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The Dilemma of Parate Executie: Secured Creditors versus Curators in Bankruptcy

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Abstract: This article analyses the normative conflict between Law Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (Act on PKPU) and Indonesian collateral law governing execution rights of secured (separatist) creditors. Using a doctrinal method combined with statutory, case, and comparative approaches, the study examines how Articles 56 and 59 of the Act on PKPU restrict parate executie as guaranteed by the Civil Code, the Mortgage Law, and the Fiduciary Law. Findings, corroborated by Supreme Court Decisions No. 158 K/Pdt.Sus/2011 and No. 895 K/Pdt.Sus-Pailit/2016, show that once collateral is surrendered to a curator, recovery for secured creditors is severely eroded by bankruptcy costs and curator fees; in the first case, recovery fell from a claim of Rp44.7 billion to a distribution of only Rp1.5 billion, roughly 3.4 per cent. A comparative reading of United States Chapter 11 and the Dutch Faillissementswet shows Indonesia's rigid two-month limit is an outlier among comparable regimes. Building on Posner's economic analysis of law and Rawls' theory of justice, the article argues the current arrangement is economically inefficient and distributively unjust, and proposes extending the execution window and ring-fencing collateral proceeds to restore secured creditors' priority while preserving bankruptcy's collective character and financial stability.

Introduction

Financial institutions, particularly the banking sector, serve as the primary intermediaries driving national economic growth by mobilising public funds and channelling them into productive credit facilities. A healthy banking ecosystem, characterised by adequate capitalisation and disciplined risk management, is a precondition for the robust economic stability envisaged in Indonesia's development agenda. In empirical practice, however, this ecosystem remains systemically vulnerable to the fluctuation of non-performing loans (NPLs): elevated NPL ratios erode banking profitability through mandatory provisioning and threaten the liquidity and solvency of the financial system as a whole.[1] If left unresolved, excessive NPLs can trigger a credit crunch that halts the

[1] Ismamudi, Nani Hartati, and Sakum, "Peran Bank dan Lembaga Keuangan dalam Pengembangan Ekonomi: Tinjauan Literatur," Jurnal Akuntansi Neraca 1, no. 2 (2023): 35, https://doi.org/10.59837/jan.v1i2.10.

intermediation function and stalls post-crisis economic recovery.[2] To mitigate the risk of debtor default, banks accordingly secure their credit exposures by binding collateral through specific legal instruments such as pledges, hypothecs, fiduciary guarantees, and mortgage rights.

The normative order is meant to answer this empirical vulnerability with a correspondingly firm guarantee. Under Articles 1131 and 1133 of the Indonesian Civil Code, creditors holding material guarantees are elevated to the status of separatist (secured) creditors and granted a preferential right (*droit de preference*) to be paid before other concurrent creditors from the proceeds of the collateral bound to them.[3] This preference is philosophically inseparable from the absolute authority to execute the collateral on the creditor's own power, the doctrine of *parate executie*. Article 1155 of the Indonesian Civil Code grants the pledge holder the inherent right to sell the pledged object in public if the debtor defaults, without a prior court judgment, and Article 1178 provides the identical right for hypothec holders; the same logic is codified in Article 6 of the Mortgage Law (Law on Mortgage Rights on Land and Objects Related to Land) and Article 29 of the Fiduciary Law.[4] In principle, then, the law promises secured creditors a swift, self-executing recovery mechanism that keeps banking capital liquid and the intermediation function intact.

A significant gap between this normative promise and legal-empirical practice opens, however, once the defaulting debtor is declared bankrupt by the Commercial Court. Article 55 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Act on PKPU) appears, at first reading, to honour the absolute right of secured creditors by stating that they may execute their rights as if no bankruptcy had occurred.[5] Yet this promise is immediately qualified by two provisions within the same statute. Article 56 imposes a mandatory 90-day suspension (*stay*) on execution rights, counted from the date the bankruptcy declaration is pronounced,[6] and Article 59 paragraph (1) restricts the window for exercising *parate executie* to a mere two months after the commencement of the insolvency state.[7] In the administrative reality of Indonesian execution auctions, which require independent appraisal by a Public Appraisal Services Office (KJPP), formal submission to the State Assets and Auction Service Office (KPKNL), and two staggered public announcements at least fifteen days apart, a two-month window is close to unattainable.[8] Once it lapses, Article 59 paragraph (2) mandates that the collateral be surrendered to the curator, whose subsequent distribution is heavily reduced by bankruptcy costs and curator fees under Article 191 of the Act on PKPU, as later evidenced empirically by Supreme Court Decisions No. 158 K/Pdt.Sus/2011 and No. 895 K/Pdt.Sus-Pailit/2016 discussed below. The result is a legal antinomy in which a statute designed to protect secured creditors becomes, in the moment they need it most, the instrument that strips their preferential position. For clarity of terminology, this article uses the terms "secured creditor" and "separatist creditor" interchangeably through-

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2 Patrizia Budino and Hyuncheol Yun, "Resolution of Non-Performing Loans: Policy Options," *FSI Insights on Policy Implementation*, no. 3 (2021): 25.

3 Dilla Nurfiana Astanti, Radhyca Nanda Pratama, and Akbar Fitri Yanto, "Reevaluasi Penyelesaian Sengketa Perbankan Melalui Badan Penyelesaian Sengketa Konsumen: Supremasi Hukum," *Jurnal Penelitian Hukum* 1, no. 30 (2021): 32, https://doi.org/10.20473/jph.v30i1.1111.

4 Setyabudi et al., "Tinjauan Hukum Terhadap Jaminan Harta Pihak Ketiga dalam Kepailitan yang Dijadikan Harta Pailit oleh Kurator," *Jurnal Lex Stricta* 1, no. 1 (2025): 152.

5 Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Act on PKPU), art. 55(1).

6 Act on PKPU, art. 56, and its elucidation.

7 Act on PKPU, art. 59(1)(2).

8 Bachtiar Marbun, "Rekonstruksi Eksekusi Hak Tanggungan Berdasarkan Prinsip Keadilan Bagi Kreditur" (Master's thesis, Universitas Diponegoro, 2025), 88.

out, following the convention of Indonesian bankruptcy scholarship, in which both terms denote a creditor whose claim is bound to specific collateral (pledge, hypothec, mortgage right, or fiduciary guarantee) and who therefore stands outside the general concursus of unsecured creditors under Article 55 of the Act on PKPU.

Existing scholarship on this problem can be grouped into three clusters. The first cluster examines the doctrinal vulnerability of secured creditors during bankruptcy without extending the analysis to the economic consequences of curator-controlled liquidation: Emirzon, Yahanan, and Soetansah highlighted the exposure of banks executing mortgage rights against bankrupt debtors but stopped short of quantifying the resulting loss in recovery value,[9] while Siagian and Lyanti examined the curator's role in preserving inter-creditor balance without addressing the macroeconomic efficiency of that role.[10] The second cluster is procedural, focusing on the automatic-stay mechanism itself: Sonbai et al. analysed the politics of the stay provision under the Act on PKPU and proposed clarifying its commencement date, but did not connect the stay to the subsequent waterfall distribution of proceeds under Article 191.[11] The third cluster is comparative: Yuhelson et al. examined secured-creditor protection against both Indonesian positive law and Islamic law,[12] and Khoiruddin et al. compared Indonesia's *concursus creditorum* principle with the Netherlands' *Faillissementswet*, finding that Dutch courts retain closer supervisory control over the execution of secured assets than their Indonesian counterparts.[13] Zuroidah et al. further mapped the general legal framework protecting property collateral in bankruptcy, confirming that creditors' execution rights remain subordinate to the stay provisions of the Act on PKPU.[14]

None of these studies integrates three elements simultaneously: (1) a quantified, jurisprudence-based demonstration of how far curator-controlled distribution erodes the recovery rate of secured creditors; (2) a comparative benchmarking of Indonesia's two-month execution limit against functionally equivalent mechanisms abroad, such as the automatic stay and adequate-protection doctrine under United States Chapter 11 or the supervised-execution model of the Dutch *Faillissementswet*; and (3) a normative reformulation grounded jointly in Posner's economic analysis of law and Rawls' theory of justice. Existing studies treat the doctrinal, the comparative, and the theoretical dimensions in isolation, leaving the practical magnitude of the problem and a correspondingly concrete reform proposal under-articulated.

This article addresses that gap by triangulating doctrinal analysis of Articles 55, 56, 59, and 191 of the Act on PKPU, empirical case evidence from two Supreme Court decisions with verifi-

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9 Ilham Soetansah, Joni Emirzon, and Annalisa Yahanan, "Problems of Justice in Legal Protection Efforts Against Banks as Separatist Creditors Related to Execution of Collateral Tied with Mortgage Rights on Bankrupt Debtor's Assets," Jurnal SASI 28, no. 3 (2022): 475, https://doi.org/10.47268/sasi.v28i3.1028.

10 Oscar Dlano Siagian and Merline Eva Lyanti, "Perlindungan Hukum Kreditor Separatis dan Peran Kurator dalam Menjaga Keseimbangan Kreditur dalam Proses Kepailitan di Indonesia," *Media Hukum Indonesia* 3, no. 2 (2025): 588, https://doi.org/10.35326/mhi.v3i2.1865.

11 Alexander Imanuel Korassa Sonbai et al., "The Politics of Legal Protection for Creditors: Setting the Automatic Stay in the Indonesian Bankruptcy and Postponement of Debt Payment Obligations Law," *International Journal of Criminal, Common and Statutory Law* 4, no. 2 (2024).

12 Yuhelson and Nur Hakim, "Legal Protection of Secured Creditors in Contemporary Bankruptcy: A Comparative Study of Positive Law and Islamic Law," MILRev: Metro Islamic Law Review 4, no. 2 (2025): 1189–14, https://doi.org/10.32332/milrev.v4i2.11518.

13 Amir Khoiruddin et al., "Comparative Study of Indonesia and the Netherlands on Legal Protection for Separatist Creditors in Bankruptcy with the Principle of Concursus Creditorum," *Jurnal Meta-Yuridis* 8, no. 1 (2025).

14 Zakiyah Nur Zuroidah et al., "Legal Framework and Creditor Rights in Bankruptcy: Analyzing Property Collateral Protection," *Journal of Multidisciplinary Research* 2, no. 3 (2024).

able nominal figures, a comparative reading of the United States and Dutch bankruptcy regimes, and a dual theoretical lens combining economic efficiency and distributive justice. Its originality lies not in identifying the conflict of norms as such, which prior studies have already noted, but in measuring its financial magnitude, situating it against comparable foreign regimes, and translating the resulting diagnosis into a specific, ring-fencing-based legislative reformulation.

The urgency of resolving this antinomy is both doctrinal and macro-economic. Doctrinally, an unresolved conflict between *lex specialis* (collateral law) and *lex generalis* (bankruptcy law) undermines legal certainty for every secured lending transaction in Indonesia. Macro-economically, Indonesia's long-term development agenda under Law Number 59 of 2024 concerning the National Long-Term Development Plan 2025—2045 (the "Golden Indonesia 2045" vision) presupposes a highly liquid, well-capitalised banking sector capable of sustained credit intermediation.[15] A bankruptcy regime that structurally depresses the recovery rate of secured lending works against that agenda by inducing banks to tighten lending standards or raise risk premia, with knock-on effects for the real economy. The question is therefore not only of doctrinal interest but of immediate policy relevance.

Building on this gap and urgency, the objective of this article is to examine the normative conflict between the Act on PKPU and Indonesian collateral law governing the execution rights of secured creditors, to measure its practical consequences through Supreme Court jurisprudence, and to formulate a reform proposal grounded in comparative practice, economic efficiency, and distributive justice. Accordingly, this article explores three research questions: (1) How do the current collateral and bankruptcy legislations conflict regarding the execution rights of separatist creditors over bankrupt debtors' assets? (2) How does curator dominance in asset-settlement practice economically impact the recovery rate of separatist creditors, and how does this compare with functionally equivalent mechanisms in other jurisdictions? (3) How can the Act on PKPU be reformulated, from the perspectives of economic efficiency and distributive justice, to restore the *parate executie* rights of secured creditors?

2. Method

This study employs normative legal research (*doctrinal research*), which conceptualises law as a *sui generis* discipline evaluated for its coherence with legal norms and legal principles rather than as an empirical social phenomenon in the strict sense. Philosophically, the research operates under a post-positivist paradigm, functioning as an observer (*toeschouwer*) when analysing court decisions to preserve objectivity and as a participant (*medespeler*) when interpreting the law as written.

Three approaches are used in combination. First, the *statute approach* dissects the vertical and horizontal conflict of norms between the Indonesian Civil Code, the sectoral collateral statutes (Law on Mortgage Rights on Land and Objects Related to Land and Fiduciary Guarantee Law), and the Act on PKPU. Second, the *case approach* examines Supreme Court Decision No. 158 K/Pdt.Sus/2011 and Supreme Court Decision No. 895 K/Pdt.Sus-Pailit/2016 to observe how curators exercise authority over secured assets in practice. These two decisions were purposively selected on four cumulative grounds: (i) both are cassation-level Supreme Court rulings and therefore carry

[15] Law No. 59 of 2024 concerning the National Long-Term Development Plan 2025—2045, General Elucidation.

binding precedential weight, unlike first-instance Commercial Court decisions; (ii) both directly adjudicate the conflict between curator authority under Article 59(2) and 191 of the Act on PKPU and a secured bank creditor's execution right, making them doctrinally on-point rather than tangential; (iii) both disclose verifiable nominal financial data in the case record, allowing the erosion of recovery value to be demonstrated quantitatively rather than asserted qualitatively; and (iv) taken together they span two different debtor sectors (metal/property and garment manufacturing) and a five-year interval (2011 and 2016), indicating that the pattern of subordination is systemic and durable rather than confined to a single industry or a single moment in the Court's jurisprudence. Third, a *comparative approach* is used to benchmark Indonesia's execution-window design against the automatic-stay and adequate-protection doctrine of United States Chapter 11 (11 U.S.C. §§361—362), the balancing framework recommended by the UNCITRAL Legislative Guide on Insolvency Law, and the court-supervised execution model of the Dutch *Faillissementswet*.[16] This comparison is used analogically to identify design choices available to the Indonesian legislature, rather than as a proposal for wholesale legal transplantation, since Indonesia's civil-law bankruptcy administration differs structurally from the debtor-in-possession model of Chapter 11.

The data consist of secondary legal materials comprising primary sources (the 1945 Constitution, the Indonesian Civil Code, the Act on PKPU, the Law on Mortgage Rights on Land and Objects Related to Land, Fiduciary Guarantee Law, and the two Supreme Court decisions), secondary sources (legal literature, journal articles, and the foreign statutory materials noted above), and tertiary sources (legal dictionaries and indices used for cross-referencing). Materials were analysed qualitatively using systematic, grammatical, historical, and comparative interpretation, and the proposed reformulation was tested for coherence against the doctrinal findings, the empirical case evidence, and the two normative theories (economic efficiency and distributive justice) employed in the Discussion.

As a doctrinal, case-based study anchored in two purposively selected Supreme Court decisions, this research does not claim statistical representativeness across the full population of Indonesian bankruptcy jurisprudence. The two decisions are treated as illustrative of a documented systemic pattern, consistent with the broader doctrinal literature on curator dominance cited above, rather than as a random or exhaustive sample.

3. The Legal Antinomy and Its Empirical Consequences

Under the Indonesian civil-law system, the creditor debtor relationship is fundamentally governed by the principle of wealth liability. Pursuant to Article 1131 of the Indonesian Civil Code, all of a debtor's assets, movable and immovable, present and future, serve as a general guarantee for personal engagements.[17] To provide financial institutions with a higher degree of security and to mitigate the systemic risk of lending, the law allows the creation of specific material guarantees; under Articles 1132 and 1133, creditors holding such guarantees acquire the status of separatist creditors, with a special preference right to be paid ahead of concurrent creditors from the proceeds of the specific collateral bound to them.[18]

[16] United States Bankruptcy Code, 11 U.S.C. §362 (automatic stay) and §361 (adequate protection); see also Kennedy, "Automatic Stays Under the New Bankruptcy Law," *University of Michigan Journal of Law Reform* 12 (1979): 1—13.
[17] Indonesian Civil Code, art. 1131—1133.
[18] Ismamudi, Hartati, and Sakum, "Peran Bank dan Lembaga Keuangan dalam Pengembangan Ekonomi," Jurnal Akuntansi Neraca 1, no. 2 (2023): 38.

This preference right is inseparable from the absolute authority to execute the collateral independently, *parate executie*. Its legitimacy is embedded across Indonesia's collateral legislation precisely to keep the banking sector liquid.[19] Article 1155 of the Indonesian Civil Code grants the pledge holder an inherent right to sell the pledged object publicly upon default, without a prior court judgment; Article 1178 grants hypothec holders the same right. In modern secured financing, Article 6 of the Law on Mortgage Rights on Land and Objects Related to Land and Article 29 of the Fiduciary Guarantee Law codify the identical principle for mortgage rights and fiduciary guarantees respectively: upon default, the first-ranking holder may sell the collateral through a public auction on its own authority.[20] The underlying economic philosophy is that collateral should function as a highly liquid, fail-safe instrument that allows banks to recover non-performing loans swiftly, bypassing lengthy civil litigation and safeguarding national economic flow. This absolute legal certainty collides with the bankruptcy regime the moment a defaulting debtor enters proceedings under the Act on PKPU. At first glance, Article 55 paragraph (1) appears to respect the sacrosanct nature of collateral, stating that separatist creditors may execute their rights as if no bankruptcy had occurred.[21] That protection is, however, immediately qualified within the same statute, producing a destructive conflict of norms.

The first layer of this antinomy is Article 56, which imposes a mandatory 90-day stay on execution rights, running from the date the bankruptcy declaration is pronounced. Although the elucidation of this article frames the suspension as a means to improve the prospects of a peace settlement (*homologasi*) or to optimise the bankruptcy estate, in practice it paralyses the creditor's *parate executie* right; during this window the value of collateral, especially depreciating movable fiduciary assets, can decline significantly, directly harming the secured creditor's economic interest.[22]

The second, and arguably more consequential, layer is Article 59 paragraph (1), which restricts the execution window to a maximum of two months after the commencement of the insolvency state. From a procedural standpoint, this limitation disregards the bureaucratic reality of Indonesian execution auctions. Executing a public auction through the state apparatus cannot occur instantaneously. First, the creditor must appoint a Public Appraisal Services Office (KJPP) to determine the auction's limit value, a process that alone can take several weeks. Second, the creditor must submit a formal auction request to the Chairman of the District Court or to KPKNL. Third, and most decisively, the law mandates two staggered public announcements for immovable property, separated by at least fifteen days, with the auction itself held no earlier than fourteen days after the second announcement.[23] The mandatory waiting periods alone therefore consume more than a month; once internal bank approvals, KPKNL scheduling conflicts, and post-auction administrative settlement are added, completing the entire process within sixty days is close to unattainable.

Because the window is practically unattainable, Article 59 paragraph (2) prescribes a severe consequence: once the period lapses, the secured creditor must surrender the collateral to the cura-

[19] Astanti, Pratama, and Yanto, "Reevaluasi Penyelesaian Sengketa Perbankan," *Jurnal Penelitian Hukum* 1, no. 30 (2021): 35.
[20] Bachtiar Marbun, "Rekonstruksi Eksekusi Hak Tanggungan Berdasarkan Prinsip Keadilan Bagi Kreditur" (Master's thesis, Universitas Diponegoro, 2025), 88.
[21] Soetansah, Emirzon, and Yahanan, "Problems of Justice in Legal Protection Efforts," Jurnal SASI 28, no. 3 (2022): 475.
[22] Melinda Sabela Putri, "Kedudukan Hak Eksekusi Pemegang Hak Tanggungan Atas Pernyataan Putusan Pailit Terhadap Debitor Dalam Konsep Kepastian Hukum" (Master's thesis, Universitas Islam Sultan Agung, 2024), 88.
[23] Marbun, "Rekonstruksi Eksekusi Hak Tanggungan," 145.

tor. This forcibly strips separatist creditors of their preferential execution rights and subjects the collateral to the curator's control, a result that directly contradicts the protective principles established in the Indonesian Civil Code Law on Mortgage Rights on Land and Objects Related to Land and Fiduciary Guarantee Law. The clash between the general bankruptcy regime (*lex generalis*) and the specific collateral regime (*lex specialis*) thereby creates a paradox in which a law designed to protect creditors becomes the instrument that diminishes their economic rights.[24]

The expiry of the two-month window triggers a decisive shift in the balance of power between the secured creditor and the debtor's estate. Article 59 paragraph (2) provides a normative assurance that the curator's sale of the collateral does not diminish the separatist creditor's right over the proceeds; in practice, however, this statutory promise is largely illusory. Once execution authority shifts to the curator, the collateral is treated not as an exclusive safeguard for the secured creditor but as an integral component of the general bankruptcy estate (*boedel pailit*).[25] Under Article 191 of the Act on PKPU, all bankruptcy costs are charged to the estate unless the collateral was sold independently by the separatist creditor; because the creditor was forced to surrender the asset, the resulting proceeds are heavily reduced by bankruptcy administration costs, outstanding tax obligations, labour wages, and the curator's own service fee (*fee kurator*). This mechanism systematically subordinates the economic rights of the secured financial institution to the operational costs of the bankruptcy procedure itself.[26]

The detrimental impact of curator dominance is not merely theoretical; it is a recurring, documented reality in Indonesian jurisprudence. Two landmark decisions illustrate the structural flaw. *Supreme Court Decision No. 158 K/Pdt.Sus/2011* involved a protracted dispute between PT Bank OCBC NISP Tbk, as separatist creditor, and the curator of PT Metalindo Perwita (in bankruptcy).[27] Bank OCBC NISP argued that because the liquidated asset was specifically bound to it as collateral, the proceeds should have been strictly prioritised to settle its outstanding credit. The judicial record discloses a stark financial disparity: out of an officially acknowledged claim of Rp44,746,392,484.12 (approximately Rp44.7 billion), Bank OCBC NISP received a distribution of only Rp1,520,236,774 (approximately Rp1.5 billion), a recovery rate of roughly 3.4 per cent of the claim. This catastrophic shortfall arose because the curator allocated the majority of the auction proceeds to concurrent and preferred creditors, bankruptcy administration costs, and the curator's own fee.

A parallel pattern appears in *Supreme Court Decision No. 895 K/Pdt.Sus-Pailit/2016*, concerning a dispute between PT Bank CIMB Niaga Tbk and the curator team of PT Jaba Garmindo (in bankruptcy).[28] Bank CIMB Niaga challenged the curator's distribution scheme, arguing that the curator had unlawfully diverted the proceeds of the bank's fiduciary collateral (machinery bound under Fiduciary Guarantee Certificate No. W2900019482.AH.05.01.TH.2011) to pay labour wages, court fees, and the curator's own fee ahead of the secured creditor's claim. The published judgment does not disclose the exact Rupiah figures of the final distribution; the Court nonetheless confirmed the

24 Soetansah, Emirzon, and Yahanan, "Problems of Justice in Legal Protection Efforts," Jurnal SASI 28, no. 3 (2022): 476.

25 Siagian and Lyanti, "Perlindungan Hukum Kreditor Separatis," *Media Hukum Indonesia* 3, no. 2 (2025): 589.

26 Elya Ras Ginting, "Perlindungan Hukum Bagi Kreditor Separatis Terkait Jaminan Hak Tanggungan yang Ditetapkan Sebagai Boedel Pailit," Lex et Societatis 11, no. 1 (2023): 12, https://doi.org/10.35796/les.v11i1.46167.

27 Mahkamah Agung Republik Indonesia, Decision No. 158 K/Pdt.Sus/2011, *PT Bank OCBC NISP Tbk v. Curator of PT Metalindo Perwita (In Bankruptcy)*.

28 Mahkamah Agung Republik Indonesia, Decision No. 895 K/Pdt.Sus-Pailit/2016, *PT Bank CIMB Niaga Tbk v. Curator Team of PT Jaba Garmindo (In Bankruptcy)*.

same doctrinal pattern found in the 2011 decision namely, that a separatist creditor's statutory priority under Article 55(1) may be displaced in practice once the curator gains control of the collateral under Article 59(2), because the proceeds are drawn into the general Article 191 waterfall before being returned to the secured creditor.

Table 1. Comparison of Claim Value and Distribution in the Two Supreme Court Decisions

Case	Secured Creditor	Debtor / Curator	Total Claim (Rp)	Distribution Received (Rp)	Approx. Recovery Rate
Supreme Court Decision No. 158 K/Pdt.Sus/2011	PT Bank OCBC NISP Tbk	Curator of PT Metalindo Perwita (In Bankruptcy)	44,746,392,484.12	1,520,236,774	≈ 3.4%
Supreme Court Decision No. 895 K/Pdt.Sus-Pailit/2016	PT Bank CIMB Niaga Tbk	Curator Team of PT Jaba Garmindo (In Bankruptcy)	Not disclosed in published judgment	Not disclosed in published judgment	Same subordination pattern confirmed qualitatively

Source: authors' compilation from Supreme Court Decision No. 158 K/Pdt.Sus/2011 and Supreme Court Decision No. 895 K/Pdt.Sus-Pailit/2016.

Table 1 makes explicit what the doctrinal analysis in Sections 3.2—3.4 predicts: once execution authority passes to the curator, the secured creditor's statutory priority survives on paper but is substantially eroded in practice. In the 2011 decision, for which the case record permits a precise calculation, the bank recovered barely a thirtieth of its claim. The 2016 decision, litigated on the same legal theory five years later, confirms that this is not an isolated miscarriage but a structural feature of the way Articles 59(2) and 191 interact.

The micro-level injustice experienced by Bank OCBC NISP and Bank CIMB Niaga reverberates through the macro-economic landscape. The primary purpose of taking collateral is to secure a high recovery rate in the event of default, thereby maintaining the bank's liquidity and solvency.[29] When bankruptcy law forces banks to surrender collateral and absorb large haircuts from curator fees and bankruptcy costs, this fundamental risk-mitigation mechanism is crippled. The consequent inability to recover non-performing loans forces banks to absorb larger loan-loss provisions, weakening Return on Assets and overall financial health.[30] Portfolios burdened with unresolved NPLs limit banks' capacity to disburse new credit; to compensate for the elevated risk of value expropriation in bankruptcy, banks tend to tighten lending standards or raise interest rates, contributing to a credit crunch that stifles growth and works against the developmental goals of a welfare state.[31]

4. Discussion: Comparative and Theoretical Synthesis

Realising the comparative approach set out in Section 2, this subsection benchmarks Indonesia's two-month execution limit against three functionally comparable arrangements. Under Unit-

29 Setyabudi et al., "Tinjauan Hukum Terhadap Jaminan Harta Pihak Ketiga dalam Kepailitan yang Dijadikan Harta Pailit oleh Kurator," *Jurnal Lex Stricta* 1, no. 1 (2025): 152.
30 Ismamudi, Hartati, and Sakum, "Peran Bank dan Lembaga Keuangan dalam Pengembangan Ekonomi," Jurnal Akuntansi Neraca 1, no. 2 (2023): 41.
31 Budino and Yun, "Resolution of Non-Performing Loans: Policy Options," *FSI Insights on Policy Implementation*, no. 3 (2021): 28.

ed States Chapter 11, the filing of a bankruptcy petition triggers an automatic stay under 11 U.S.C. §362 that halts a secured creditor's self-help remedies, but the stay is not open-ended: §361 requires the debtor-in-possession to provide "adequate protection" to the secured creditor, typically periodic cash payments, replacement liens, or an indemnity against diminution in collateral value and a secured creditor may petition the bankruptcy court for relief from the stay if adequate protection is not provided or if the debtor has no equity in the property and the property is not necessary for reorganisation.[32] The design logic is therefore not a fixed calendar deadline but a continuously monitored balance between the collective interest in reorganisation and the individual creditor's economic exposure, precisely the balance that Article 56 and Article 59 of the Act on PKPU fail to strike, because Indonesian law offers no equivalent adequate-protection mechanism during the ninety-day stay and then imposes an inflexible sixty-day cut-off regardless of the collateral's actual depreciation risk.

The UNCITRAL Legislative Guide on Insolvency Law reaches a similar conclusion through soft-law recommendation rather than binding statute: it advises that any stay on secured creditors should be time-limited, subject to extension only where the estate can demonstrate that the secured creditor's interest is adequately protected, and that courts should retain discretion to lift the stay where protection is absent.[33] Indonesia's Act on PKPU satisfies the first element (a time limit exists) but not the second (no protection mechanism accompanies the limit) nor the third (no judicial discretion to extend or shorten the period based on case-specific risk).

The Dutch *Faillissementswet* offers a third, more institutionally supervised model. Rather than a fixed statutory window, Dutch law places the execution of secured assets under closer oversight by the supervisory judge (*rechter-commissaris*), who can direct the timing of execution while preserving the separatist creditor's substantive priority; Khoiruddin et al.'s comparative analysis concludes that this supervisory structure produces a better-balanced outcome between collective creditor interests and individual secured priority than Indonesia's rigid two-month rule.[34] Read together, the three transatlantic comparators converge on a single lesson directly relevant to Research Question 3: an execution constraint on secured creditors is legitimate only if it is paired with either (a) a protection mechanism against value erosion during the stay, or (b) active judicial supervision capable of adjusting the timeline to the collateral's actual risk profile. Indonesia's current framework has neither, which explains why the empirical outcomes documented in Section 3.5 are so severe. Beyond the transatlantic comparators discussed above, a regionally proximate benchmark is available within ASEAN itself, whose member states share closer economic structures, banking systems, and, in several cases, a comparable civil-law heritage to Indonesia. Four jurisdictions illustrate a spectrum of design choices directly relevant to Research Question 3.

The Philippines offers the most structurally analogous solution to the reform this article proposes. Under the Financial Rehabilitation and Insolvency Act of 2010, a stay order suspends a secured creditor's enforcement rights but does not diminish the underlying security or its value; critically, the court may lift the suspension, in whole or in part, upon a showing that the secured

32 United States Bankruptcy Code, 11 U.S.C. §362 (automatic stay) and §361 (adequate protection); see also Kennedy, "Automatic Stays Under the New Bankruptcy Law," *University of Michigan Journal of Law Reform* 12 (1979): 1—13.

33 United Nations Commission on International Trade Law, *UNCITRAL Legislative Guide on Insolvency Law* (New York: United Nations, 2005), pt. 2, chap. 2, paras. 25—58.

34 *Faillissementswet* [Dutch Bankruptcy Act], art. 57; see also Khoiruddin et al., "Comparative Study of Indonesia and the Netherlands on Legal Protection for Separatist Creditors."

creditor lacks "adequate protection" over the property securing its claim. This is, in substance, an ASEAN-based adoption of the Chapter 11 adequate-protection doctrine discussed in Section 4.1, transplanted into a jurisdiction whose legal tradition and banking-sector structure sit far closer to Indonesia's than the United States does. Its existence within ASEAN weakens any objection that the adequate-protection model is a common-law artefact unsuited to Southeast Asian civil-law administration.

Thailand demonstrates that a longer, court-calibrated stay period is administratively workable within the region. Once a rehabilitation petition is accepted, an automatic stay takes effect, but it may run for up to one year, extendable to two years by court order, rather than Indonesia's rigid sixty-day cut-off. Significantly, this extended stay applies only to court-supervised rehabilitation; in ordinary bankruptcy (liquidation) proceedings, Thai secured creditors retain the right to enforce their security directly, without first filing a claim through the general estate. Thailand's bifurcated design, protracted protection where collective reorganisation is genuinely underway, but undiminished self-help execution where it is not, offers a template the Indonesian legislature could adapt without wholesale doctrinal transplantation.

Singapore illustrates the judicial-supervision alternative in an ASEAN setting. Under the Insolvency, Restructuring and Dissolution Act 2018, a statutory moratorium arising from liquidation does not touch a secured creditor's right to enforce its security at all; only where a debtor seeks protection under a scheme of arrangement or judicial management may the moratorium be extended to secured creditors, and even then solely by case-specific court order rather than automatically. This mirrors, within the region, the supervised-execution logic of the Dutch rechter-commissaris discussed above, while confirming that active judicial discretion over the timing of execution is achievable within an Asian commercial-court system similar in caseload and institutional capacity to Indonesia's.

Malaysia, by contrast, illustrates the risk of overcorrection. Under the judicial-management framework introduced by the Companies Act 2016, a secured creditor holds an effective veto over the commencement of a moratorium, a design that recent scholarship identifies as having severely constrained the mechanism's rescue function by allowing a single secured creditor to block protection before it takes effect. Malaysia's experience is instructive precisely because it demonstrates the opposite failure mode to Indonesia's: where Indonesia's framework strips secured creditors of protection almost entirely, Malaysia's grants them a veto so absolute that it undermines the collective character of reorganisation altogether.

Read together, these four ASEAN regimes converge on the same lesson drawn from the transatlantic comparators in Section 4.1, but with added force precisely because the lesson now travels within, rather than across, structurally comparable legal families: a constraint on secured-creditor execution is defensible only when paired with either a genuine protection mechanism (the Philippine model) or a calibrated, judicially supervised timeline proportionate to the collateral's actual risk (the Thai and Singaporean models), and it becomes counterproductive when it swings to either extreme, Indonesia's current near-total subordination of secured creditors or Malaysia's near-absolute creditor veto. Indonesia's two-month rule sits at one pole of this ASEAN spectrum, without the safeguards that make the Philippine and Singaporean designs workable, reinforcing that the reformulation proposed in Section 5 is not merely modelled on distant common-law or Dutch practice but is achievable within the institutional and administrative constraints that Indonesia shares with its immediate regional neighbours.

The resolution of this normative conflict cannot rely on dogmatic interpretation alone; it requires a holistic evaluation against the broader objectives of the state. Under the Welfare State paradigm, the state functions as an active regulator mandated to ensure public prosperity, a mandate now given renewed policy weight by the Law No. 59 of 2024 concerning the National Long-Term Development Plan 2025—2045,'s vision of a highly liquid, well-capitalised financial sector.[35] The legal framework governing credit and bankruptcy must therefore act as a facilitator, not an impediment, of economic growth, a perspective that aligns with Richard Posner's economic analysis of law, under which legal rules should be evaluated by their capacity to maximise wealth and aggregate utility while minimising transaction costs.[36]

Read through this lens, Articles 56 and 59 of the Act on PKPU generate avoidable economic inefficiency. The forced transfer of execution authority to the curator introduces additional bureaucratic layers, curator fees, and prolonged disputes, precisely the kind of destructive transaction costs Posner's framework identifies as socially wasteful.[37] The comparative evidence in Section 4.1 reinforces this reading in efficiency terms as well as institutional-design terms: Ayotte's formal analysis of the mandatory stay shows that a stay is efficient only under specific conditions, firm-specific collateral, sequential and incomplete debt contracts, and imperfect bankruptcy bargaining and that outside those conditions, a mandatory stay of secured creditors can destroy rather than preserve value.[38] Indonesia's stay applies uniformly regardless of whether these efficiency conditions hold, which is itself a source of inefficiency. Empirically, Schoenherr and Starmans' cross-jurisdictional analysis of creditor-friendly versus debtor-friendly bankruptcy regimes finds that the efficient degree of creditor protection is contingent on the personal costs of bankruptcy borne by owners and managers, implying that a one-size-fits-all suspension such as Indonesia's uniform ninety-day stay and two-month cut-off is unlikely to be efficient across heterogeneous debtors.[39] Aggarwal's empirical study of a comparable secured-creditor reform in India further shows that strengthening (rather than diluting) creditors' self-help execution rights reduced debtor firms' litigation-related transaction costs and freed judicial resources, evidence directly consistent with Posner's prediction that clearer, faster secured-creditor remedies lower the aggregate cost of credit enforcement.[40]

By constraining the *parate executie* rights of separatist creditors without an offsetting protection mechanism, the Act on PKPU traps banking capital within the slower administration of the Commercial Court. An economically efficient framework would allow banks to execute collateral swiftly and independently, converting idle, non-performing assets back into liquid capital redeployable as new credit. Harmonising bankruptcy law to respect the substantive priority of secured creditors is therefore not merely a matter of dogmatic consistency but a macro-economic necessity for financial-system stability.[41]

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35 Law No. 59 of 2024 concerning the National Long-Term Development Plan 2025—2045, General Elucidation.

36 Richard A. Posner, *Economic Analysis of Law*, 9th ed. (New York: Wolters Kluwer, 2014), 14—17.

37 Posner, *Economic Analysis of Law*, 587—91.

38 Kenneth Ayotte, "On the Mandatory Stay of Secured Creditors in Bankruptcy," in *Research Handbook on Corporate Bankruptcy Law*, ed. Barry E. Adler (Cheltenham: Edward Elgar Publishing, 2020), 150—52, https://doi.org/10.4337/9781781007884.0001.

39 David Schoenherr and Jan Starmans, "When Should Bankruptcy Law Be Creditor- or Debtor-Friendly? Theory and Evidence," *Journal of Finance* 77, no. 5 (2022): 2670—72, https://doi.org/10.1111/jofi.13171.

40 Dhruv Chand Aggarwal, "Creditor Rights and Legal Transaction Costs," *Journal of Empirical Legal Studies* 23, no. 1 (2026): 5—8, https://doi.org/10.1111/jels.70020.

41 Budino and Yun, "Resolution of Non-Performing Loans: Policy Options," *FSI Insights on Policy Implementation*, no. 3 (2021): 28.

Beyond efficiency, the reformulation of secured creditors' rights must also be anchored in distributive justice. The current mechanism, which forces separatist creditors to subsidise the general bankruptcy estate and the curator's operational costs under Article 191, raises a genuine question of fairness. John Rawls' second principle of justice, the "difference principle" permits social and economic inequalities only where they are arranged to work to everyone's advantage.[42] In the lending relationship, the secured creditor occupies an elevated (unequal) position derived from a specific contractual bargain aimed at mitigating lending risk. Under a Rawlsian reading, this preferential position is just precisely because protecting the creditor's capital ultimately benefits society at large, by sustaining a stable banking system capable of financing productive activity and averting systemic crises.

The Act on PKPU's intervention, however, violates this principle of fairness. By allowing curators to draw on the proceeds of specifically bound collateral to fund the bankruptcy costs of the defaulting debtor's estate, the law penalises the party that already bore the risk of the original credit exposure. This dominant curatorial authority enriches the general estate and the curator while systematically disadvantaging the secured creditor, failing Rawls' requirement that resulting inequalities produce mutual advantage.[43] A just legal system would instead treat the collateral as a segregated asset immune from the financial burdens of the general estate; distributive justice, on this reading, demands that the party who bore the initial financial risk, the separatist creditor, receive absolute priority in the recovery of its funds.[44]

The transatlantic and ASEAN comparative evidence, together with the efficiency- and justice-based analyses, converge on a single conclusion: the Act on PKPU's current execution-window design is an outlier among functionally comparable regimes precisely because it combines a rigid time limit with neither an adequate-protection mechanism (as under Chapter 11) nor active judicial supervision (as under the *Faillissementswet*), and this design choice is simultaneously inefficient (Section 4.2) and distributively unjust (Section 4.3). A harmonised framework must therefore restructure the relationship between Articles 56, 59, and 191 of the Act on PKPU so that the stay period serves its legitimate collective purpose, allowing the curator to verify and organise the estate, without silently reallocating the secured creditor's economic priority to the estate's general costs. The specific legislative proposals following from this synthesis are set out in Section 5.

5. Conclusion

The Act on PKPU creates a systemic antinomy with collateral law: the Civil Code, the Mortgage Law, and the Fiduciary Guarantee Law grant secured creditors an absolute right of parate executie, yet Articles 56 and 59 restrict that right through a mandatory ninety-day suspension and an unrealistic two-month execution limit. Supreme Court Decisions No. 158 K/Pdt.Sus/2011 and No. 895 K/Pdt.Sus-Pailit/2016 show that surrendering collateral to the curator sharply erodes recovery, in the first case from a Rp44.7 billion claim to a Rp1.5 billion distribution, roughly 3.4 per cent, as auction proceeds absorb general bankruptcy costs and curator fees under Article 191.

[42] John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Belknap Press of Harvard University Press, 1999), 65—73 (the "difference principle").

[43] Rawls, *A Theory of Justice*, 302—3.

[44] Emirzon, Yahanan, and Soetansahl, "Problems of Justice in Legal Protection Efforts," *Jurnal SASI* 28, no. 3 (2022): 479.

A comparative reading of the United States adequate-protection doctrine, the UNCITRAL Guide, the Dutch Faillissementswet, and the Philippine, Thai, and Singaporean models shows Indonesia is unusual in pairing a fixed deadline with neither compensatory protection nor judicial discretion. Read through Posner and Rawls, the arrangement is economically inefficient and distributively unjust, forcing the party bearing the original lending risk to subsidise the defaulting estate.

Legislators should therefore extend the execution window to six-to-twelve months or make it extendable by the supervisory judge, ring-fence net collateral proceeds from general estate deductions, and, if a stay is retained, pair it with an adequate-protection obligation. Pending reform, Commercial Courts should require curators to itemise anticipated Article 191 deductions before liquidation, and banks should treat appraisal and auction scheduling as time-critical from early distress and maintain contemporaneous valuation records. Three extensions follow from this article's limitations. First, a large-sample study of Commercial Court and cassation decisions could test the recovery-rate pattern for statistical generality. Second, future work could extend the ASEAN benchmarking begun here to Vietnam, Cambodia, and Myanmar. Third, research could quantify the macro-economic effect of curator-driven recovery erosion on bank lending, linking the doctrinal argument to observable credit-supply data.

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