SKPT) to the local National Land Agency , at this stage it is of a nature simultaneous when seller has get timetable auction up to implementation auction	
6.	Seller attend implementation auction Good in a way presence or online , at this stage the applicant need 1 day time	

In general general at the stage implementation auction need time 35-45 days .

As per the data submitted by Rudy Fransisco The Simanjuntak as Vice President Regional Special Asset Management Medan PT. Bank Mandiri (Persero), Tbk . above , there are constraint in to obtain document official determination of insolvency period from Court Commerce , as well as limited time for the insolvency period to be fulfilled document condition auction and implementation targets the auction itself , generally as many as 2 times , namely auction market price and price

liquidation, above it's a creditor separatist need time at least 3 to 4 months for the insolvency period to get it operate execution of guarantee material owned by debtor.²⁰

Based on all over description above, it is known If arrangements that can provide a sense of justice for creditors separatist in bankruptcy debtor is connected with the term time execution in a period of insolvency is for 3 to 4 months, calculation the time is based on management stages the administration more or less requires 2-3 weeks, then after that do the administration letter information registration land for guarantee does not move. then determine limit value as set up in Article 55 of PMK Number 122 of 2023. Then submit application auction at KPKNL and waiting determination timetable auction. Then announce plan auction. And finally carry out auction as well as generally as many as 2 times, namely auction market price and price liquidation, above it's a creditor separatist need time at least 3 to 4 months for the insolvency period to get it operate execution of guarantee material owned by debtor.

CONCLUSION

The position of separatist creditors in the bankruptcy process can be seen from two perspectives of the Law, namely the Mortgage Law and the Fiduciary Law. In relation to the Mortgage Law, due to the existence of the principle of "droit de preference" which is regulated legally in provision 20 paragraph (1) of the Mortgage Law, there is a wording of the first mortgage holder as the owner of the rights in selling the collateral as regulated in Article 6, or in addition, the executorial title of the mortgage certificate based on Article 14 paragraph (2), in carrying out the auction of mortgage rights and in relation to the Fiduciary Law, Article 27 paragraph 3 of the Fiduciary Guarantee Law in essence regulates that separatist creditors are prioritized if the debtor is declared bankrupt.

During insolvency, separatist creditors have rights that can be described at that time the stay period ends by law and separatist creditors by law can already exercise their rights to fulfill the payment of their receivables that have been matched and have been given status in the list of receivables as receivables recognized and approved by the supervisory judge. Furthermore, Article 55 Paragraph (1) of the K PKPU Law, what is meant by separatist creditors are creditors who can execute their own rights as if there was no bankruptcy. Separatist creditors are included in creditors who have privileges, as per Article 1134 of the Civil Code, namely a special position of a collector granted by law based on the nature of the receivables. Privilege rights to

²⁰ Wawancara dengan Rudy Fransisco Simanjuntak selaku *Vice President* RSAM Medan Bank Mandiri Tbk. pada 05 November 2024.

movable goods, the development of national law recognizes fiduciary guarantees as regulated in the provisions of Article 1 number 2 of the Fiduciary Guarantee Law.

Arrangements that can provide a sense of justice for creditors separatist in bankruptcy debtor is connected with the term time execution in a period of insolvency is for 3 months up to 4 months on implementation auction first , but in fact implementation auction first never succeed because of limit value set by the seller based on market value of assessor or interpreter in accordance with applicable regulations related to the determination or stipulation limit value for sales through auction execution object right liability through KPKNL, so that on it 's a creditor separatist need time at least 3 months up to 4 months for insolvency period to obtain operate execution of guarantee material owned by debtor .

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Data Lelang Hak Tanggungan Kantor Pelayanan Kekayaan Negara dan Lelang Medan Peraturan Menteri Keuangan (PMK) Nomor 122 Tahun 2023 tentang Petunjuk Pelaksanaan Lelang.