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Legal Implications of the Execution of Mortgage Rights by Separatist Creditors Through the Foreclosed Collateral (AYDA) Mechanism in Bankruptcy

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ABSTRACT: The increasing development of banking activities encourages the use of material collateral, particularly mortgage rights, as a means to guarantee debt repayment. In the event that a debtor is declared bankrupt, the bank, as a secured creditor, in principle has the right to execute the collateral object independently. This study uses a normative juridical legal research method with a statutory and conceptual approach. Data were obtained through literature review and analyzed descriptively and analytically. The results show that although banks, as secured creditors, have the right to execute collateral through the AYDA mechanism, its implementation still faces legal weaknesses, such as multiple interpretations of regulations, unclear coordination with the curator, and the risk of imbalanced protection between creditors. The legal implications of this mechanism emphasize the principle of justice, with the obligation to balance the rights of secured creditors and the collective interests of other creditors; the principle of legal certainty, through the need for regulatory harmonization so that the implementation of execution is clear and measurable; and the principle of legal benefit, because AYDA can accelerate the resolution of problem loans and maintain banking stability if implemented in a controlled manner. Thus, the implementation of AYDA must integrate these three principles to provide proportional legal protection, clear guidelines, and real benefits for all parties involved.

KEYWORDS: Legal Implications, Separatist Creditors, Execution; Mortgage Rights, AYDA, Bankruptcy.

I. INTRODUCTION

The development of economic and business activities in Indonesia has driven an increasing public demand for bank credit facilities as a source of financing (Ismamudi et al., 2023). In practice, bank loans are always accompanied by collateral to minimize the risk of debtor default. The existence of collateral in credit agreements plays a crucial role as a form of legal protection for banks, as creditors, to guarantee the repayment of debtors' debts. With this collateral, banks have legal certainty to obtain repayment of their receivables through execution of the collateral object if the debtor defaults or goes bankrupt (Lestari & Waluyo, 2024).

One of the most frequently used forms of collateral in banking practice is mortgage. Based on Article 1 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, states that "Mortgage Rights are security rights imposed on land rights including or not including other objects that are an integral part of the land, for the repayment of certain debts, which give a preferred position to certain creditors over other creditors". In principle, mortgage rights are imposed on land as collateral objects, but in practice, mortgage objects can also include objects related to the land, such as buildings, plants, and works of art that are an integral part of the land used as collateral (Supriyadi, 2020).

The position of creditors holding collateral becomes crucial, especially when the debtor goes bankrupt. Indonesian bankruptcy law recognizes three categories of creditors: preferred creditors, concurrent creditors, and separatist creditors (Sentika & Kartoningrat, 2020). Separatist creditors hold a special position in bankruptcy law, as they hold a stronger position than other creditors in the bankruptcy process. Separatist creditors are creditors who hold material collateral and have the right to enforce the collateral separately from the bankruptcy estate. Separatist creditors include creditors holding material collateral, such as mortgages, fiduciary guarantees, pawns, and mortgages, who, in principle, can still exercise their enforcement rights even after the debtor has been declared bankrupt (Sentika & Kartoningrat, 2020).

The privileged position of secured creditors in bankruptcy often gives rise to practical problems, particularly regarding the exercise of the right of execution against collateral. Article 56 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations stipulates that the right of execution of secured creditors may be suspended for 90 days from the date of the bankruptcy decision. This provision has sparked debate because it is considered to limit the privileges of

secured creditors who should be able to execute collateral directly based on the provisions of the property guarantee law.

The problem is increasingly complex in banking practice because it is related to the mechanism of Foreclosed Collateral (AYDA), which is one way for banks to obtain receivables when debtors do not fulfill their obligations. The legal basis for the implementation of AYDA is contained in Article 12A of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (Banking Law), which authorizes commercial banks to take over collateral in part or in whole, either through auction or outside of auction, based on voluntary surrender or power to sell outside of auction from the collateral owner (Soediro, 2026). Article 1 number 15 of the Financial Services Authority Regulation Number 40/POJK.03/2019 concerning Asset Quality Assessment of Commercial Banks, states that AYDA is an asset obtained by a bank either in part or in whole by purchasing through auction or outside of auction, based on power to sell outside of auction from the collateral owner, in the event that the debtor does not fulfill its obligations to the bank. Then, the Circular Letter of the Supreme Court (SEMA) Number 3 of 2023 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2023 as a Guideline for the Implementation of Duties for the Court, provides an affirmation that AYDA is not interpreted as a form of sale and purchase of collateral objects, but rather the repayment of debt by voluntarily handing over collateral to the bank for subsequent sale (Soediro, 2026).

Problems arise when a debtor is declared bankrupt by a court decision and is in a state of insolvency. In such a situation, questions arise regarding the party authorized to voluntarily surrender the collateral to the bank, acting as a secured creditor, if the secured creditor wishes to exercise its right of execution against the debtor's collateral through the Foreclosed Assets (AYDA) mechanism. Legal provisions do not specifically specify who is entitled to voluntarily surrender the collateral to the bank, acting as a secured creditor, in the context of a debtor being declared bankrupt, even though legally the debtor no longer has the authority to control and manage all of their assets included in the bankruptcy estate as of the date of the decision.

The use of Foreclosed Assets (AYDA) in a debtor's bankruptcy situation is that after the debtor is declared bankrupt, all of the debtor's assets become part of the bankruptcy estate, which is under the management and settlement of the receiver. The provisions of Article 56 and Article 59 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU Law), demonstrate multiple interpretations and even a lack of synchronization of the rules regarding mortgage rights and material guarantees, which state that secured creditors can still enforce mortgage rights even if a curator has been appointed by the court. This lack of synchronization or multiple interpretations clearly raises legal issues, and philosophically, it could even be said to diminish the existence of legal certainty in a state governed by the rule of law (Muisa et al., 2022).

Based on these various problems, the implementation of the execution of collateral security by banks as separatist creditors through the AYDA mechanism in bankruptcy still raises various legal issues, especially related to legal certainty, protection for other creditors, and the authority of the curator in managing the bankruptcy estate. Therefore, a more in-depth legal study is needed regarding the legal provisions regarding the execution of collateral security by banks as separatist creditors through foreclosed collateral (AYDA) in bankruptcy in Indonesia today; and the legal implications of the execution of collateral security by separatist creditors through the AYDA mechanism in bankruptcy from the perspective of justice, certainty and legal benefits.

II. RESEARCH METHOD

This study uses a normative legal approach with analytical descriptive specifications, which places law as a norm or rule to analyze the implementation of mortgage rights execution through the Foreclosed Collateral (AYDA) mechanism by banks as separated creditors in bankruptcy. The approaches used include a conceptual approach, to examine doctrines, concepts, and legal principles related to legal certainty and justice, as well as a statute approach, to analyze relevant statutory provisions, such as the UUHT, the Bankruptcy Law, the Banking Law, the POJK, and the Supreme Court's Supreme Court Supreme Court Circular Letter. The data used are sourced from primary legal materials (statutory regulations and court decisions), secondary (literature, journals, legal textbooks), and tertiary (legal dictionaries and encyclopedias) (Muhaimin, 2020), collected through document and documentation studies. The analysis is conducted qualitatively deductively, starting from a review of legal principles, legal definitions, legal standards, and identification of obstacles, then systematically compiled and analyzed to produce appropriate conclusions regarding legal certainty and justice in the implementation of AYDA collateral execution.

III. RESULT AND DISCUSSION

Legal Provisions Regarding The Execution Of Mortgage Rights By Banks As Separatist Creditors Through AYDA In Bankruptcy In Indonesia Today

The provisions for the execution of mortgage rights by banks as secured creditors through Foreclosed Collateral (AYDA) in bankruptcy in Indonesia present unique legal challenges. This is because banks have the preferential right to execute debtor collateral under the Mortgage Law, while the AYDA mechanism provides the operational basis for repayment of receivables in accordance with the Banking Law and Financial Services Authority Regulations. However, the existence of bankruptcy limits the implementation of execution due to the curator's authority over all bankruptcy assets and the existence of a suspension period for

execution under the Bankruptcy and Suspension of Debt Payment Obligations Law, thus giving rise to multiple legal interpretations between the rights of secured creditors and the management of the bankruptcy estate. Therefore, further analysis of the right of execution, bank authority, limitations in bankruptcy, and the affirmation of AYDA regulations is important to understand the protection of bank interests while ensuring legal certainty for all creditors.

The Position of Banks as Separator Creditors in Indonesian Bankruptcy Law

In Indonesian bankruptcy law, creditors are divided into three main groups: separatist creditors, preferred creditors, and concurrent creditors. Banks that provide credit secured by material collateral, such as mortgages, are considered separatist creditors. The legal basis for this position is regulated in Article 55 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which essentially states:

"While still paying attention to the provisions as referred to in Article 56, Article 57, and Article 58, every Creditor holding a pledge, fiduciary guarantee, security right, mortgage, or collateral right on other property, can execute his rights as if there had been no bankruptcy"

This provision gives the separatist creditor the right to obtain payment from the collateral object separately from the debtor's bankrupt assets. In other words, even though the debtor has been declared bankrupt, the separatist creditor still has the right to execute its collateral to obtain payment of receivables. However, this right is not completely free because it remains subject to the bankruptcy law mechanism that regulates the management and settlement of bankrupt assets by the curator as regulated in Article 56 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, as follows:

""The Creditor's right of execution as referred to in Article 55 paragraph (1) and the right of third parties to claim their assets which are under the control of the Bankrupt Debtor or Curator, are suspended for a maximum period of 90 (ninety) days from the date the bankruptcy declaration decision is pronounced"

The provisions of the above article indicate that the suspension aims to provide the curator with the opportunity to optimally inventory, secure, and manage the bankruptcy estate for the benefit of all creditors. Furthermore, if the secured creditor fa ils to exercise its right of execution within a specified period, the curator may seize the collateral by selling it in accordance with Article 59 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. In this case, the proceeds from the sale will still be used primarily to settle the secured creditor's receivables, after deducting costs associated with the management and settlement of the bankruptcy estate. This provision demonstrates that although secured creditors have a strong position within the bankruptcy legal system, the exercise of their rights remains within the framework of supervision and coordination of the bankruptcy process.

Based on the above description, the bank's position as secured creditor provides relatively strong legal protection for the bank's interests as a creditor, particularly through the right of execution of the collateral. However, this protection is not absolute, as it must still comply with the provisions of bankruptcy law, which prioritize the principles of balance and justice for all parties involved in the bankruptcy process, including other creditors. Therefore, the provisions regarding secured creditors in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations essentially aim to balance the interests of creditors holding collateral with the collective interests of creditors in the process of settling the bankruptcy estate.

Limitations on Execution Rights by Banks as Separator Creditors in Bankruptcy

Banks, as separator creditors in the Indonesian bankruptcy legal system, are creditors holding collateral rights, such as pawns, mortgages, fiduciary rights, or security interests. Therefore, in principle, they have the right to execute their collateral as if the bankruptcy had not occurred, as stipulated in Article 55 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. However, this right is not absolute, as the law also provides certain limitations to safeguard the interests of all creditors and ensure the orderly process of settling the bankruptcy estate. One of the main limitations on the execution rights of secured creditors is the existence of a suspension period after the bankruptcy decision is issued. This provision is regulated in Article 56 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, which states that the execution rights of separatist creditors are suspended for a maximum period of 90 days from the date the bankruptcy declaration decision is pronounced. The purpose of this suspension is to provide the curator with the opportunity to conduct an inventory of the bankrupt's assets, maintain the value of these assets, and consider the possibility of peace or debt restructuring that can benefit all parties.

In addition to the suspension period, restrictions also arise during the bankruptcy estate settlement phase. Based on Article 59 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, it states:

"With due regard to the provisions of Articles 56, 57, and 58, creditors holding rights as referred to in Article 55 paragraph (1) must exercise their rights no later than 2 (two) months after the commencement of the insolvency situation as referred to in Article 178 paragraph (1)."

The above provisions indicate that after the insolvency begins, secured creditors are given a maximum of two months to exercise their right of execution against the collateral. If the secured creditors fail to exercise their right of execution within this

period, the curator is authorized to sell the collateral, with the proceeds being used primarily to settle the secured creditors' receivables, after deducting bankruptcy costs. This provision demonstrates that although secured creditors have preferential rights, asset management remains under the coordination of the bankruptcy process.

Other restrictions relate to the interests of the bankrupt debtor's business continuity. Article 56 paragraph (3) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states that:

"During the suspension period as referred to in paragraph (1), the Curator may use the bankrupt's assets in the form of immovable or movable objects or sell the bankrupt's assets in the form of movable objects which are under the Curator's control for the purposes of the Debtor's business continuity, in the event that reasonable protection has been provided for the interests of Creditors or third parties as referred to in paragraph (1).

Thus, the limitation on the bank's execution rights as a secured creditor is not intended to eliminate its preferential rights, but rather to ensure that the exercise of these rights remains in line with the primary objective of bankruptcy law, namely the fair, orderly, and proportional settlement of debts for all creditors and the preservation of the possibility of optimizing the value of the bankruptcy estate. This provision reflects a balance between the protection of collateral rights and collective interests in the bankruptcy process.

Bank Authority to Execute Mortgage Rights Through the Foreclosed Asset (AYDA) Mechanism

The authority of banks to enforce credit guarantees is an important part of the legal system of guarantees in Indonesia. In banking practice, the provision of credit by banks is almost always accompanied by material guarantees to provide legal certainty for creditors if the debtor does not fulfill their obligations. One of the most frequently used forms of guarantee is a mortgag e on land, as regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land. This law gives priority to the holder of the mortgage compared to other creditors. This is as regulated in Article 6 as follows:

"If the debtor defaults, the first Mortgage Right holder has the right to sell the Mortgage Right object under his own power through a public auction and take payment of his debt from the proceeds of the sale."

The above provisions indicate that the creditor has strong execution rights over the collateral object if the debtor defaults. In banking practice, in addition to public auctions as regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land, there is also a mechanism for resolving problematic credit through the takeover of collateral by the bank known as Collateral Taken Over (AYDA). The legal basis for this mechanism is regulated in Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, specifically in Article 12A paragraph (1) as follows:

"Commercial Banks can purchase part or all of the collateral, either through auction or outside of auction based on voluntary surrender by the collateral owner or based on the power to sell outside of auction from the collateral owner in the event that the Debtor Customer does not fulfill his obligations to the bank, with the provision that the collateral purchased must be disbursed as soon as possible."

These provisions provide a legal basis for banks to take over debtor collateral as an effort to resolve problem loans. Although banks are given the authority to take over collateral, this control is not permanent. This is regulated in the Explanation of Article 12A paragraph (1) that Banks are not permitted to own the collateral they purchase and must resell it as soon as possible so that the proceeds from the sale of the collateral can be immediately utilized by the bank. Then the explanation of paragraph (2) states that collateral that can be purchased by banks is collateral whose credit has been categorized as bad for a certain period of time; Collateral that has been purchased must be disbursed no later than within a period of one year. Within a period of one year, the bank can suspend obligations related to the transfer of rights to the collateral in question in accordance with applicable laws and regulations. This provision is intended so that the bank does not act as a long-term asset owner, but only as a party that temporarily controls the collateral to be resold to cover the debtor's unfulfilled obligations. Thus, AYDA is basically a temporary problem credit settlement instrument and must still pay attention to the principle of prudence in banking activities. Further regulations regarding the takeover of collateral by banks are also regulated in the provisions issued by the Financial Services Authority, one of which is through Article 1 of Financial Services Authority Regulation Number 40/POJK.03/2019 concerning Asset Quality Assessment of Commercial Banks, and Article 1 of Bank Indonesia Regulation Number 14/15/PBI/2012 concerning Asset Quality Assessment of Commercial Banks states that "Foreclosed Collateral, hereinafter abbreviated as AYDA, is an Asset obtained by the Bank either in part or in whole by means of purchase through auction or outside the auction based on voluntary delivery by the collateral owner or based on the power to sell outside the auction from the collateral owner, in the event that the debtor does not fulfill its obligations to the Bank"

Based on the description above, it can be analyzed that normatively, there is a close relationship between the Mortgage Law and the Bankruptcy and Suspension of Debt Payment Obligations Law in regulating the execution of collateral by secured creditors. The Mortgage Law gives creditors the authority to execute collateral objects directly through parate execution. However, in the case of a bankrupt debtor, the implementation of this right is limited by the provisions of the Bankruptcy and Suspension of Debt Payment Obligations Law, especially regarding the suspension period of execution. This raises several legal issues, including: (1) Potential

conflict of norms between the Mortgage Law and the Bankruptcy and Suspension of Debt Payment Obligations Law regarding the freedom of secured creditors in executing collateral; (2) The unclear position of AYDA in bankruptcy, whether it is a form of execution or takeover of assets; and (3) Potential imbalance in legal protection between secured creditors and other creditors. Thus, it can be concluded that the legal provisions governing the execution of collateral rights by banks as separatist creditors through AYDA in bankruptcy in Indonesia still give rise to various problems in practice, especially related to the harmonization between property collateral law and bankruptcy law.

Given these various legal issues, the mechanism for executing collateral rights by banks through AYDA can be analyzed from the perspective of legal protection in Indonesia. According to Satjito Rahardjo, legal protection is an effort to protect a person's interests by granting them the rights and authority to act in their interests (Romli et al., 2024). In the context of AYDA, banks, as separatist creditors, obtain preferential rights to execute the debtor's collateral based on the Mortgage Law and the Banking Law. However, these rights remain limited by the curator's authority and the suspension of execution period as stipulated in the Bankruptcy and Suspension of Debt Payment Obligations Law. This reflects the principle of repressive legal protection explained by Philipus M. Hadjon, namely the protection of the dignity, honor, and rights of legal subjects through provisions that guarantee justice, certainty, and balance the interests of all creditors (Atmadja & Budiartha, 2018). Furthermore, legal protection also requires certainty and harmonization of norms between the mortgage law, the Banking Law, and the Bankruptcy Law, in order to avoid multiple interpretations and conflicts of interest. The concept of preventive and repressive legal protection emphasizes that every legal subject must have the opportunity and clear guidelines to exercise their rights, as well as supervision to ensure the optimal settlement of bankruptcy assets (Romli et al., 2024). Thus, the AYDA mechanism functions not only as an instrument for recovering bad debts but also as a form of legal protection for banks as secured creditors, while safeguarding the collective interests of other creditors.

Legal Implications for the Execution of Mortgage Rights by Secured Creditors Through the Foreclosed Collateral Mechanism in Bankruptcy, Reviewed from the Perspective of Justice, Certainty, and Legal Benefit

The legal implications for the execution of mortgage rights by secured creditors through the Foreclosed Collateral (AYDA) mechanism in bankruptcy reflect the complex interactions between property security law, banking law, and bankruptcy law in Indonesia. Although the AYDA mechanism provides an opportunity for banks to cover bad debts through collateral foreclosure, its application in the situation of a bankrupt debtor must still comply with the provisions on the suspension of execution and coordination with the curator. Within the framework of Radbruch's legal theory, these legal implications can be analyzed through three fundamental values: justice, certainty, and legal benefit (Abdurrachman & Isharyanto, 2016), thus providing a normative basis for assessing the extent to which the AYDA mechanism aligns with the overall objectives of the law.

Implications from a Legal Justice Perspective

From a justice perspective, according to Radbruch, the law is not merely applied formally but must also provide moral legitimacy and proportional protection for all stakeholders (Moeliono & Sebastian, 2019). From a justice perspective, the regulation regarding the execution of collateral rights by banks as secured creditors through the Foreclosed Collateral (AYDA) mechanism in bankruptcy creates its own dynamics within the Indonesian bankruptcy legal system. On the one hand, the law provides special protection to secured creditors because they hold material security rights, which legally give them priority over other creditors. This is reflected in the provisions of Article 55 paragraph (1) of the Bankruptcy Law and the Suspension of Debt Payment Obligations, which grant creditors holding collateral the right to execute their collateral as if bankruptcy had not occurred.

The granting of these rights can be viewed as a form of justice for secured creditors, particularly banks as financial intermediaries that channel public funds in the form of credit. With the existence of material collateral and the right to enforce such collateral, banks obtain legal protection against the risk of bad debts that may arise due to debtor default. In this context, the existence of the AYDA mechanism can be viewed as an instrument that supports the recovery of bank receivables more effectively, especially when the public auction process is not running optimally or when there is a voluntary agreement between the debtor and the bank in resolving problem loans. However, a broader perspective of justice demands that the rights of secured creditors still take into account the collective interests of other creditors in the bankruptcy process. The principle of paritas creditorum, a fundamental principle of bankruptcy law, affirms the equality of creditors' rights in obtaining repayment from the debtor's bankruptcy estate. Therefore, the implementation of AYDA must not harm other creditors or disrupt the process of settling the bankruptcy estate managed by the curator. For example, taking over collateral without coordinating with the curator or without paying attention to the procedures for settling bankrupt assets can cause an imbalance in the distribution of receivables.

The limitation through the suspension of execution as stipulated in Article 56 of the Bankruptcy Law and the suspension of Debt Payment Obligations are normative instruments that balance the interests of separatist creditors and other creditors, in line with the Radbruch principle of justice which emphasizes that the law must serve moral and social purposes and not solely favor certain parties (Kansil, 2009). Thus, from a justice perspective, the regulation regarding the execution of collateral rights through AYDA in bankruptcy must be understood as an effort to balance two different interests, namely the protection of the rights of

creditors holding material collateral and the protection of the collective interests of creditors in the bankruptcy process. This balance is important to ensure that the bankruptcy legal system not only provides benefits to certain parties, but also creates a fair distribution of debt settlement for all parties involved.

Implications from the Perspective of Legal Certainty

From a legal certainty perspective, the regulation of the execution of mortgage rights by secured creditors through the AYDA mechanism in bankruptcy still raises several normative issues (Marzuki, 2016). According to Radbruch's theory, legal certainty is a fundamental value that ensures the orderly implementation of the law and provides clear guidelines for the public in exercising their rights and obligations. In practice, there is potential for overlapping norms between the Mortgage Law, the Banking Law, and the Bankruptcy Law and the suspension of Debt Payment Obligations. Article 6 of the Mortgage Law grants mortgage holders the right to execute their collateral directly through a parate execution mechanism, allowing creditors to sell the collateral object through an auction without a lawsuit. Meanwhile, Article 12A of the Banking Law provides a legal basis for banks to take over collateral through the AYDA mechanism as a form of problem credit resolution.

Ambiguity arises when a debtor is declared bankrupt, as all of the bankrupt's assets are under the control of the curator. This gives rise to multiple interpretations regarding whether secured creditors can directly execute collateral or must coordinate with the curator. This situation creates legal uncertainty, both for the bank as secured creditor and for other creditors with rights to the bankrupt's assets. In the context of Radbruch's theory, this kind of ambiguity reduces the effectiveness of the law and poses the risk that the law no longer fulfills its normative purpose, namely to provide certainty for all parties.

Therefore, the legal certainty perspective emphasizes the urgency of harmonizing all relevant regulations, including the Mortgage Law, the Banking Law, the Bankruptcy Law, and the Suspension of Debt Payment Obligations Law, to avoid overlapping norms that could lead to multiple interpretations in bankruptcy practice. This harmonization is essential to ensure that all parties involved in the bankruptcy process, including secured creditors, concurrent creditors, and the curator, have clear and integr ated guidelines for exercising their rights and obligations in a systematic and measurable manner. Consistent and structured guidelines minimize the potential for legal conflicts, abuse of authority, and uncertainty in the execution of collateral, allowing the bankruptcy process to proceed fairly and efficiently. This ensures that the principle of legal certainty can be truly achieved without sacrificing justice for all creditors or the overall benefit of the law in optimizing the settlement of bankruptcy assets.

Implications from a Legal Benefit Perspective

The legal benefit provisions regarding the execution of collateral rights through the Foreclosed Assets (AYDA) mechanism in bankruptcy essentially aim to provide an effective solution for resolving problem loans. The Foreclosed Assets (AYDA) mechanism allows banks to take over collateral from debtors who are unable to meet their obligations, allowing the bank to immediately resell the collateral to cover losses resulting from bad loans. According to Radbruch, the law must be oriented toward social goals and provide tangible benefits to society, specifically to banks, debtors, and other creditors (Sulaiman, 2021). From a practical perspective, this mechanism benefits banks because the loan settlement process can be carried out more quickly than through auction procedures, which often take considerable time. Thus, Foreclosed Assets (AYDA) can help maintain the stability of the banking system, particularly by reducing the risk of losses that could impact the bank's overall health.

However, in the context of bankruptcy, these benefits must be balanced with the interests of optimally managing the bankruptcy estate by the curator. If the acquisition of collateral is carried out without considering the best economic value for the bankrupt estate, it can be detrimental to other creditors who also have rights to the debtor's assets. Therefore, in its implementation, the AYDA mechanism must adhere to the principles of transparency, accountability, and coordination with the curator so that the bankruptcy estate settlement process can produce optimal results for all creditors. Furthermore, the AYDA mechanism also benefits from increasing the efficiency of credit dispute resolution, as it provides a more flexible alternative to lengthy litigation processes. In the long term, this mechanism can support the creation of a more conducive business climate by providing certainty for financial institutions in disbursing credit to the public.

Therefore, from a legal perspective, the AYDA mechanism has the potential to provide significant benefits to the stability of the banking system and the smooth functioning of the economy as a whole. However, these benefits will only be realized if implementation is carried out carefully, in a controlled manner, and in accordance with the principles of bankruptcy law, which are designed to protect the interests of all creditors fairly and proportionally. Therefore, the implementation of Foreclosed Assets (AYDA) must always be accompanied by strict supervision and clear coordination between the bank and the curator to ensure that legal benefits are achieved without creating the risk of disputes or unfairness.

IV. CONCLUSION

Based on the results and discussions regarding the legal provisions for the execution of mortgage rights by banks as secured creditors through the AYDA mechanism in bankruptcy, it can be concluded that although banks, as secured creditors, have the right to execute debtors' collateral, their implementation still faces various legal weaknesses. These weaknesses include unclear

coordination with the curator, multiple interpretations of regulations between collateral law, banking law, and bankruptcy law, and the risk of imbalanced protection between secured creditors and other creditors. Restrictions such as the suspension period for execution and the curator's authority demonstrate that secured creditors' rights are not absolute and must be aligned with the principles of balance and fairness in the settlement of bankruptcy assets. Therefore, the practice of AYDA has the potential to create conflicts of interest if not systematically regulated.

The legal implications of the execution of mortgage rights by secured creditors through the AYDA mechanism in bankruptcy emphasize the importance of the principle of fairness, as the bank's rights as secured creditor must be balanced with the collective interests of other creditors to ensure a proportional distribution of bankruptcy assets. The principle of legal certainty is crucial given that multiple interpretations of regulations can create ambiguity in enforcement, necessitating harmonization between collateral law, banking law, and bankruptcy law. Furthermore, from a legal utility perspective, the AYDA mechanism has the potential to expedite the resolution of problem loans and maintain banking system stability, but only if its implementation is controlled and aligned with bankruptcy estate management. Therefore, the implementation of AYDA must consistently integrate these three principles to provide proportional legal protection, clear guidelines, and tangible benefits for all parties involved.

REFERENCES

1) Abdurrachman, A., & Isharyanto. (2016). *Penafsiran Hukum Hakim Konstitusi*. Halaman Moeka Publishing.
2) Atmadja, I. D. G., & Budiartha, I. N. P. (2018). *Teori-Teori Hukum*. Setara Press.
3) Ismamudi, Hartati, N., & Sakum. (2023). Peran Bank dan Lembaga Keuangan dalam Pengembangan Ekonomi: Tinjauan Literatur. *Jurnal Akuntansi Neraca*, *1*(2), 35–44.
4) Kansil, C. (2009). *Kamus Istilah Hukum*. Jala Permata Aksara.
5) Lestari, I. I., & Waluyo. (2024). Legal Review Of Parate Executie Of Mortgage Rights In Protecting The Rights Of Separate Creditors In Bankruptcy Proceedings. *Eqalegum International Law Journal*, *2*(3), 137–142.
6) Marzuki, P. M. (2016). *Pengantar Ilmu Hukum*. Kencana.
7) Moeliono, T. P., & Sebastian, T. (2019). Tendensi Reduksionis dan Utilitarianis Dalam Ilmu Hukum Indonesia: Membaca Ulang Filsafat Hukum Gustav Radbruch. *Konferensi Ke 5, Solo, 17-18 November 2019*, *1*(1), 1–32. https://repository.unpar.ac.id/bitstream/handle/123456789/3174/maklhsc250_Tristam Meoliono_Tendensi Reduksionis dan Utilitarianis-p.pdf?sequence=1&isAllowed=y
8) Muhaimin. (2020). *Metode Penelitian Hukum*. Mataram University Press.
9) Muisa, I. F., Ikhwansyah, I., & Handayani, T. (2022). Kedudukan Kreditor Separatis Terkait Jaminan Hak Tanggungan yang Masuk dalam Boedel Pailit Debitor. *Jurnal Poros Hukum Padjajaran*, *3*(2), 277–288.
10) Romli, Sadi, M., Rani, F. H., Ardha, D. J., Ifrohati, & Huzaimah, A. (2024). *Perlindungan Hukum*. CV. Doki Course and Training.
11) Sentika, A. D., & Kartoningrat, R. B. (2020). Kedudukan Kreditor Separatis dalam Mengeksekusi Objek Jaminan Saat Terjadi Kepailitan. *Perspektif: Kajian Masalah Hukum Dan Pembangunan*, *25*(37), 63–73.
12) Soediro, R. A. (2026). AYDA Yang Dilakukan Oleh Kreditor Separatis Dalam Melaksanakan Hak Eksekusinya Ketika Debitor Dinyatakan Pailit Ditinjau Dari Persepektif Teori Hukum Gustav Radbruch. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, *4*(1), 750– 762.
13) Sulaiman, A. (2021). *Pengantar Ilmu Hukum*. UIN Jakarta Bersama YPPSDM.
14) Supriyadi. (2020). *Hukum Perkreditan dan Penyelesaiannya (Telaah Penyelesaian Secara Non Litigasi)*. Qahar Publisher.

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