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Mitigating Secured Creditors Hegemony Through Judicial Moratoriums for Corporate Rescue Within ASEAN

Mitigasi Hegemoni Kreditur Beragun Melalui Moratorium Yudisial Guna Penyelamatan Korporasi ASEAN

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Abstract

This research examines the legal antinomy between the absolute execution rights of secured creditors under Article 55 paragraph (1) of the Bankruptcy Law and the unity of bankruptcy principle within Limited Liability Companies. This normative clash triggers systemic issues because unilateral core asset withdrawal by financial institutions destroys the corporate going concern value and violates distributive justice for unsecured creditors. Utilizing normative legal research with conceptual, statutory, and comparative approaches to corporate rescue regulations in Singapore and Malaysia, this study finds that these comparative jurisdictions successfully mitigate secured creditor hegemony through judicial moratoriums and public interest exceptions. Therefore, this article recommends a normative synchronization through the reinterpretation of secured rights from absolute physical control into strict financial priority over liquidation proceeds. This transformation necessitates expanding the discretionary authority of the Supervisory Judge to precisely suspend core asset execution, ensuring optimal value maximization of the bankruptcy estate for all participating creditors.

Abstrak

Penelitian ini mengkaji antinomi yuridis antara hak eksekusi absolut kreditur separatis dalam Pasal 55 ayat (1) Undang-Undang Kepailitan dengan asas kesatuan harta pailit pada Perseroan Terbatas. Benturan norma ini memicu permasalahan sistemik karena penarikan aset utama oleh lembaga perbankan secara sepihak dapat menghancurkan nilai kelangsungan usaha perseroan dan mencederai asas keadilan distributif bagi para kreditur konkuren. Melalui metode penelitian hukum normatif dengan pendekatan konseptual, perundang-undangan, serta perbandingan hukum terhadap regulasi penyelamatan korporasi di yurisdiksi Singapura dan Malaysia, penelitian ini menemukan bahwa negara pembanding sukses memitigasi hegemoni kreditur beragun melalui instrumen moratorium yudisial dan pengecualian kepentingan publik. Oleh sebab itu, artikel ini merekomendasikan sinkronisasi norma melalui reinterpretasi hak separatis dari sekadar penguasaan fisik menjadi hak prioritas atas hasil finansial secara mutlak. Transformasi ini mewajibkan perluasan kewenangan diskresioner bagi Hakim Pengawas untuk secara presisi menangguhkan eksekusi aset sentral demi menjamin tercapainya nilai maksimalisasi bundel pailit bagi kesejahteraan seluruh faksi kreditur secara proporsional.

A. INTRODUCTION

1. Background

The contemporary global economic architecture relies on debt instruments and structured financing as foundational pillars for scaling the operational capacity of commercial enterprises, particularly limited liability companies. Within the corporate legal landscape, these entities are erected upon the doctrine of separate legal personality. This framework endows the corporation with independent rights and obligations, ensuring absolute asset segregation from both its shareholders and executive officers.[1]

Such institutional autonomy enables corporations to enter into diverse civil obligations, including encumbering strategic assets with security interests to secure liquidity injections from banking institutions. Macroeconomic fluctuations, supply chain disruptions, and internal mismanagement, however, frequently act as catalysts that drive these entities into a negative equilibrium characterized by severe financial distress.

Once this distress escalates beyond the solvency threshold, the corporation descends into insolvency and bankruptcy. At this critical juncture, the entire framework of corporate asset autonomy undergoes juridical deconstruction. Bankruptcy law intervenes by transforming all corporate assets into a common collateral pool for creditors. This mechanism operates as a universal attachment (*gerechtelijk beslag*), the administration of which is entirely delegated to a bankruptcy trustee under the strict oversight of a Supervisory Judge.[2]

The fundamental philosophy animating bankruptcy law across jurisdictions is its function as a collective debt resolution mechanism (*concursus creditorum*). This system is orchestrated to preclude the anarchic race to the courthouse characterized by individual creditor attachments. Such a framework is anchored in the *pari passu* and *pro rata* distribution principles imperatively mandated by Articles 1131 and 1132 of the Indonesian Civil Code.[3] These statutory provisions manifest the universal doctrine of the unity of bankruptcy, which postulates that all debtor assets, without exception, must be

[1] Moh. Asadullah Hasan Al Asy'arie et al., "Creditor Protection in Individual Company Bankruptcy," *International Journal of Business, Law, and Education* 6, no. 2 (October 2025): 1436–49, https://doi.org/10.56442/ijble.v6i2.1269.
[2] Luqman Guntur Ridhwani and Muhamad Jodi Setianto, "Kewenangan Kurator Dalam Pengurusan Dan Pemberesan Harta Pailit Dalam Perspektif Hukum Bisnis," *Federalisme: Jurnal Kajian Hukum Dan Ilmu Komunikasi* 3, no. 1 (February 2026): 70–82, https://doi.org/10.62383/federalisme.v3i1.1534.
[3] Ricki Rahmad Aulia Nasution, Iwan Erar Joesoef, and Heru Sugiyono, "Justice in the Administration and Settlement of Bankruptcy Estate by Auction in Relation to the Recovery of Creditors' Claims," *International Journal of Law and Society* 2, no. 3 (June 2025): 46–62, https://doi.org/10.62951/ijls.v2i3.616.

consolidated into a single bankruptcy estate. This consolidation aims to maximize asset liquidation value and ensure proportional distribution, thereby mitigating systemic losses among stakeholders.

In the practical and normative architecture of Indonesian positive law, this equilibrium of collectivity collides head-on with the privileges accorded to creditors holding security interests *in rem*—structurally known as secured creditors.[4] The normative tension engendering this clash of norms stems from Article 55(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (the Bankruptcy Law). This provision explicitly dictates that creditors holding mortgage rights, fiduciary security, pledges, or real estate mortgages possess the prerogative to foreclose on their collateral as if the bankruptcy had never occurred (*parate executie*).[5]

The quintessential problem underlying this statutory conflict transcends textual dogmatism; it yields destructive impacts on the empirical reality of estate administration. In numerous large-scale corporate bankruptcies, the collateral encumbered by secured creditors consists not of passive peripheral assets, but of core assets that singularly sustain the entity's going concern value. These typically encompass end-to-end manufacturing facilities, intellectual property rights, and indispensable production machinery.[6] When secured creditors exercise their absolute right to initiate non-judicial foreclosure on these primary assets concurrently with the trustee's administration efforts, the commercial entity is *de facto* dismantled piecemeal.

This physical fragmentation directly disintegrates the corporation's synergy premium as an active enterprise. It paralyzes the statutory mandate imposed upon the trustee to maximize the value of the bankruptcy estate, while systematically marginalizing unsecured creditors, who are left to fight over worthless residual assets.[7] At this nadir, the doctrine of the unity of bankruptcy loses its legitimacy. The bankruptcy regime is thus reduced from an institution of collective justice to a mere conduit for

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[4] Amir Khoiruddin et al., "Comparative Study of Indonesia and the Netherlands on Legal Protection for Securitized Creditors in Bankruptcy with the Principle of Concursus Creditorum," *Jurnal Meta-Yuridis* 8, no. 2 (September 2025): 93–108, https://doi.org/10.26877/m-y.v8i2.23509.

[5] M Adnan Lira, "The Position and Protection of Concurrent Creditors in Indonesia's Bankruptcy Process: A Review Based on the Principle of Paritas Creditorum," *The Juris* 8, no. 1 (June 30, 2024): 281–90, https://doi.org/10.56301/juris.v8i1.1280.

[6] Johnson Sahat Maruli Tua Maruli et al., "From Failure to Future Reconstructing Intellectual Property in Bankruptcy Law," *Journal of Human Rights, Culture and Legal System* 5, no. 1 (May 2025): 279–318, https://doi.org/10.53955/jhcls.v5i1.569.

[7] Lira, "The Position and Protection of Concurrent Creditors in Indonesia's Bankruptcy Process: A Review Based on the Principle of Paritas Creditorum."

unilateral foreclosures driven by financial oligarchies.

Academic discourse regarding the ambivalent standing of secured creditors within bankruptcy proceedings has sparked dynamic scholarly debate in contemporary legal literature. A review of the state of the art reveals sharp ideological polarization. Qodrunnada et al. (2025) critically examine the normative dyssynchrony between the Mortgage Law and the Bankruptcy Law. They argue that the direct foreclosure rights of secured creditors are frequently undermined by trustee interventions, advocating for absolute legal certainty to protect the property rights of banking institutions.[8]

Echoing this sentiment, Faisal (2024) specifically investigates the execution of fiduciary security interests, asserting that the supremacy of secured rights forms the bedrock of national credit stability against distress risks.[9] On the opposing end of the spectrum, Khoiruddin (2025) broadens the debate by offering a comparative analysis of the Dutch legal framework (*Faillissementswet*). He concludes that the implementation of *concursus creditorum* in Indonesia suffers from a justice deficit due to minimal judicial oversight. This vacuum fosters the unchecked hegemony of secured creditors, contrasting sharply with the Dutch model, which grants courts robust authority to balance rights across creditor classes.[10]

Reinforcing this critique, Lira (2024) argues that the absolute dominance of secured creditors relegates unsecured creditors to an acutely vulnerable hierarchical position, rendering their recovery rates severely regressive.[11] Delving deeper, Nainggolan and Anatoliy (2024) propose a paradigmatic intervention, positing that the going concern concept must be wholly integrated into the anatomy of Indonesian debt resolution to protect business continuity from premature liquidation.[12] Meanwhile, Harir et al. (2025) touch upon the concept of normative antinomies within estate administration, though

[8] Salsabil Qodrunnada, Elisatris Gultom, and Sudaryat Sudaryat, "Asas Keadilan Dalam Eksekusi Jaminan Kebendaan Kreditor Separatis Pada Kasus Kepailitan Terhadap Batasan Waktu Eksekusi," *Konstitusi : Jurnal Hukum, Administrasi Publik, Dan Ilmu Komunikasi* 2, no. 3 (June 2025): 16–27, https://doi.org/10.62383/konstitusi.v2i3.750.
[9] Faisal Santiago, "Reconstruction of the Business Judgment Rule Doctrine in Indonesia: Legal Comparison with England, Canada, the United States, and Australia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (April 29, 2024): 107–21, https://doi.org/10.29303/ius.v12i1.1371.
[10] Khoiruddin et al., "Comparative Study of Indonesia and the Netherlands on Legal Protection for Securitized Creditors in Bankruptcy with the Principle of Concursus Creditorum."
[11] Lira, "The Position and Protection of Concurrent Creditors in Indonesia's Bankruptcy Process: A Review Based on the Principle of Paritas Creditorum."
[12] Bernard Nainggolan and Kostruba Anatoliy, "The Going Concern Paradigm in Bankruptcy Process Reviewed from Regulations in Indonesia," *Jurnal Hukum* 40, no. 1 (October 2, 2024): 272, https://doi.org/10.26532/jh.v40i1.37175.

their inquiry focuses primarily on the friction between bankruptcy stays and criminal asset forfeitures under anti-corruption statutes.[13]

A thematic synthesis of these scholarly dialectics demonstrates that the prevailing discourse continues to oscillate between extremes: demanding either absolute protection for banking investment certainty or procedural clemency for unsecured creditors. This dichotomy leaves a critical blind spot within the dogmatics of Indonesian bankruptcy law. Precedent studies have yet to systematically dissect the statutory conflict between Article 55(1) of the Bankruptcy Law and the unity of bankruptcy principle (Articles 1131–1132 of the Civil Code) as a pure legal antinomy. Such an antinomy demands a structural resolution grounded in the intersection of distributive justice theory and the doctrine of entity separation. Current scholarship lacks a theoretical or normative formulation on distinguishing the treatment of core versus non-core assets under the secured execution regime. Furthermore, there is no established methodology for injecting proportional limitations to preserve the unity of the bankruptcy estate without vitiating the preferential rights of secured creditors.

Recognizing this gap, this article articulates a significant conceptual and comparative novelty for corporate legal scholarship. Unlike prior research heavily reliant on textual dogmatic analysis of property rights or sociological lamentations regarding the subordination of unsecured creditors, this study introduces a new analytical framework. It juxtaposes these conflicting norms within a philosophical arena, utilizing Gustav Radbruch's theory of legal antinomy and Aristotle’s theory of distributive justice. This conceptual advancement is further catalyzed by comparative insights, examining analogous conflict resolution mechanisms within neighboring ASEAN jurisdictions. Specifically, it dissects the operation of statutory moratoria and conditional veto rights within the judicial management regimes under Malaysia's Companies Act 2016 and Singapore's Insolvency, Restructuring and Dissolution Act 2018. This multi-dimensional approach aims to synthesize proportional limitations on foreclosure rights, ensuring that while the financial priority of secured creditors remains absolutely protected, the physical control of assets is delegated to the bankruptcy trustee to maximize the corporation's going concern value.

[13] Moh Harir et al., “Konflik Norma (Antinomy Normen) Sita Umum Dengan Sita Pidana Dalam Pemberesan Harta Pailit,” *Jurnal USM Law Review* 8, no. 2 (August 2025): 1107–25, https://doi.org/10.26623/julr.v8i2.11384.

The central thesis defended and systematically proven in this manuscript is that granting absolute physical foreclosure legitimacy to secured creditors over a company's core assets during insolvency constitutes a systemic flaw. This defect precipitates aggregate economic losses, offends distributive justice, and fatally paralyzes the unity of bankruptcy principle. Restoring the integrity of bankruptcy law necessitates the synchronization of this legal antinomy through conceptual reinterpretation. Such a paradigm shift would convert the right of physical asset possession into a mere priority of proceeds, effectuated by reinforcing the discretionary authority of the Supervisory Judge in controlling core assets.

The academic community, legislators, and the judiciary must accord high urgency to these findings. A failure to curtail secured creditor dominance not only perpetuates distributive injustice against hundreds of workers and subordinate creditors but also macroeconomically diminishes the state's capacity to salvage fundamental industrial value from brutal liquidation. Ultimately, the proposed conceptual solution is an interpretative amendment requiring that the sale of a corporation's core assets be consolidated into a unified auction mechanism by the trustee to capture the synergy premium. Concurrently, this model strictly preserves the secured creditors' right to harvest the primary proceeds of the auction up to their collateral value—a framework successfully tested via the public interest exception in modern insolvency systems.

2. Research Questions

Anchored in the preceding background analysis, which dissects the structural complexities of this normative conflict, this study formulates two primary research questions to guide its analytical framework:

a. What is the legislative intent (*ratio legis*) underlying the grant of non-judicial foreclosure rights to secured creditors under Article 55(1) of the Bankruptcy Law, and how does this rationale intersect with the imperative to preserve corporate asset value during insolvency?

b. What constitutes the optimal statutory harmonization to resolve the legal antinomy between secured creditor protections and the collective interests of unsecured creditors, thereby achieving distributive justice in the administration of the bankruptcy estate, particularly when examined through a comparative lens of ASEAN jurisdictions?

3. Research Methods

The methodological framework employed to dissect this legal issue is anchored in doctrinal legal research. This approach inherently focuses on scrutinizing normative systems, statutory harmonization, and the coherence of legal principles within positive law. The selection of this methodology is justified by the nature of the inquiry; rather than investigating the sociological behavior of actors, it examines the intrinsic tension—or antinomy—between statutory provisions and the philosophical foundations of civil rights in bankruptcy.

To comprehensively address the research questions, this study integrates three distinct analytical approaches. First, a statutory approach is utilized to conduct a vertical and horizontal review of the relationships among controlling legal instruments. Specifically, this entails analyzing Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations, Law No. 4 of 1996 on Mortgage Rights, Law No. 42 of 1999 on Fiduciary Security, and the Indonesian Civil Code (*Burgerlijk Wetboek*). Second, a conceptual approach constructs the analytical architecture by operationalizing Gustav Radbruch's theory of legal antinomy, Aristotle's theory of distributive justice, the separate legal entity doctrine, and the *pari passu* and *pro rata* distribution principles. Third, a comparative approach elevates the analysis by benchmarking modern insolvency conflict resolution frameworks. This is achieved primarily through an examination of Malaysia's Companies Act 2016 and Singapore's Insolvency, Restructuring and Dissolution Act 2018.

The legal sources relied upon are organized according to their hierarchical authority. Primary legal sources encompass Indonesian bankruptcy statutes, security interest regulations, and insolvency legislation from the comparative jurisdictions. Secondary legal sources are strictly curated from leading, globally recognized academic literature published between 2020 and 2025.

The collection of legal materials is executed through a systematic literature review. This process involves selecting and synthesizing judicial decisions, treatises by preeminent scholars, and scholarship focusing on cross-border insolvency and bankruptcy conflict resolution.

In the final stage, the analytical mechanism employs qualitative assessment through deductive syllogism and teleological interpretation—an interpretative method grounded in the philosophical intent underlying the legislation. Contradictory legal materials are synthesized and tested against theories of justice. This rigorous evaluation is designed to formulate a conclusion that is not only logically coherent but also provides actionable, structural guidance for statutory harmonization in Indonesia.

B. DISCUSSION

1. The Legislative Intent (*Ratio Legis*) of Article 55(1) of the Bankruptcy Law and the Status of Limited Liability Company Assets in the Insolvency Phase

To construct a rigorous analytical deconstruction of secured creditors' authority, the dialectic must begin at the epistemological foundation regarding the legal status of a limited liability company's assets during insolvency. Within modern corporate legal doctrine, the existence of a limited liability company is anchored in the dogma of the separate legal entity. This doctrine erects an imaginary corporate veil that imperatively insulates the corporate persona from the natural persons who established or manage it, granting the corporation the independence to hold exclusive assets, accumulate liabilities, and structure its own capitalization.[14] Due to this isolated autonomy, corporations possess the capacity to enter into large-scale credit contracts with banking consortia.

To mitigate default risks, the law accommodates the encumbrance of company assets with security interests *in rem*, such as mortgages over land and buildings under Law No. 4 of 1996, and fiduciary securities over movable property and machinery under Law No. 42 of 1999. Dogmatically, the provision of such collateral shifts a bank's status from a mere unsecured (concurrent) creditor to a secured creditor armed with preferential rights (*droit de preference*) and the right to follow the property into whosoever hands it may fall (*droit de suite*).[15] Security laws definitively facilitate this arrangement by granting financial institutions the right to non-judicial foreclosure (*parate executie*), enabling them to liquidate collateral instantly through public auctions without requiring a court order or fiat when the debtor defaults.[16]

The enactment of Article 55(1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations represents a proactive legislative effort to preserve this safety net of security rights amidst the turbulence of bankruptcy. This provision explicitly mandates that any creditor holding a mortgage, fiduciary security, pledge, or real estate

[14] M. Pasha Arifin Nusantara, "Kajian Penerapan Doktrin Piercing The Corporate Veil Pada Perseroan Perorangan," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (March 2025): 3082–90, https://doi.org/10.38035/jihhp.v5i4.3868.
[15] Khoiruddin et al., "Comparative Study of Indonesia and the Netherlands on Legal Protection for Securitized Creditors in Bankruptcy with the Principle of Concursus Creditorum."
[16] Lira, "The Position and Protection of Concurrent Creditors in Indonesia's Bankruptcy Process: A Review Based on the Principle of Paritas Creditorum."

mortgage retains the legitimacy to enforce its rights as if the bankruptcy had never occurred.[17] An analysis of the legislative intent, or *ratio legis*, underlying this provision reveals an essential politico-economic motive: safeguarding the stability of the national banking system. Freezing collateral through immediate bankruptcy intervention would inject severe asset valuation uncertainty, driving up non-performing loan (NPL) ratios and systematically eroding public confidence in banking liquidity.

Consequently, Article 55(1) operates as an absolute immunity, allowing capital channeled by banks into the real sector to be autonomously withdrawn without becoming entangled in the complex, costly, and protracted queues of bankruptcy verification and administration costs.[18]

Although this legislative rationale enjoys elegant justification under normal economic conditions, its factual implementation generates a structural anomaly when a corporation is declared bankrupt and plunges into an insolvency equilibrium. Insolvency, as defined under Article 1(1) of the Bankruptcy Law, is not merely a state of default; it represents a transformation of legal status wherein the debtor automatically loses its legal capacity (*rechtsbevoegdheid*) to control and manage its entire asset portfolio.[19] All corporate assets are collectively attached under a universal judicial attachment (*gerechtelijk beslag*) and consolidated into a single entity known as the bankruptcy estate (*boedel pailit*).[20] At this juncture, the separate legal entity doctrine faces its most formidable dogmatic test. Assets previously encumbered by mortgages or fiduciary securities are frequently not non-productive assets (such as vacant, unused land), but rather the core assets that constitute the anatomical core of the company's business operations.[21] These core assets encompass primary factory assembly lines, critical patent rights, and centralized data infrastructure systems whose functional value is realized only when operating comprehensively.

[17] Nyulistiowati Suryanti, Deviana Yuanitasari, and Hazar Kusmayanti, "The Status of Property Granted in The Provisions of Bankruptcy Law in Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (April 2025): 38–54, https://doi.org/10.29303/ius.v13i1.1593.
[18] Lira, "The Position and Protection of Concurrent Creditors in Indonesia's Bankruptcy Process: A Review Based on the Principle of Paritas Creditorum."
[19] Shelomita Putri Amelia and Ema Nurkhaerani, "Penentuan Keadaan Insolvensi Terhadap Proses Kepailitan Dalam Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang," *Mahkamah : Jurnal Riset Ilmu Hukum* 2, no. 3 (May 2025): 112–23, https://doi.org/10.62383/mahkamah.v2i3.683.
[20] Harir et al., "Konflik Norma (Antinomy Normen) Sita Umum Dengan Sita Pidana Dalam Pemberesan Harta Pailit."
[21] Maruli et al., "From Failure to Future Reconstructing Intellectual Property in Bankruptcy Law."

When an enterprise enters insolvency, the treatment of these core assets dictates whether the firm's value can be salvaged or obliterated. According to modern corporate valuation doctrine, a business executed or sold as a going concern consistently projects an exponential economic value—the synergy premium—when compared to the valuation of identical assets dismantled and sold piecemeal as scrap.[22] Regrettably, owing to the absolute authority conferred by Article 55(1), secured creditors are handed a red carpet to forcibly dismantle machinery or foreclose upon factory land serving as the corporate lifeline just as the bankruptcy trustee initiates administration. This sporadic enforcement by secured creditors instantaneously shatters the corporate going concern framework; production lines grind to a permanent halt, raw material supply chains from vendors are severed, and employees instantly lose their livelihoods. The trustee, who bears a statutory fiduciary duty to utilize and maximize the value of all assets within the bankruptcy estate, is left stripped of the substantial objects required for optimal management and liquidation.

The fatal consequence of this practice strikes at the heart of justice for other creditor constituencies, primarily unsecured creditors (such as uncollateralized raw material suppliers or consumers) and preferential creditors (such as state tax claims and employee severance pay). With the destruction of going concern value, the residual assets flowing into the general bankruptcy pool frequently consist merely of administrative leftovers or damaged goods with market valuations approaching zero (a zero recovery rate).[23] Unsecured creditors, who already occupy a subordinate tier in the legal priority hierarchy, are rendered the absolute sacrificial lambs.[24]

Synthesizing these legal data yields a critical conclusion: the *ratio legis* of Article 55(1), originally conceived with the noble intent of securing banking financial circulation, has transformed into a double-edged sword that destroys aggregate corporate wealth. Elevating freedom of contract and unilateral asset extraction to satisfy a single faction of creditors amid bankruptcy is a dogmatic distortion. The application of absolute physical

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[22] Elisatris Gultom and Huta Disyon, "The Implementation of the Going Concern Principle in Bankruptcy and The Suspension of Payment to Protect the Economic Rights of the Parties," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 9, no. 3 (2022): 343–64, https://doi.org/10.22304/pjih.v9n3.a3.
[23] Lira, "The Position and Protection of Concurrent Creditors in Indonesia's Bankruptcy Process: A Review Based on the Principle of Paritas Creditorum."
[24] Jingga Ardeanti Putri and Muhammad Alvin Syihab H. P, "Perlindungan Hukum Atas Hak Kreditur Konkuren Dalam Kepailitan Studi Putusan: Nomor 15/Pdt.Sus-Pembatalan Perdamaian/2022/PN.Niaga/Jkt.Pst," *Jurnal Yuridis* 12, no. 1 (November 2025): 51–61, https://doi.org/10.35586/jyur.v12i1.12773.

foreclosure rights is no longer relevant or efficient when confronted with geospatial and systemic anatomies of modern limited liability companies, whose operational continuity is so interdependent that the deconstruction of a single core asset equates to the total annihilation of all remaining asset value.

2. The Theory of Legal Antinomy and Synchronization Through Aristotle's Theory of Distributive Justice

The escalating normative tension between the unfettered enforcement authority of secured creditors (Article 55(1) of the Bankruptcy Law) and the collective protection regime governed by the unity of bankruptcy principle (Articles 1131–1132 of the Indonesian Civil Code) is far from a mere editorial anomaly. Within legal philosophy, this phenomenon is legitimately identified as a legal antinomy. Preeminent philosophers Hans Kelsen and Gustav Radbruch postulated that an antinomy arises when two co-existing norms within a hierarchical legal ecosystem issue prescriptions or commands that contradict, collide with, or negate one another regarding identical legal facts or substances.[25]

The resulting contradiction is stark. On one end of the spectrum, Article 55(1) of the Bankruptcy Law issues a command to holders of mortgage rights and fiduciary securities that detaches them from the web of collective legal constraints: "as if bankruptcy had never occurred." This imperative phrase underscores the asset segregation doctrine, whereby the law *a priori* separates and releases the physical collateral from the reach of the bankruptcy trustee's mass attachment. At the opposite end of the spectrum, the very existence of bankruptcy law is rooted in the derivation of Article 1131 in conjunction with Article 1132 of the Indonesian Civil Code, which institutionalizes the crown jewel of universal bankruptcy principles: the unity of bankruptcy. This fundamental principle explicitly dictates that the totality of a debtor's assets—tangible and intangible, past, present, and future—absolves into a unified collateral pool for the entire creditor community. The distribution of this consolidated estate must be executed through a proportional balancing scheme (*pari passu pro rata parte*), excepting claims validly granted priority status by statute (such as secured claims and preferential tax or labor

[25] Adiansyah Adiansyah et al., "Reaktualisasi Konsep Recht Idee Gustav Radbruch Sebagai Fondasi Hukum Progresif Indonesia," *SENTRI: Jurnal Riset Ilmiah* 5, no. 1 (January 31, 2026): 180–88, https://doi.org/10.55681/sentri.v5i1.5137.

claims).[26]

To dissect the radicalization of this antinomy, one must explore Gustav Radbruch's foundational triad of legal values: Legal Certainty (*Rechtssicherheit*), Justice (*Gerechtigkeit*), and Expediency (*Zweckmäßigkeit*). The literal operationalization of Article 55(1) of the Bankruptcy Law is the supreme manifestation of an overzealous pursuit of legal certainty for individual banking entities. Banks achieve certainty regarding when they can foreclose upon their collateral. However, the legal certainty furnished by this provision comes at the expense of cannibalizing other core legal elements: justice and expediency for the majority population sheltered within the bankruptcy estate. Fulfillment of certainty for the secured faction breeds massive inefficiency and triggers extreme alienation that offends rational justice.[27]

At this critical juncture of dogmatic collision, Aristotle's theory of distributive justice must be introduced as an analytical framework to determine which normative guidepost approaches truth most closely. Distributive justice within the Aristotelian framework is not a principle of blind egalitarianism that divides a pie equally among all participants. Instead, distributive justice guides proportional equality—a comparable balance where the distribution of resources or the allocation of losses corresponds to the respective rights and obligations of each party within the community.[28] Injecting the philosophy of distributive justice into the anatomy of bankruptcy signifies that the law must strictly validate and respect the creditor hierarchy: secured creditors, occupying the highest tier, must still receive satisfaction for their collateralized claims first. They are entitled to recover funds ahead of others from the proportional value of that collateral.[29]

Nevertheless, Aristotle also teaches that satisfying this priority right must not be construed as a tyrannical license empowering priority holders to arbitrarily execute the physical form of core assets to the point of paralyzing the communal estate and annihilating residual rights for subordinated groups. Equipping secured creditors with the legitimacy to dismantle factory infrastructure or liquidate critical operating assets merely in pursuit of a rapid fire sale inherently violates the doctrine of distributive

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[26] Lira, "The Position and Protection of Concurrent Creditors in Indonesia's Bankruptcy Process: A Review Based on the Principle of Paritas Creditorum."
[27] Umi Khairiah, "Relevansi Kepastian Hukum Dalam Mewujudkan Keadilan Pada Sistem Peradilan Indonesia," *Jurnal Normatif* 5, no. 2 (December 2025): 527–36, https://doi.org/10.54123/jn.v5i2.489.
[28] Tim Gray, "Fishing for Principles: The Fairness of Fishing Quota Allocations," *Sustainability* 16, no. 12 (June 2024): 5064, https://doi.org/10.3390/su16125064.
[29] Lira, "The Position and Protection of Concurrent Creditors in Indonesia's Bankruptcy Process: A Review Based on the Principle of Paritas Creditorum."

justice.[30] Such an approach tyrannically distorts the distribution of bankruptcy burdens: it impoverishes the corporation's aggregate value—harming unsecured creditors, wiping out state tax revenues, and terminating employees without adequate severance—solely to secure the repayment certainty of a single financial obligation.[31]

Conventional legal literature frequently rationalizes the resolution of this antinomy by retreating behind the interpretive fortresses of *lex specialis derogat legi generali* or *lex posterior derogat legi priori*.[32] Proponents argue that the Bankruptcy Law and Security Laws constitute specialized rules that inherently override the collective regulations of the Civil Code, which they deem obsolete. Such a jurisprudential approach harbors a superficial logical fallacy. The universal attachment principle and the collective framework of *concursus creditorum* are not mere general civil regulations (*lex generalis*); they constitute the *grundnorm*, the fundamental roots, and the ontological lifeblood of bankruptcy law worldwide. Without the principle of universal estate consolidation, bankruptcy law loses its identity and is reduced to little more than state-sanctioned debt-collection thuggery. Killing Article 1131 of the Civil Code simply to streamline secured foreclosures equates to dismantling the primary architecture of insolvency resolution itself.

Based on this syllogism, synchronization to reconcile this antinomy must be anchored in coherent teleological and sociological interpretations. A mediating instrument was prematurely embedded in Article 56 of the Bankruptcy Law, which designs a stay mechanism suspending secured foreclosure rights for a maximum of 90 days following the commercial court's bankruptcy declaration. Furthermore, Article 59 of the Bankruptcy Law imposes a two-month post-insolvency limitation for secured creditors to independently foreclose upon collateral, shifting absolute execution authority entirely to the trustee upon failure to meet this deadline.[33] Unfortunately, the temporal relaxation offered by these mechanisms proves functionally sterile and artificial. A 90-day window is grossly inadequate for a trustee to stabilize a company and attract investors

[30] Sanusi, "Harmonizing Security Rights and Bankruptcy Law: A Systematic Review of Global," *LAWYER: Jurnal Hukum* 2, no. 2 (March 2025): 54–65, https://doi.org/10.58738/lawyer.v2i2.631.
[31] Lira, "The Position and Protection of Concurrent Creditors in Indonesia's Bankruptcy Process: A Review Based on the Principle of Paritas Creditorum."
[32] Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," *Jurnal Legislasi Indonesia* 17, no. 3 (September 2020): 305–25, https://doi.org/10.54629/jli.v17i3.711.
[33] Salsabil Qodrunnada, Elisatris Gultom, and Sudaryat Sudaryat, "Asas Keadilan Dalam Eksekusi Jaminan Kebendaan Kreditor Separatis Pada Kasus Kepailitan Terhadap Batasan Waktu Eksekusi."

willing to acquire the entity as a going concern. The moment the 90-day stay lock is lifted, the dominance of secured foreclosure resumes with full fury.[34]

This extreme juncture exposes the urgent need for paradigm engineering. Resolving this antinomy demands a progressive interpretation: the secured creditor's rights under Article 55(1) must no longer be conservatively construed as absolute physical control over the tangible collateral. Jurisprudential interpretation must mutate this dogma into a financial priority of proceeds. Under this construct, secured creditors are strictly prohibited from physically extracting corporate core assets during liquidation. Instead, these assets are managed and sold as comprehensive business instruments by the trustee to extract the synergy premium. Subsequently, from the accumulated proceeds of this sale, the secured creditor is entitled to pocket its equivalent priority share without reduction or proportional dilution among subordinate creditor classes. This constructive separation between the "right to priority satisfaction" and the "right to physically dismantle the business" represents the definitive pathway to harmonizing legal certainty for banks with distributive justice for the bankruptcy estate community.

3. Comparative Analysis: The Dynamics of Intervention and Limitation of Secured Creditors' Foreclosure Rights in ASEAN Jurisdictions

Unpacking the structural deadlock within the anatomy of Indonesian bankruptcy law cannot achieve academic maturity without contrasting it with the constitutional dialectics of international insolvency regimes. To elevate this discourse from a localized issue into a universal dialogue on corporate financing equilibrium, a comprehensive comparison with the legal frameworks of neighboring ASEAN jurisdictions—specifically Singapore and Malaysia—is essential. Although the legal foundations of Singapore and Malaysia are rooted in the English common law tradition, in stark contrast to the Dutch civil law history adopted by Indonesia, both nations have executed a spectacular revolution in reconstructing their corporate law landscape. They have successfully introduced instruments that subordinate the egoism of secured creditors to the protective umbrella of a corporate rescue culture, thereby achieving a more comprehensive equilibrium of justice.[35]

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[34] Laila Fauziyyah, "Implikasi Pembatasan Waktu Eksekusi Jaminan Terhadap Kedudukan Dan Hak Kreditor Separatis Dalam Undang-Undang Kepailitan," *Media Hukum Indonesia (MHI)* 3, no. 3 (2025): 599–603, https://doi.org/10.5281/zenodo.15668962.

[35] Salsabil Qodrunnada, Elisatris Gultom, and Sudaryat Sudaryat, "Asas Keadilan Dalam Eksekusi Jaminan Kebendaan Kreditor Separatis Pada Kasus Kepailitan Terhadap Batasan Waktu Eksekusi."

Malaysia provides a precise reference point through its systemic reforms, culminating in the amendments to the Companies Act 2016 (CA 2016) and further reinforced by the Companies (Amendment) Act 2024.[36] Malaysia's normative restructuring strives to liberate debt resolution regimes from rigid historical stigmas by introducing visionary corporate rescue mechanisms, notably Judicial Management (JM) and Corporate Voluntary Arrangements. Judicial Management is a rehabilitation procedure strictly supervised by the judicial system, wherein the board of directors is temporarily replaced by an independent professional (a judicial manager) mandated to restructure debt and prevent the enterprise from plunging into terminal liquidation. The primary intersection concerning the position of secured creditors lies in the operation of the stay of execution (moratorium) and the mechanics of conditional veto rights.

Under Malaysia's Judicial Management regime, filing a court application triggers an automatic, prescriptive statutory moratorium (pursuant to Section 410 of the CA 2016). Throughout this moratorium, all enforcement actions, new legal proceedings, winding-up petitions, and—most crucially—any steps by secured creditors to execute security interests are subjected to a blanket freeze, except where authorized by a discretionary court order. Admittedly, to protect capital investment flows, Section 409(b) of the CA 2016 dogmatically confers a "right of veto" upon secured creditor communities; courts are instructed to dismiss judicial management applications if they encounter active resistance from secured lenders unwilling to have their assets bound by restructuring. Nevertheless, the dogmatic tension (antinomy) between the rescue regime and individual veto rights is resolved through jurisprudential brilliance and regulatory flexibility. The CA 2016 mandates the application of a public interest exception via Section 405(5)(a).

This provision elevates judicial discretion, empowering the High Court to override the resistance and veto rights of secured creditors by judicial fiat if the court concludes that implementing judicial management serves macro-level public interests. Such interests include protecting thousands of jobs, preserving the value chain of core assets, and delivering communal (distributive) justice to powerless creditor factions.[37] The

[36] Lee Shih, "Malaysia's Companies Amendment Act 2024 Strengthens Its Restructuring and Corporate Rescue Landscape," Singapore Management University, 2024, https://ccla.smu.edu.sg/sgri/blog/2024/04/13/malaysias-companies-amendment-act-2024-strengthens-its-restructuring-and.

[37] Skrine, "Judicial Management in Malaysia: Are Unsecured Creditors Left without a Voice?," Skrine, 2025, https://www.skrine.com/insights/alerts/october-2025/judicial-management-in-malaysia-are-unsecured-cred.

property rights of banks are thus subordinated under public law intervention.

Singapore, which has established itself as the epicenter for arbitration and cross-border restructuring in the Asia-Pacific region, advances even further. Its previously fragmented insolvency laws have been successfully consolidated into a singular, comprehensive statute: the Insolvency, Restructuring and Dissolution Act 2018 (IRDA 2018). Singapore bifurcates the anatomy of insolvency into two distinct paths: rehabilitation (Judicial Management and Schemes of Arrangement) and terminal execution (winding up). In the winding-up phase, the IRDA 2018 framework respects classical property rights; secured creditors remain free to realize their security interests irrespective of the liquidation order (Section 206 and general liquidation protective exceptions). Intriguingly, this freedom is tamed by interest penalty rules. The IRDA doctrines imperatively forfeit the right to claim interest for secured creditors who drag their feet or politically delay executing their collateral within 12 months following the initiation of liquidation, absent a special extension.[38] This serves as a structural disincentive preventing creditors from indefinitely tying up assets during insolvency.

Most strikingly, when an enterprise seeks sanctuary through Singapore's judicial management rehabilitation procedure, a massive moratorium umbrella shields all outstanding claims. Throughout this judicial shelter, any form of independent enforcement against the core or secondary assets of the corporation by banking institutions is strictly prohibited. Secured creditors are stripped of their formidable enforcement tools; they are barred from liquidating their *in rem* security without definitive consent from the judicial manager administering the entity or explicit judicial approval.[39] It is this sweeping discretion delegated by the state to judicial arbiters that guarantees crucial assets are not torn apart and cast onto the secondhand market to satisfy unilateral ambitions.

To sharpen conceptual clarity, this cross-border elaboration of instruments limiting secured physical enforcement rights within bankruptcy proceedings in Indonesia, Malaysia, and Singapore is synthesized in the following comparative parametric table:

[38] Adilah Dea Sentika and Raden Besse Kartoningrat, "Kedudukan Kreditur Separatis Dalam Mengeksekusi Objek Jaminan Saat Terjadi Kepailitan," *Perspektif* 25, no. 1 (January 2020): 63, https://doi.org/10.30742/perspektif.v25i1.751.

[39] Verra Yanti; Rahardiansah Ngantung Trubus, "Ketidakseimbangan Perlindungan Antara Kreditur Separatis (Pemegang Jaminan) Dan Prinsip Going Concern Debitor Dalam Proses PKPU Dan Kepailitan," *Jurnal Transformatif UNKRISWINA Sumba* 14, no. 2 (2025): 83–96, https://www.ojs.unkriswina.ac.id/index.php/transformatif/article/view/1158.

Table 1: Comparative Table of Bankruptcy and Corporate Rescue Regimes

Comparative Evaluation Indicator	Indonesia (Law No. 37 of 2004)	Singapore (IRDA 2018)	Malaysia (CA 2016)
Philosophical Paradigm of Bankruptcy	Dogmatically pro-secured creditor; dominantly oriented toward single-claim satisfaction rather than business enterprise continuity (liquidation bias).	Highly protective hybrid orientation centered on the going concern status (debtor-in-possession / rescue culture).	Progressive synthesis between secured credit protection and collective corporate rescue protection.
Constitutional Status of Direct Foreclosure Rights (*Parate Executie*)	Dogmatically recognized without essential conditions (Article 55(1)). Secured creditors are immune to corporate insolvency status.	Autonomously recognized only at the winding-up level (pure liquidation), subject to interest margin claim restrictions after a 12-month deadline.	Recognized during the liquidation cleanup phase, heavily reliant on the binding force of pre-bankruptcy security documentation.
Scope and Limitations of the Moratorium Mechanism (Stay of Execution)	Highly limited and automatic; capped at a maximum of 90 days post-bankruptcy declaration (Article 56). Enforcement rights re-emerge with full aggression thereafter.	Comprehensive and blanket coverage under the Judicial Management regime; all security enforcement efforts are prohibited without specific court authorization.	Automatically and absolutely freezes enforcement upon filing a judicial management application with the High Court (Section 410).
Judicial Discretionary Authority Over Core Asset Preservation	Extremely weak. Supervisory Judge intervention instruments and trustee bargaining power are vulnerable to absolute pressure from secured creditors.	Exceptionally robust and superior. Full discretionary mandate is vested in the Judicial Manager and the Court to preserve core assets.	Measured. Secured creditors hold a "veto right" to block judicial management (Section 409), but judges are empowered to override it via the public interest doctrine (Section 405).

Conceptual extraction from this comparative examination lifts the theoretical veil and exposes the fatal blind spot within Indonesia's bankruptcy legal framework. At a historical juncture where the financial industries of Singapore and Malaysia have maturely evolved their jurisprudence to moderate secured property rights through judicial discretion (via judicial consent and public interest exceptions) to safeguard the going concern economic viability of commercial enterprises, Indonesian legal construction remains tightly locked within a one-dimensional mindset. Blindly interpreting the textual command of Article 55(1) to tolerate the barbaric physical separatism of assets amounts to a denial of economic conscience and common sense. Such an approach demonstrably facilitates the systematic cannibalization of core asset valuations, penalizes laid-off workers without adequate severance compensation, and incinerates the collective distribution pools that serve as the essential lifeblood of universal bankruptcy.

4. Normative Synchronization Formulation: Transitioning Toward Priority of Proceeds and the Determinative Authority of the Supervisory Judge

This exploration—grounded in the deconstruction of separate entity rationality, the excavation of Aristotle's lofty values of distributive justice, and the adoption of cross-jurisdictional ASEAN insights—brings the discourse to the critical juncture of formulating legal synchronization. The effort to rectify the juridical antinomy haunting Article 55(1) and the unity of bankruptcy doctrine can never rely on artificial solutions such as the mere repeal of a single provision. What is required is ontological social engineering and transformative interpretation. The framework recommended in this paper rests firmly on two institutional reconstruction pillars: (1) a radical reinterpretation of secured rights into a priority of financial proceeds, and (2) the injection of progressive discretionary authority for the Supervisory Judge regarding the classification and operational control of core assets.

Under the first pillar, Indonesian jurisprudence must respond to the obsolescence of its legal paradigm through a dogmatic interpretive leap that replicates the protective values found in Singapore's judicial management regime and Dutch law's success in balancing *concursus creditorum*.[40] The textual mandate of the bankruptcy constitution stating "as if bankruptcy had never occurred" must be imbued with new meaning. It must no longer be symbolized as a right of corporate cannibalism that facilitates the physical extraction of goods or the dismantling of central assembly machinery within a bankrupt corporation's production facility. Instead, this progressive interpretation must mutate the existence of *in rem* security rights into a mere financial priority right—a Right to Financial Proceeds Priority. This construction reinforces the intellectual guarantee that secured creditors, occupying the highest tier of the financing chain, remain absolutely protected in holding the primary right to absorb satisfaction proceeds, insulated from the reach of unsecured creditors or the state.[41]

Although their recovery pool remains untouched by other factions, the method of realizing that collateral must be entirely divested and funneled into an integrated collective sales engine operated by the sole legitimate commander: the bankruptcy

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[40] Khoiruddin et al., "Comparative Study of Indonesia and the Netherlands on Legal Protection for Securitized Creditors in Bankruptcy with the Principle of Concursus Creditorum."
[41] Salsabil Qodrunnada, Elisatris Gultom, and Sudaryat Sudaryat, "Asas Keadilan Dalam Eksekusi Jaminan Kebendaan Kreditor Separatis Pada Kasus Kepailitan Terhadap Batasan Waktu Eksekusi."

trustee. By subordinating physical enforcement to the trustee's authority, the paralyzed limited liability company avoids having its assets butchered screw by screw. The entity can instead be marketed and auctioned as a comprehensive, intact, and functioning business instrument—a going-concern sale. Global valuation consensus dictates that this takeover will reap auction proceeds harboring an explosive synergy premium—a bargaining value impossible to achieve if individual banks independently foreclose on machinery, land, and vehicles through hasty liquidation fire sales into the secondhand market. Eventually, once a substantial capital injection is realized, the auction margin representing the registered collateral's valuation is immediately dedicated to the secured creditors' coffers without arbitrary deductions, thereby preserving the dignity of the Mortgage Law and Fiduciary Law.

Under the second pillar, this asset resolution architectural formulation is nothing more than a paper tiger unless its fangs are sharpened through judicial institutionalization. This shift in command necessitates a significant expansion of the discretionary jurisdiction wielded by the Supervisory Judge in the Commercial Court. Reflecting on the current posture of trustees, they are far too vulnerable and inferior when confronting the psychological showdown against the mighty institutional syndicates of secured creditors once the artificial 90-day grace period has elapsed. Adopting the wisdom of judicial precedents in the Malaysian jurisdiction—which successfully leverages resistance vetoes through the public interest exception enshrined in Section 405(5)(a) of the CA 2016,[42] —Indonesian bankruptcy law must definitively legalize the expansion of the Supervisory Judge's attributed authority.

The Supervisory Judge must be endowed with extraordinary jurisdictional authority—exercised through petition-based orders or procedural *renvoi* disputes—to execute a classification mapping instrument over all encumbered asset inventories of the company at the very moment the insolvency gavel falls. If the Supervisory Judge, acting within objective reason, identifies that a mortgage or fiduciary security collateral held by a bank constitutes a core asset (such as a refinery unit, power transmission center, fundamental manufacturing line, or platform operational digital asset) whose unilateral dismantling would destroy business viability and strip away thousands of worker livelihoods merely to barbarically satisfy a single debt obligation, the Supervisory Judge

[42] Skrine, "Judicial Management in Malaysia: Are Unsecured Creditors Left without a Voice?"

is empowered to issue a stay order suspending secured creditors' physical enforcement rights beyond the restrictive deadlines of ordinary bankruptcy law. This consequential ruling declares an imperative mandate for the trustee to retain those strategic assets and realize their sale as an integrated corporate package.

Conversely, the diametric opposite treatment must be applied when bank-held collateral logically qualifies as marginal passive assets (non-core assets), such as vacant land, commissioners' vacation villas, or rows of executive directors' company cars that bear no organic relation to the essential operational heartbeat of the enterprise.[43] For such non-core assets, the court shall unhesitatingly grant plenary permission for secured creditors to immediately liquidate their privileges through independent and rapid conventional *parate executie* auction methods, unencumbered by bankruptcy bureaucracy. Such rational physical enforcement limitations, bounded by asset classification parameters, avoid any accusation of disparaging the foundation of positive legal certainty. Furthermore, this resolution model stands as a magnificent manifestation of the spirit of Aristotle's theory of distributive justice, which champions the dogma of proportional equality: respecting the precise material share due to the banking entity (the secured creditor) while simultaneously curbing individual dictatorship to preserve the legacy of corporate asset value from brutal liquidation slaughter. Through this harmonic convergence of doctrines, the remaining fragments of welfare from a bankruptcy do not evaporate in vain; hope remains preserved for creditors in the most destitute tiers—the long-sought severance pay for impoverished workers, outstanding state tax obligations, and the miscellaneous claims of unsecured creditors without collateral. Through this multi-layered teleological synthesis, the conceptual tension pitting individual rights under Article 55(1) against the crown jewel of social unity—the Unity of Bankruptcy Principle canonized by the Civil Code—can be healed and integrated both dogmatically and empirically within the arena of modern bankruptcy adjudication.

C. CONCLUSION

The absolute authority granted to secured creditors to foreclose on core assets under Article 55(1) of the Bankruptcy Law engenders a profound legal antinomy. This

[43] Uche Nnawulezi, Hilary Nwaechefu, and Salim Magashi, "Addressing The Principle and Challenges of Enforcement and Prosecution Under Universal Jurisdiction: Charting New Pathways for International Justice," *Indonesian Journal of International Law* 20, no. 2 (February 2023): 263–86, https://doi.org/10.17304/ijil.vol20.2.5.

statutory conflict inherently dismantles the unity of bankruptcy doctrine and offends Aristotelian principles of distributive justice. In stark contrast to the legal frameworks of Singapore and Malaysia—which successfully curtail the hegemony of unilateral foreclosure through judicial moratoria and public interest exceptions—Indonesia's current insolvency regime remains constrained by an artificial liquidation bias. This rigid paradigm severely threatens to paralyze a distressed corporation's going concern value. Restoring the structural integrity of this legal framework necessitates normative synchronization through a radical jurisprudential shift. Specifically, the secured creditor's right to physical possession of the collateral must be transformed into a strict priority of proceeds. This dogmatic transformation must be operationalized by expanding the discretionary authority of the Supervisory Judge to stay foreclosures on corporate core assets. Such an intervention empowers the bankruptcy trustee to maximize the collective value of an integrated auction, accomplishing this without eroding the legal certainty that banking institutions rely upon to realize the economic value of their security interests.

REFERENCES

Adiansyah, Adiansyah, Abdul Kadir Jailani, Hendra Darmawan, Erdy Nopriady, Delima Santri, and A. Jabidi Ritonga. "Reaktualisasi Konsep Recht Idee Gustav Radbruch Sebagai Fondasi Hukum Progresif Indonesia." *SENTRI: Jurnal Riset Ilmiah* 5, no. 1 (January 31, 2026): 180–88. https://doi.org/10.55681/sentri.v5i1.5137.

Asy'arie, Moh. Asadullah Hasan Al, Benedictus Satryo Wibowo, Bagus Rahmanda, and Irawati Irawati. "Creditor Protection in Individual Company Bankruptcy." *International Journal of Business, Law, and Education* 6, no. 2 (October 2025): 1436–49. https://doi.org/10.56442/ijble.v6i2.1269.

Fauziyyah, Laila. "Implikasi Pembatasan Waktu Eksekusi Jaminan Terhadap Kedudukan Dan Hak Kreditor Separatis Dalam Undang-Undang Kepailitan." *Media Hukum Indonesia (MHI)* 3, no. 3 (2025): 599–603. https://doi.org/10.5281/zenodo.15668962.

Gray, Tim. "Fishing for Principles: The Fairness of Fishing Quota Allocations." *Sustainability* 16, no. 12 (June 2024): 5064. https://doi.org/10.3390/su16125064.

Gultom, Elisatris, and Huta Disyon. "The Implementation of the Going Concern Principle in Bankruptcy and The Suspension of Payment to Protect the Economic Rights of the Parties." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 9, no. 3 (2022): 343–64. https://doi.org/10.22304/pjih.v9n3.a3.

Harir, Moh, Soegianto Soegianto, Zaenal Arifin, Kukuh Sudarmanto, and Miftah Arifin. "Konflik Norma (Antinomy Normen) Sita Umum Dengan Sita Pidana Dalam Pemberesan Harta Pailit." *Jurnal USM Law Review* 8, no. 2 (August 2025): 1107–25. https://doi.org/10.26623/julr.v8i2.11384.

Irfani, Nurfaqih. "Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum." *Jurnal Legislasi Indonesia* 17, no. 3 (September 2020): 305–25. https://doi.org/10.54629/jli.v17i3.711.

Khairiah, Umi. "Relevansi Kepastian Hukum Dalam Mewujudkan Keadilan Pada Sistem Peradilan Indonesia." *Jurnal Normatif* 5, no. 2 (December 2025): 527–36. https://doi.org/10.54123/jn.v5i2.489.

Khoiruddin, Amir, Dedo Indra Pratama, Denny Astriansyah, and Teddy Prima Anggriawan. "Comparative Study of Indonesia and the Netherlands on Legal Protection for Securitized Creditors in Bankruptcy with the Principle of Concursus Creditorum." *Jurnal Meta-Yuridis* 8, no. 2 (September 2025): 93–108. https://doi.org/10.26877/m-y.v8i2.23509.

Lira, M Adnan. "The Position and Protection of Concurrent Creditors in Indonesia's Bankruptcy Process: A Review Based on the Principle of Paritas Creditorum." *The Juris* 8, no. 1 (June 30, 2024): 281–90. https://doi.org/10.56301/juris.v8i1.1280.

Luqman Guntur Ridhwani, and Muhamad Jodi Setianto. "Kewenangan Kurator Dalam Pengurusan Dan Pemberesan Harta Pailit Dalam Perspektif Hukum Bisnis." *Federalisme: Jurnal Kajian Hukum Dan Ilmu Komunikasi* 3, no. 1 (February 2026): 70–82. https://doi.org/10.62383/federalisme.v3i1.1534.

Maruli, Johnson Sahat Maruli Tua, Eddy Damian, Bernard Nainggolan, Hulman Panjaitan, and Christopher J. Johnstone. "From Failure to Future Reconstructing Intellectual Property in Bankruptcy Law." *Journal of Human Rights, Culture and Legal System* 5, no. 1 (May 2025): 279–318. https://doi.org/10.53955/jhcls.v5i1.569.

Nainggolan, Bernard, and Kostruba Anatoliy. "The Going Concern Paradigm in Bankruptcy Process Reviewed from Regulations in Indonesia." *Jurnal Hukum* 40, no. 1 (October 2, 2024): 272. https://doi.org/10.26532/jh.v40i1.37175.

Ngantung Trubus, Verra Yanti; Rahardiansah. "Ketidakseimbangan Perlindungan Antara Kreditur Separatis (Pemegang Jaminan) Dan Prinsip Going Concern Debitor Dalam Proses PKPU Dan Kepailitan." *Jurnal Transformatif UNKRISWINA Sumba* 14, no. 2 (2025): 83–96. https://www.ojs.unkriswina.ac.id/index.php/transformatif/article/view/1158.

Nnawulezi, Uche, Hilary Nwaechefu, and Salim Magashi. "Addressing The Principle and Challenges of Enforcement and Prosecution Under Universal Jurisdiction: Charting New Pathways for International Justice." *Indonesian Journal of International Law* 20, no. 2 (February 2023): 263–86. https://doi.org/10.17304/ijil.vol20.2.5.

Nusantara, M. Pasha Arifin. "Kajian Penerapan Doktrin Piercing The Corporate Veil Pada Perseroan Perorangan." *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 4 (March 2025): 3082–90. https://doi.org/10.38035/jihhp.v5i4.3868.

Putri, Jingga Ardeanti, and Muhammad Alvin Syihab H. P. "Perlindungan Hukum Atas Hak Kreditur Konkuren Dalam Kepailitan Studi Putusan: Nomor 15/Pdt.Sus-Pembatalan Perdamaian/2022/PN.Niaga/Jkt.Pst." *Jurnal Yuridis* 12, no. 1 (November 2025): 51–61. https://doi.org/10.35586/jyur.v12i1.12773.

Ricki Rahmad Aulia Nasution, Iwan Erar Joesoef, and Heru Sugiyono. "Justice in the Administration and Settlement of Bankruptcy Estate by Auction in Relation to the

Recovery of Creditors' Claims." *International Journal of Law and Society* 2, no. 3 (June 2025): 46–62. https://doi.org/10.62951/ijls.v2i3.616.

Salsabil Qodrunnada, Elisatris Gultom, and Sudaryat Sudaryat. "Asas Keadilan Dalam Eksekusi Jaminan Kebendaan Kreditor Separatis Pada Kasus Kepailitan Terhadap Batasan Waktu Eksekusi." *Konstitusi : Jurnal Hukum, Administrasi Publik, Dan Ilmu Komunikasi* 2, no. 3 (June 2025): 16–27. https://doi.org/10.62383/konstitusi.v2i3.750.

Santiago, Faisal. "Reconstruction of the Business Judgment Rule Doctrine in Indonesia: Legal Comparison with England, Canada, the United States, and Australia." *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (April 29, 2024): 107–21. https://doi.org/10.29303/ius.v12i1.1371.

Sanusi. "Harmonizing Security Rights and Bankruptcy Law: A Systematic Review of Global." *Lawyer: Jurnal Hukum* 2, no. 2 (March 2025): 54–65. https://doi.org/10.58738/lawyer.v2i2.631.

Sentika, Adilah Dea, and Raden Besse Kartoningrat. "Kedudukan Kreditur Separatis Dalam Mengeksekusi Objek Jaminan Saat Terjadi Kepailitan." *Perspektif* 25, no. 1 (January 2020): 63. https://doi.org/10.30742/perspektif.v25i1.751.

Shelomita Putri Amelia, and Ema Nurkhaerani. "Penentuan Keadaan Insolvensi Terhadap Proses Kepailitan Dalam Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang." *Mahkamah : Jurnal Riset Ilmu Hukum* 2, no. 3 (May 2025): 112–23. https://doi.org/10.62383/mahkamah.v2i3.683.

Shih, Lee. "Malaysia's Companies Amendment Act 2024 Strengthens Its Restructuring and Corporate Rescue Landscape." Singapore Management University, 2024. https://ccla.smu.edu.sg/sgri/blog/2024/04/13/malaysias-companies-amendment-act-2024-strengthens-its-restructuring-and.

Skrine. "Judicial Management in Malaysia: Are Unsecured Creditors Left without a Voice?" Skrine, 2025. https://www.skrine.com/insights/alerts/october-2025/judicial-management-in-malaysia-are-unsecured-cred.

Suryanti, Nyulistiowati, Deviana Yuanitasari, and Hazar Kusmayanti. "The Status of Property Granted in The Provisions of Bankruptcy Law in Indonesia." *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (April 2025): 38–54. https://doi.org/10.29303/ius.v13i1.1593.

Warsito, Lilik. "Urgensi Pembuktian Syarat Kepailitan Dan Tes Insolvensi Dalam Permohonan Kepailitan." *JURNAL USM LAW REVIEW* 7, no. 2 (June 2024): 822–34. https://doi.org/10.26623/julr.v7i2.9018.

Wijayanta, Tata, Sheva Trisanda Adistia, Rado F Leonardus, and B.E Hermawan. "Should Indonesia Learn from Malaysia and Singapore's Cross-Border Insolvency Asset Settlements?" *Yustisia Jurnal Hukum* 13, no. 1 (April 2024): 27–37. https://doi.org/10.20961/yustisia.v13i1.79773.