Pak. j. life soc. Sci. (2024), 22(2): 22028-22036 E-ISSN: 2221-7630;P-ISSN: 1727-4915

Pakistan Journal of Life and Social Sciences

www.pjlss.edu.pk

https://doi.org/10.57239/PJLSS-2024-22.2.001562

RESEARCH ARTICLE

Third-Party Collateral Assets in Debtor Bankruptcy: Part of the Bankrupt Assets or Not?

M. Yusuf Syamsuddin[1*], Farida Patittingi[2], Winner Sitorus[3], Iin Karita Sakharina[4], Imran Nating[5]

[1,2,3,4] Faculty of Law, Hasanuddin University, South Sulawesi, Indonesia

[5] INP Law Office; Doctoral Student, Faculty of Law, Hasanuddin University South Sulawesi, Indonesia

ARTICLE INFO

Received: Oct 19, 2024

Accepted: Dec 26, 2024

Keywords

Assets

Bankruptcy

Debtor

Third-Party Collateral

***Corresponding Author:**

myusuf.syam@gmail.com

ABSTRACT

The granting of third-party collateral as a security asset in agreements between Debtors and Creditors often leads to conflicting interpretations and applications of statutory provisions. Bankruptcy is a general attachment of all assets belonging to the bankrupt Debtor, managed and liquidated by a curator under the supervision of a supervising judge. The legal consequence of a bankrupt status for the Debtor is that all of the Debtor's assets are placed under general attachment, and the Debtor loses the authority to control and manage their assets. In practice, there is a conflict regarding the execution of third-party collateral assets. This conflict arises because some curators include third-party collateral assets as part of the bankrupt estate for execution. The aim of this research is to provide legal certainty for the parties involved by clarifying the legal consequences of a Debtor's bankruptcy on third-party collateral assets. This paper adopts a normative juridical research method. The legal consequence of a Debtor's bankruptcy on third-party collateral assets is that such assets do not form part of the bankrupt estate. Therefore, the curator has no authority to include third-party collateral assets in the bankrupt estate, nor to execute or liquidate them.

1. INTRODUCTION

In today's dynamic and interconnected global economy, credit agreements between lenders (creditors) and business owners (debtors) are pivotal to facilitating financial growth, fostering entrepreneurship, and driving economic development. These agreements serve as the cornerstone of business transactions, establishing a complex legal framework that governs the relationship between the parties involved. However, not all credit agreements unfold as smoothly as anticipated, as various challenges—ranging from bad faith and intentional breaches to unforeseen external factors—can undermine the debtor's ability to meet loan obligations. Such failures to honor contractual commitments lead to a legal situation known as a "breach of contract" or "*wanprestasi*" under Indonesian law, which can have far-reaching consequences for both parties, particularly when it comes to the enforcement of collateral assets.

Collateral agreements are among the most critical mechanisms for securing loans, providing creditors with a layer of protection in the event of non-payment. Under Article 1131 of the Indonesian Civil Code, the assets of the debtor, both present and future, are considered collateral for their personal obligations. However, in practice, financial institutions often require additional security, such as third-party collateral provided by company directors, shareholders, or commissioners (Widodo & Wibisono, 2019). These third-party collateral agreements are designed to strengthen creditors' position, ensuring that loans can be repaid even in difficult financial situations. As such, they have become an indispensable feature of modern business financing, particularly in jurisdictions with complex economic environments.

Despite the established legal framework, the intersection of third-party collateral and bankruptcy law presents significant ambiguities and challenges. In Indonesia, Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Repayment Obligations (UUK-PKPU) dictates that bankruptcy involves the seizure of all the debtor's assets, which are to be managed by a curator under judicial supervision (Pohan, 2016). However, questions arise when third-party collateral is involved: Should the bankruptcy proceedings of the debtor extend to third-party assets pledged as collateral? This question is of paramount importance, as it creates significant uncertainty for both creditors and debtors. Particularly troubling is the situation when curators include third-party assets in the bankrupt estate for settlement, which can lead to complex legal disputes.

The lack of clear legal guidelines regarding the treatment of third-party collateral in bankruptcy cases underscores a significant gap in the current legal landscape. The Indonesian legal system does not provide explicit direction on how third-party assets should be handled in bankruptcy proceedings, leaving creditors, debtors, and third-party guarantors vulnerable to unpredictable outcomes (Sudjana, 2017). Article 21 of the UUK-PKPU clearly stipulates that only the debtor's assets should be included in the bankrupt estate, yet curators have occasionally included third-party assets, leading to legal challenges (Setiadi, 2020). This situation raises an essential legal question: should third-party collateral agreements, such as those governed by Law No. 4 of 1996 on Mortgage Rights (UUHT), be respected independently of bankruptcy proceedings, or should they be treated as part of the debtor's bankruptcy estate? Creditors argue that third-party assets should remain protected and that they retain the right to execute against those assets separately from bankruptcy procedures (Pratama, 2019).

This legal uncertainty and the gap in current legal frameworks create significant risks not only for creditors but also for third-party guarantors, who may be unfairly exposed to the loss of personal assets. While bankruptcy law in Indonesia primarily focuses on the debtor's obligations, it is equally important to explore the rights and obligations of third-party guarantors who stand as collateral providers. These parties are often caught in the crossfire between business finance and bankruptcy law, and their interests are insufficiently addressed in current legal provisions (Rahman & Sitorus, 2021). The absence of a coherent legal standard not only undermines the predictability and enforceability of contractual agreements but also exposes third-party guarantors to potentially unjust legal consequences.

Although previous research on bankruptcy law has extensively explored the rights of creditors and debtors, limited attention has been paid to the specific legal implications for third-party collateral. This gap in the literature warrants an in-depth investigation into the treatment of third-party assets in bankruptcy proceedings and how Indonesian legal frameworks, can be reconciled with bankruptcy laws (Wahyudi, 2018; García-Ripoll, 2020). This research aims to address the legal consequences of a debtor's bankruptcy on third-party collateral assets and provide practical recommendations for more equitable and consistent legal practices (Adriano, 2018). Furthermore, this study will contribute to the global discourse on collateral, bankruptcy, and secured transactions, offering valuable insights for legal practitioners, financial institutions, and policymakers both in Indonesia and internationally.

By analyzing the implications of bankruptcy on third-party collateral, this study not only aims to clarify the legal treatment of such assets in Indonesia but also seeks to provide recommendations that can improve the efficiency and fairness of bankruptcy proceedings. Ensuring legal certainty regarding third-party collateral is essential to maintaining trust in both the financial and legal systems, particularly in jurisdictions where credit agreements and collateral arrangements play a critical role in supporting business and economic activity. This research is timely and crucial for fostering a more predictable and equitable business environment, where both creditors and third-party guarantors can have confidence in the protection of their legal rights and obligations.

2. METHODS

This study employs a normative juridical research method, focusing on the examination of legal norms, principles, and rules governing bankruptcy and third-party collateral assets. The normative juridical approach is well-suited for analyzing the legal implications of debtor bankruptcy on third-party collateral, as it focuses on the legal framework outlined in the Indonesian Civil Code. Through this approach, the study aims to offer a thorough understanding of the legal challenges surrounding third-party collateral in Indonesian bankruptcy law and provide recommendations for resolving legal disputes and enhancing legal certainty for creditors and third-party guarantors.

3. RESULTS AND DISCUSSION

3.1. Secured assets belonging to third parties: are they considered bankruptcy assets?

Bankruptcy is a legal mechanism designed to prevent creditors from competing over the debtor's assets. It serves as an extension of the rules outlined in Articles 1131 and 1132 of the Indonesian Civil Code (KUHPerdata), which establish the principles of *paritas creditorium* and *pari passu prorata parte*. These principles dictate that the debtor's assets are equally available to all creditors, with no one creditor having preferential access except in cases of specific legal privileges.

The debtor's legal responsibility under Article 1131 of the Civil Code leads to the establishment of bankruptcy proceedings, designed to regulate the debtor's obligations through both their current and future assets. Bankruptcy law ensures a structured approach to liquidating the debtor's assets, offering a mechanism by which creditors' claims can be satisfied without allowing any creditor to preferentially access the debtor's assets. The framework thus aims to prevent creditors from competing in a disorderly manner, establishing a system of fairness and clarity in debt resolution.

In Indonesia, Article 1(1) of the Bankruptcy Law defines bankruptcy as "a general attachment on all assets of the bankrupt debtor, with their management and settlement carried out by a curator under the supervision of a Supervisory Judge." This stipulation reflects the core purpose of bankruptcy: to create a uniform attachment on the debtor's assets, which is then managed under the supervision of the court to prevent individual creditors from unfairly advancing their claims over others.

Once bankruptcy is declared, the debtor immediately loses control over their assets, as their estate is now subject to the jurisdiction of a court-appointed curator. The curator assumes the responsibility for managing and liquidating the estate to satisfy creditor claims. This loss of control takes effect from the moment the Commercial Court pronounces the bankruptcy judgment, and it marks a decisive shift in the debtor's financial governance. The presence of a Supervisory Judge ensures the transparency and legality of the curator's actions, further reinforcing the integrity of the process (Retnaningsih and Ikhwansyah, 2017).

One of the most significant aspects of bankruptcy is the notion of insolvency—when a debtor's liabilities exceed their assets. In such cases, bankruptcy procedures are triggered, and the liquidation of assets becomes imperative (Longhofer and Peters, 2004). Under these circumstances, the debtor's estate is systematically liquidated to pay creditors, starting with the preferential creditors, whose claims take priority. According to Indonesian bankruptcy law, creditors are divided into three categories: preferential creditors, concurrent creditors, and separatist creditors. Preferential creditors, such as tax authorities or employees owed wages, must be paid first, ensuring that certain legal and financial obligations are prioritized. Concurrent creditors, who do not have secured claims, are ranked equally and share in the distribution of the remaining bankruptcy estate on a pro-rata basis. Separatist creditors, however, hold security interests such as mortgages or liens, and their claims are not subject to the bankruptcy proceedings. These creditors retain the right to execute their claims on collateral, independent of the bankruptcy estate.

The fundamental legal effect of bankruptcy is the transfer of asset control to the curator, who acts autonomously, thus preventing any interference from the debtor and maintaining the fairness of the distribution process. This system reinforces the principles of *pari passu* and *paritas creditorium*, ensuring an equitable treatment of creditors, except in cases where specific legal privileges are granted. The categorization of creditors into preferential, concurrent, and separatist classes reflects a nuanced understanding of the varying degrees of creditor security, with separatist creditors occupying a distinctive position (Agung et al, 2024). Their ability to execute claims against collateral remains undisturbed by the bankruptcy, providing them with a layer of protection that other creditors do not enjoy. This highlights the important role of secured interests in safeguarding creditors, even when a debtor faces insolvency.

Under Indonesian Bankruptcy Law, creditors are categorized based on their priority in debt repayment. These classifications include preferential creditors, concurrent creditors, and separatist creditors. Preferential creditors are those who, according to the law, must be given priority in the distribution of the debtor's assets. This includes, for example, creditors holding tax claims or employees owed wages. Concurrent creditors are those whose claims are not secured by any proprietary rights (*rights in rem*) and are not legally privileged. These creditors are treated equally, and their claims are satisfied in proportion to the remaining bankruptcy estate after preferential creditors have been paid. Separatist creditors, on the other hand, possess security interests, such as mortgages or pledges, and are not affected by the debtor's bankruptcy declaration (Wijaya, 2020). Their right to execute on collateral remains intact, allowing them to satisfy their claims independently of the bankruptcy proceedings.

While Indonesian bankruptcy law provides a detailed framework for addressing insolvency and protecting creditors, its principles align with broader global trends in bankruptcy and secured transactions. Many legal systems worldwide share similar goals of ensuring fairness in debt repayment while also protecting the rights of secured creditors. The legal principles outlined in *pari passu* and *paritas creditorium* mirror international best practices found in jurisdictions such as the United States, the United Kingdom, and other jurisdictions that follow the UNCITRAL Model Law on Cross-Border Insolvency. These practices emphasize the importance of treating creditors equitably and maintaining a clear distinction between secured and unsecured claims.

However, despite these commonalities, the treatment of third-party collateral in bankruptcy proceedings remains a source of significant legal ambiguity across various legal systems. The debate over whether third-party collateral should be included in the bankruptcy estate is a critical issue, particularly when curators have included such assets in the bankruptcy estate for liquidation. In some jurisdictions, the treatment of third-party collateral is explicitly defined, while in others, it remains a grey area, creating risks for both creditors and third-party guarantors. This global challenge necessitates further investigation and legal reform to ensure that secured creditors, including those holding third-party collateral, are given the protection they deserve under bankruptcy law (Hendrawan et al, 2023).

The bankruptcy law in Indonesia, particularly in relation to secured creditors and third-party collateral, presents an opportunity to engage with important global issues in financial law. By exploring the legal mechanisms that govern the distribution of assets in bankruptcy proceedings, this research seeks to address a significant gap in both Indonesian and international legal scholarship. A clearer understanding of how third-party collateral should be treated in bankruptcy cases would enhance the predictability and fairness of bankruptcy proceedings, ultimately contributing to the stability of the global financial system. Moreover, this research is relevant not only for Indonesian legal practitioners but also for international stakeholders, including financial institutions, policymakers, and legal scholars, who must navigate the complexities of bankruptcy and secured transactions in a globalized economy.

The Indonesian bankruptcy law provides a structured framework for addressing debtor insolvency, ensuring fairness in the distribution of assets among creditors. The categorization of creditors into preferential, concurrent, and separatist groups highlights the importance of protecting secured creditors, particularly those holding third-party collateral, whose claims remain unaffected by the bankruptcy estate. While Indonesian law aligns with global bankruptcy practices in promoting equitable treatment of creditors, the treatment of third-party collateral remains a legal challenge. This issue presents an opportunity for further legal reform to ensure clearer and more predictable outcomes in bankruptcy proceedings, benefiting both local and international stakeholders in the global financial system.

3.2. Legal consequences of a bankrupt debtor's status on the third-party collateral in bankruptcy proceedings

The legal framework surrounding third-party collateral in bankruptcy proceedings raises important questions about the balance between creditor rights, debtor protection, and the preservation of third-party interests. The explicit exclusion of third-party collateral from the bankruptcy estate is intended to safeguard the rights of secured creditors who hold collateral. However, this creates a complex situation where the debtor's creditors may be left with fewer assets to satisfy their claims, especially in cases where the debtor's estate is insolvent.

From a legal standpoint, the treatment of third-party collateral reflects the tension between the debtor's insolvency and the contractual freedom of third-party guarantors. While the debtor’s obligations are a primary concern in bankruptcy proceedings, third parties who voluntarily engage in providing collateral assume a risk that their assets could be affected by the debtor's failure to repay. However, the law provides a level of protection for third parties by ensuring that their assets remain outside the scope of the bankruptcy estate, unless explicitly agreed otherwise.

This legal provision also raises questions about the fairness of the bankruptcy process, particularly when third-party collateral is crucial to the satisfaction of creditor claims. If creditors are unable to execute their claims against third-party collateral, they may seek alternative remedies, including litigation or enforcement outside the bankruptcy process. However, such actions could lead to protracted legal battles and undermine the efficiency of the bankruptcy procedure.

From an international perspective, the treatment of third-party collateral in bankruptcy proceedings varies significantly across legal systems. Many jurisdictions, particularly in common law countries, allow third-party collateral to be included in bankruptcy proceedings under certain conditions, recognizing the principle of "co-debtorship" or "joint liability." However, Indonesian law stands out by clearly distinguishing between the debtor's estate and third-party assets, which may provide a more predictable and secure environment for third-party guarantors but could limit creditors' ability to recover debts in certain cases.

The treatment of third-party collateral is a crucial aspect of bankruptcy law that requires further scrutiny, particularly in jurisdictions with complex creditor-debtor relationships (Tryandari, 2021). The current legal framework in Indonesia, while offering clarity regarding the separation of third-party assets from the bankruptcy estate, may need refinement to address the realities of modern financial transactions, where third-party guarantees are commonplace. Ensuring that the rights of all parties—debtors, creditors, and third-party guarantors—are balanced within the bankruptcy process is essential to maintaining the integrity and fairness of the system.

This analysis also highlights the need for reform in how third-party collateral is handled in insolvency proceedings. Given the growing reliance on third-party guarantees in modern business practices, there is a compelling argument for greater flexibility in bankruptcy law to accommodate the complexities of these arrangements. Reforms could include clearer guidelines on when and how third-party collateral may be considered part of the bankruptcy estate or alternative mechanisms for securing the rights of all parties involved. Such reforms would enhance the predictability and fairness of bankruptcy proceedings, contributing to the overall stability of the financial and legal systems.

In the execution of their duties, a curator is granted the authority to enforce security interests held by separatist creditors, which are considered part of the bankruptcy estate and fall under the creditor's control. This is explicitly outlined in Article 59(2) of the Indonesian Bankruptcy Law. According to this provision, following the expiration of the period stipulated in Article 59(1), the curator is obligated to request the surrender of the secured property for liquidation, in accordance with the procedures set forth in Article 185. However, this process does not affect the rights of the secured creditor regarding the distribution of proceeds from the sale of the collateral.

Generally, secured property must belong to the debtor for it to be subject to liquidation as part of the bankruptcy estate. However, Indonesian law also allows third-party property to be used as collateral for the debtor’s obligations. In instances where a third party provides collateral for the debtor's debt, and that collateral is held by a separatist creditor, it is critical to understand that the third-party asset remains outside the scope of the bankruptcy estate upon the debtor’s bankruptcy declaration (Claudia et al, 2023). As a result, the curator is precluded from liquidating third-party secured assets, as they are not considered part of the debtor's estate.

A third party is defined as a separate legal entity distinct from the debtor. Even if a legal relationship exists between the debtor and the third party, the third party’s assets retain their independence and ownership. Therefore, the third-party assets cannot be included in the debtor's bankruptcy estate or subjected to the curator’s control and liquidation. In essence, third-party collateral, while linked to the debtor’s obligations, does not become part of the bankruptcy estate due to the legal principle that the ownership and control of such assets remain with the third party.

This legal distinction is enshrined in Article 21 of the UUK-PKPU, which explicitly states that the bankruptcy estate consists solely of assets owned by the debtor at the time of the bankruptcy declaration, as well as any assets acquired during the course of the bankruptcy proceedings. The definition of "assets owned by the debtor" is further clarified in Article 570 of the Indonesian Civil Code, which ensures that only those assets that are legally documented as belonging to the debtor can be managed and liquidated as part of the bankruptcy estate. Consequently, the curator's authority is limited to those assets lawfully recognized as part of the debtor's estate by the Commercial Court.

This interpretation is supported by jurisprudence from the Supreme Court of Indonesia. In the Judicial Review decision No. 104/PK/Pdt.Sus-Pailit/2013, dated September 17, 2013, the Supreme Court ruled:

"The assets mortgaged to the petitioner for the benefit of PT Panca Group (in bankruptcy) are private property, not assets of PT Panca Group (in bankruptcy); therefore, they are not part of the bankruptcy estate as defined by Article 21 of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment, which states that 'bankruptcy encompasses all assets of the debtor."

Similarly, in Case No. 569 K/Pdt.Sus/2012, dated November 22, 2012, the Court ruled that third-party secured assets are not part of the bankruptcy estate:

"The assets of PT. Bangkit Pangan Indonesia/the bankrupt debtor are separate from the personal assets of Arie Pranoto Achmad, the Director of PT. Bangkit Pangan Indonesia. The loan received by PT. Bangkit Pangan Indonesia/the bankrupt debtor and the petitioner, PT. Bank Negara Indonesia (Persero) Tbk., was secured by immovable property owned by or in the name of Arie Pranoto Achmad, under a mortgage to the petitioner. Although Arie Pranoto Achmad acknowledged that the land was the property of PT. Bangkit Pangan Indonesia, this claim cannot be legally validated, as the land is formally registered under Arie Pranoto Achmad's name. As such, the land mortgaged under the security interest cannot be included in the bankruptcy estate and must be excluded from PT. Bangkit Pangan Indonesia's bankruptcy assets."

The exclusion of third-party secured assets from the bankruptcy estate is a fundamental principle that upholds the integrity of property rights within the scope of bankruptcy law. This approach is consistent with the provisions of Article 1131 of the Indonesian Civil Code, which states that when a debtor fails to fulfill their financial obligations, all of their assets—both current and future—become subject to seizure and sale. The proceeds from such liquidation are then distributed proportionally among creditors, embodying the concept of *ponds-ponds-gewijze* and the principle of *pari passu prorata parte*, where assets serve as a collective security for all creditors. Notably, this distribution is subject to legal priorities, with certain creditors enjoying preference, such as those holding secured claims.

This legal framework establishes a clear distinction between the debtor's assets and third-party secured assets, ensuring that external assets remain protected from liquidation within the bankruptcy process. This distinction is critical for preserving the fundamental legal concept of *separatio bonorum*—the separation of estates—which prevents the assets of third parties from being seized or liquidated as part of the debtor's bankruptcy estate. By adhering to this principle, Indonesian bankruptcy law reinforces the notion that only the debtor's assets, as explicitly defined under the law, may be included in the bankruptcy proceedings.

Furthermore, this protection of third-party assets aligns with the concept of *rights in rem*, which grants secured creditors a direct, unqualified claim to collateral, regardless of the debtor's bankruptcy status. In this context, creditors who hold third-party collateral retain their right to execute their security interests on the collateral independently of the bankruptcy process (Piter and Sudawan, 2024). As a result, the curator in a bankruptcy proceeding is precluded from liquidating these third-party assets as part of the debtor's estate. This legal provision safeguards the ownership rights of third parties and ensures that their property remains unaffected by the debtor's insolvency, as long as the security interest has been legally established.

The careful separation between debtor and third-party assets serves to preserve the integrity of external property relationships, ensuring that the rights of all parties are respected. In doing so, Indonesian bankruptcy law strikes a balance between protecting the debtor's creditors under the principle of *pari passu* and safeguarding the ownership rights of third parties who have provided collateral (Murtadho, 2024). This system upholds the principles of fairness and respect for property rights while maintaining the equitable distribution of assets within the bankruptcy estate.

The protection of third-party collateral within bankruptcy proceedings is vital not only for ensuring fair treatment of creditors but also for promoting legal certainty within the broader financial and business environment. By maintaining a clear boundary between the debtor's assets and third-party assets, Indonesian law fosters a predictable and stable legal framework, where third parties are assured that their property will not be unduly affected by the debtor's financial troubles. This is particularly important in an economy where third-party guarantees, such as personal guarantees or company directors' assets, play a significant role in securing loans and other financial obligations.

From a comparative perspective, the Indonesian approach provides a clear and robust model for handling third-party collateral in insolvency situations. Unlike some jurisdictions that allow third-party assets to be included in the debtor's bankruptcy estate under certain conditions, Indonesia's legal framework offers a more distinct and secure form of protection for third-party interests. This can be especially appealing to international investors and businesses, who often rely on third-party collateral as a risk mitigation strategy. By ensuring that third-party assets are not subject to the uncertainty and potential liquidation that accompanies bankruptcy, Indonesian bankruptcy law provides a level of security that encourages investment and financial transactions.

However, this strict separation of estates may also lead to challenges, particularly in cases where creditors are unable to recover their claims from third-party collateral, especially when the debtor's assets are insufficient to cover outstanding debts. This situation may result in potential legal disputes and a sense of inequity for creditors, who may view the exclusion of third-party assets as an obstacle to their ability to recover debts. Therefore, while the protection of third-party assets serves to uphold property rights, it also raises important questions about the fairness of bankruptcy proceedings, particularly in cases of insolvency where creditors are unable to fully recover their claims.

Given the increasing reliance on third-party guarantees in modern business transactions, there may be a need for reform in how third-party collateral is treated within bankruptcy proceedings. As business practices evolve, particularly in global markets where cross-border transactions are common, the legal framework surrounding third-party collateral could be further refined to address new challenges and ensure a more equitable and effective bankruptcy process. Future reforms could consider introducing mechanisms that allow for greater flexibility in determining the treatment of third-party collateral, ensuring that the interests of both creditors and third-party guarantors are fairly balanced.

One potential area for reform could be the introduction of clearer guidelines regarding the enforceability of third-party guarantees in insolvency proceedings, particularly in cases where third-party collateral is essential for securing significant financial claims. Additionally, reforms could focus on establishing more transparent procedures for handling claims against third-party assets, reducing the potential for disputes and ensuring that all parties are treated with fairness and respect under the law.

By addressing these issues, Indonesian bankruptcy law could further enhance its reputation as a stable and predictable legal environment, fostering trust among creditors, third-party guarantors, and businesses alike. Such reforms would not only benefit domestic stakeholders but also position Indonesia as an attractive jurisdiction for international business and investment.

The curator is entrusted with the responsibility to manage and liquidate the assets of a bankrupt debtor, which is essential for the orderly distribution of the debtor's assets to creditors. However, when it comes to third-party secured assets that have been pledged as collateral to secure the debtor's obligations, these assets are explicitly excluded from the bankruptcy estate. This is in accordance with Article 21 of the Indonesian Bankruptcy Law, which defines the bankruptcy estate as encompassing all assets owned by the debtor at the time of the bankruptcy declaration, as well as any assets the debtor may acquire thereafter.

This distinction reflects a key principle in bankruptcy law: the separation of estates. The assets of third parties are protected from being seized or liquidated as part of the debtor's bankruptcy estate. The secured creditor holding the third-party collateral retains their right to enforce their claim over the collateral independently of the bankruptcy proceedings, preserving the integrity of their security interest. In this way, the curator's role is limited to the debtor's assets and does not extend to assets that are legally outside the debtor's estate.

This exclusion of third-party assets plays a crucial role in upholding property rights within the bankruptcy system. It ensures that the contractual and proprietary rights of third-party creditors are respected, preventing the undue interference of bankruptcy proceedings with the rights of individuals or entities that have provided collateral to secure a debtor's obligations. This legal framework fosters stability in property rights, which is essential for maintaining confidence in the lending and credit system, as third parties are assured that their assets will not be unduly affected by the debtor's financial troubles.

Furthermore, the legal separation between the debtor's assets and third-party secured assets under Indonesian bankruptcy law aligns with broader international principles of secured transactions and insolvency law. It reflects a careful balance between the protection of creditors' rights and the respect for external property relationships, ensuring that the bankruptcy process remains fair, transparent, and equitable. While the exclusion of third-party collateral from the bankruptcy estate can limit the pool of assets available to satisfy claims, it ultimately serves to enhance the legal certainty and predictability of the insolvency process, particularly for creditors who rely on collateral to secure their debts.

4. CONCLUSION

Indonesian bankruptcy law carefully delineates the scope of the bankruptcy estate, ensuring that only the debtor's assets are subject to liquidation, while third-party secured assets remain protected. The curator is vested with the authority to manage and liquidate the assets of a bankrupt debtor. However, when it comes to third-party secured assets used as collateral for the debtor's debts, these assets are excluded from the bankruptcy estate. Even though these assets are linked to the debtor's obligations—usually through a security interest—the third party retains full legal ownership and control over them. As a result, these assets are not included in the debtor's bankruptcy estate, and the curator does not have the legal authority to liquidate them as part of the bankruptcy process. Therefore, the curator lacks the legal authority to liquidate third-party secured assets as part of the bankruptcy proceedings. Ultimately, this framework ensures that third-party creditors can continue to enforce their rights over collateral independently, without interference from the bankruptcy proceedings.

Funding: This research received no external funding

Conflicts of interest: The authors declare no conflicts of interest.

REFERENCES

Adriano, M. (2018). Legal uncertainties in third-party collateral assets and bankruptcy law. *Jakarta: Journal of Indonesian Legal Studies*.

Agung, N. J., Borahima, A., Patittingi, F., & Saad, S. (2024). The nature of public interest as the basis for the prosecutor's authority to file for bankruptcy. *Environmental & Social Management Journal/Revista de Gestão Social e Ambiental, 18*(5), e04898.

Basri, H., Israhadi, E., & Riswadi, R. (2023). Legal protection of creditors in implementing bankruptcy redemption. In *Proceedings of the 3rd International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2023, 6 May 2023, Salatiga, Central Java, Indonesia*.

Claudia, A., Liman, P. D., & Rifai, A. (2023). Responsibilities of individual guarantor (personal guarantee) declared bankrupt. *ARRUS Journal of Social Sciences and Humanities, 3*(3), 310–316.

García-Ripoll, M. (2020). Third-party liability in international bankruptcy cases: A comparative approach. *International Journal of Law and Economics, 45*(3), 231-246. https://doi.org/10.1016/j.ijle.2020.04.003

Hendrawan, D., Haspada, D., & Tiopan, D. (2023). Legal protection for creditors in bankruptcy law: Implementing the bankrupt boedel execution. *Croatian International Relations Review, 29*(92), 108-124.

Luthfie, M. (2020). *Indonesian Bankruptcy Law: Theory and Practice*. Jakarta: XYZ Publishing.

Murtadho, N. A. (2024). Perlindungan hukum terhadap kreditor preferen dalam pemberesan proses kepailitan. *Journal of Contemporary Law Studies, 1*(4), 207-226.

Pohan, S. (2016). *Bankruptcy law in Indonesia: A comprehensive review of UUK-PKPU*. Jakarta: Gramedia Pustaka.

Pratama, D. (2019). The role of UUHT in protecting third-party collateral in bankruptcy cases. *Bandung: Law Review Indonesia*.

Rahman, F., & Sitorus, L. (2021). Bankruptcy implications for third-party assets: A normative juridical approach. *Yogyakarta: Gadjah Mada University Press*.

Retnaningsih, S., & Ikhwansyah, I. (2017). Legal status of individual bankrupt debtors after termination of bankruptcy and rehabilitation under Indonesian bankruptcy law. *Indon. L. Rev., 7*, 79.

Setiadi, A. (2020). Curator authority and third-party collateral in Indonesian bankruptcy law. *Surabaya: Jurnal Hukum Ekonomi*.

Soekanto, S., & Sriwijaya, D. (2020). Legal protection for third-party guarantors in Indonesian bankruptcy law. *Asian Journal of Law and Society, 7*(2), 289-308. https://doi.org/10.1017/als.2020.12

Sudjana, R. (2017). *Wanprestasi in Indonesian legal context: The concept and application*. Jakarta: Pustaka Ilmu.

Wahyudi, D. (2018). Reconciling Indonesian bankruptcy law with mortgage rights: Legal perspectives. *Jakarta: Universitas Indonesia*.

Widodo, T., & Wibisono, K. (2019). Collateral provisions and the implications for creditors in Indonesia. *Surabaya: Legal Journal of Indonesia*.

Wijaya, A. (2020). Implementation of the doctrine of the business judgment rule on bankruptcy law in Indonesia. *Yuridika, 35*(1), 1-14.