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COMPARATIVE STUDY OF INDONESIA AND THE NETHERLANDS ON LEGAL PROTECTION FOR SEPARATIST CREDITORS IN BANKRUPTCY WITH THE PRINCIPLE OF CONCURSUS CREDITORUM

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Abstract: This study examines the legal protection of secured (separatist) creditors in bankruptcy through a comparative analysis of Indonesian and Dutch legal systems, focusing on the *concursus creditorum* principle. Secured creditors have preferential rights due to their security interests over debtor assets. Although both countries follow civil law traditions, Indonesia's implementation under Law No. 37 of 2004 is weakened by limited judicial oversight and the dominant role of curators. In contrast, Dutch law, through the *Faillissementswet*, allows courts greater authority in supervising secured asset execution, ensuring better balance among creditors.
Using a normative juridical method with statutory, comparative, and conceptual approaches, the research finds that the Dutch system offers stronger collective protection and legal fairness. The study concludes that Indonesia needs legal reforms to adopt collective justice principles and improve the proportional legal protection of secured creditors in bankruptcy processes.

Keywords: Separatist Creditor, Bankruptcy, Legal Protection, Concursus Creditorum, Comparative Study.

INTRODUCTION

Bankruptcy is a legal instrument used to solve the problem of debts and receivables when a debtor is no longer able to fulfill his obligations to creditors. In bankruptcy proceedings, creditors have different legal positions depending on the type of claims and guarantees they have. In the bankruptcy system, creditors are classified based on their rights and position, one of which is separatist creditors. Separatist creditors have a privileged position because they have property security rights such as dependents, mortgages, or fiduciaries, which are attached to certain objects of the debtor's estate

(Fuady, Munir. 2016). This right allows separatist creditors to execute the object of collateral directly without having to be fully subject to the principle *of concursus creditorum*, which is the principle of equity in the distribution of the debtor's property (Khairandy, Ridwan. 2011).

The principle *of concursus creditorum* is one of the fundamental principles in bankruptcy law, which is a principle or principle that states that all creditors of a bankrupt debtor gather in one legal forum to jointly collect their receivables from the bankruptcy property (*boedel*). This principle affirms that once the debtor is declared bankrupt, the entire process of individual execution by the creditor is stopped and replaced by a collective mechanism overseen by the curator and the commercial court (Sjahdeini, Sutan Remy. 2002). The main purpose of this principle is to ensure equality (parity) among concurrent creditors, as well as to create efficiency and justice in the distribution of debtors' assets. This principle also limits the unilateral actions of individual creditors, which, if left unchecked, can harm other creditors and hinder structured settlement.

However, the applicability of the principle *of concursus creditorum* is not absolute to all creditors. Separatist creditors, for example, are essentially outside the scope of this principle because they hold security rights that are executory in nature and are not subject to the collective distribution of the bankruptcy estate. However, in practice, separatist creditors can still be subject to temporary restrictions through the provision of a stay period or if the execution of the guarantee is considered to interfere with the continuity of the debtor's business that is being restructured (Yusri, M. 2015). Therefore, the principle of *concursus creditorum* must be understood as a legal instrument that serves to balance the individual rights of creditors with the collective interests in the bankruptcy process, as well as to avoid chaos in the execution of executions carried out uncontrollably.

In legal practice, the rights of separatist creditors are not absolute. There are certain limitations that are set in order to protect the public interest and ensure the continuity of the bankruptcy process. In Indonesia, Article 56 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations stipulates that separatist creditors can still execute their guarantees, but their execution can be suspended during the "*stay period*" for a maximum of 90 days after the declaration of bankruptcy. This provision often gives rise to a conflict of interest, especially when the value of the collateral must be secured for the debtor's operational continuity for restructuring purposes.

One of the concrete examples that shows the complexity of separatist creditor protection in Indonesia is in the case of PT Asmin Koalindo Tuhup (AKT) in the decision of the Supreme Court of the Republic of Indonesia Number 01/Pdt.Sus-Pailit/2020/PN. Niaga.Jkt.Pst (Case of PT Asmin Koalindo Tuhup), where Bank Mandiri as a separatist creditor experienced obstacles in executing guarantees in the form of dependents during the bankruptcy process. In this case, the curator postponed the execution on the pretext of the need to protect the

bankruptcy property for the common good, including concurrent creditors. This has led to a legal dispute that has led to a test in the Supreme Court regarding the position of separatist execution rights on the management of bankruptcy boedels. This case shows that although normatively separatist creditors receive priority rights, implementation in the field is often constrained by different interpretations of the function of bankruptcy as a system of justice distribution.

PT Asmin Koalindo Tuhup (AKT) is a coal mining company under the Borneo Lumbung Energi & Metal Tbk group. The company experienced financial distress and faced a bankruptcy petition filed by PT Mandiri Herindo Adiperkasa in 2017. On February 9, 2018, the Central Jakarta Commercial Court granted the petition and declared PT AKT bankrupt. During the proceedings, PT Bank Mandiri acted as a secured creditor with fiduciary guarantees over mining equipment and receivables. Invoking Article 55(1) of Law No. 37 of 2004, PT Bank Mandiri submitted a request to execute the fiduciary collateral, which provides that secured creditors have the right to enforce their collateral as though bankruptcy had not occurred. However, the bankruptcy trustee (curator) rejected the execution, arguing that it must comply with the stay period as stipulated in Article 56(1), which imposes a 90-day suspension following the bankruptcy ruling. Furthermore, the curator argued that the pledged assets were essential to the bankruptcy estate and necessary to maintain the company's going concern value.

The secured creditor asserted that its rights were absolutely preferential and should be honored despite the debtor's bankruptcy. However, the trustee and the court upheld the *concursus creditorum* principle, which mandates that all creditors be gathered into one forum during insolvency to ensure equality and efficiency in asset execution. Although the full legal process was not publicly disclosed up to the Supreme Court level, the fact that the trustee could suspend the execution of secured collateral illustrates the weak legal certainty afforded to secured creditors in practice. This also demonstrates that the *concursus creditorum* principle in Indonesia is still applied in a dominant manner, which can significantly limit the enforcement rights of secured creditors.

In contrast, under the Dutch legal system, the case of *ING Bank v. X BV* illustrates a more balanced implementation of the *concursus creditorum* principle alongside the protection of secured creditors. X BV, a real estate company, experienced liquidity problems and was later declared bankrupt by a Dutch court. ING Bank was a secured creditor in this case, holding mortgage rights over several of X BV's property assets. When the bankruptcy process commenced, ING Bank intended to enforce its security rights over the mortgaged properties. However, the trustee objected and requested the court to delay or regulate the execution.

In this case, ING Bank acted as a secured creditor due to its mortgage over the assets of X BV, which had been declared bankrupt. When the trustee attempted to suspend ING

Bank's enforcement, the court ruled that while secured creditors do retain their rights to enforce collateral, the execution must be subject to judicial oversight to prevent harm to other creditors' interests. The Dutch court emphasized the importance of balancing the individual rights of secured creditors with the collective interests of the creditor body, in accordance with Articles 57 and 58 of the *Faillissementswet*. In its decision, the court allowed ING Bank to proceed with execution, but under the condition that the proceeds be aligned with other obligations and subject to fair insolvency governance. This approach demonstrates that Dutch law does not unconditionally prioritize secured creditors but recognizes their rights insofar as they do not violate collective principles.

The comparison of these two cases highlights that the Dutch legal system provides stronger judicial oversight to ensure that the rights of secured creditors are upheld without compromising collective interests. Meanwhile, the Indonesian system continues to face a dilemma between granting autonomy to secured creditors and preserving the collective value of the bankruptcy estate. These cases underscore the urgency of legal reform in Indonesia to achieve a fair and proportional balance between the *concursus creditorum* principle and the protection of secured creditors.

The Dutch legal system regulated in *the Faillissementswet* (Dutch Bankruptcy Act) also recognizes the existence of separatist creditors. However, Dutch law provides a more functional limitation: separatist creditors can still carry out executions as long as they do not interfere with the primary purpose of the bankruptcy. The Netherlands applies the principles *of doelmatigheid* (efficiency) and *redelijkheid en billijkheid* (propriety and justice) which are the basis for judges to balance the interests of the parties (Wessels, Bob. 2017). In this context, separatist creditors continue to obtain legal protection as long as they act reasonably and do not harm the bankrupt entity as a whole.

In examining the differences in legal approaches between Indonesia and the Netherlands in terms of separatist creditor protection, the theoretical framework of *comparative law* is very relevant. This theory aims not only to descriptively compare differences in legal rules, but also to understand the philosophical, historical, and sociological reasons behind these differences (Örücü, Esin. 2006). According to Konrad Zweigert and Hein Kötz, legal comparison is not just about comparing norms, but also paying attention *to the legal culture* of each legal system so that the results of comparisons are not superficial (Zweigert, Konrad et.al. 1998).

In addition, the main basis used in assessing bankruptcy legal policies related to separatist creditors is legal *protection theory*. This theory emphasizes the importance of clarity, certainty, and effectiveness of the rule of law in providing guarantees for the rights of legal subjects (Rahardjo, Satjipto. 2000). Legal protection is divided into two forms, namely *preventive legal protection* and repressive *legal protection*. Preventive means that the state provides a legal mechanism that can prevent rights violations, while repressive means that the state is

present in resolving disputes after rights have been violated (Hadjon, Philipus M. 1987). In the context of separatist creditors, this theory tests the extent to which the legal system can guarantee the right of execution of the guarantee, without compromising the principles of justice and the interests of other creditors. Thus, the incorporation of comparative legal theory and legal protection theory will be an important foundation in analyzing the effectiveness and rationality of separatist creditor arrangements in the Indonesian and Dutch legal systems.

This research related to the Comparison of 2 countries is relevant considering that both Indonesia and the Netherlands adhere to the *civil law system* which is derived from the European continental legal tradition. However, in their implementation, the two have important differences in the judicial, institutional, and practical aspects of bankruptcy justice. This comparative study aims to evaluate the extent to which the law in Indonesia has provided effective protection for separatist creditors, as well as to explore lessons from Dutch legal practice to strengthen the national bankruptcy legal framework, especially regarding the principle *of concursus creditorum*. Thus, this research is not only descriptive but also normative and comparative in encouraging more fair and functional bankruptcy law reform.

MAIN PROBLEM

This study aims to analyze the legal protection of secured creditors in bankruptcy proceedings through a comparative approach between the legal systems of Indonesia and the Netherlands, particularly in the context of applying the *concursus creditorum* principle. The research focuses on examining and analyzing two main issues: first, the implementation of the *concursus creditorum* principle in the Indonesian bankruptcy system and its impact on secured creditors; and second, the Dutch legal approach to secured creditors and how it balances their rights with the *concursus creditorum* principle.

METHOD OF RESEARCH

This research is a normative juridical legal research, which is legal research conducted by examining primary and secondary legal materials as the basis for analysis (Ibrahim, Jhonny. 2006). This study aims to examine the positive legal norms that govern legal protection for separatist creditors in bankruptcy, as well as compare them between the Indonesian and Dutch legal systems. Normative juridical research focuses on law as an autonomous normative system and does not see law as an empirical phenomenon.

The data collection method is carried out through *library research* by collecting documentary materials from various sources, including laws and regulations, academic references, and scientific publications in the field of law. The data analysis process is carried out in a normative qualitative manner, namely through critical interpretation and argumentative construction of available legal documents and sources, by developing comprehensive interpretations to produce valid and in-depth academic conclusions.

The approach used in this study is as follows:

1. The *statue approach,* is an approach that is carried out by examining and researching laws and regulations, principles, and norms that live in society, especially regulations related to the issues raised in this study. This approach is used to examine various relevant laws and regulations, such as Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations in Indonesia and *Bankruptcy Laws* in the Netherlands. Through this approach, an interpretation of the legal provisions governing the position of separatist creditors and the principle *of concursus creditorum* in each country's bankruptcy system is interpreted.
2. *Conceptual approach*, which is an approach that is carried out by referring to legal concepts, namely through the views of scholars, legal doctrines, and legal principles that are relevant to the legal issues at hand. This approach is used to analyze legal concepts such as *concursus creditorum*, separatist creditors, and legal protection, both from the point of view of legal theory and expert doctrine. This approach helps to clarify the normative underpinnings and rationality behind the legal arrangements being analyzed, as well as providing a framework for assessing the consistency and effectiveness of those legal norms.
3. *Comparative Approach*, This approach is used to compare the legal arrangements and practices that apply in Indonesia with those in the Netherlands, especially in terms of the protection of separatist creditors in bankruptcy. This approach allows researchers to find similarities and differences in the legal system, as well as explore alternative solutions to legal problems faced in Indonesia.

RESEARCH RESULT AND DISCUSSION

1. Application of the Principle *of Concursus Creditorum* in the Indonesian Bankruptcy System and Its Impact on Separatist Creditors

In the Indonesian bankruptcy legal system, the principle *of concursus creditorum is* explicitly regulated in Law Number 37 of 2004. This principle aims to unify all claims against bankruptcy debtors into a single legal forum under the supervision of the commercial court and the curator, in order to create equity for creditors. However, separatist creditors are still given the right to execute guarantees under Articles 55 and 56 of the Bankruptcy Law, although these rights are subject to restrictions during *the stay period*. In practice, separatist creditors often have to postpone execution due to the interests of the bankrupt or considerations of the business continuity of the debtor who are in the process of reorganization or PKPU. This creates tensions between the

individual rights of separatist creditors and the collective principle of bankruptcy, thus raising the question of the extent to which legal protection for separatist creditors in Indonesia can be said to be effective within the framework *of the principle of concursus creditorum*.

Despite being in the *concursus creditorum system*, separatist creditors in Indonesia receive special legal protection in the form of:

a. Recognition of the right of direct execution,

The first legal protection for separatist creditors is the explicit recognition of their executory rights in Law No. 37 of 2004 concerning Bankruptcy and PKPU. Article 55 paragraph (1) states that separatist creditors can exercise their rights "as if there were no bankruptcy." This shows that they are outside *the concursus* in principle because their rights to certain objects are not shared with other creditors. The implication of the principle of *concursus creditorum* is that even though there is a principle of equality of creditors, separatist creditors get an exception because the basis of their rights is material collateral, not just unsecured receivables.

Although separatist creditors have the right of execution, Article 56 paragraph (1) allows the curator to suspend execution for 90 days, especially when the assets are needed to maintain the debtor's business continuity or when the PKPU process is ongoing. This postponement aims to provide opportunities for the curator to manage and settle the bankruptcy assets optimally, as well as increase the chances of reaching a peaceful agreement between the debtor and the creditor (Faisal. 2024). This is where legal protection becomes "relative." The state seeks to balance the individual rights of separatist creditors with the collective interests of other creditors and the rescue of the debtor's business.

b. Separation from bankruptcy boedel,

Separatist creditors do not have to wait for the division of bankruptcy assets together with other creditors. The collateralized assets can be executed separately, and if the results of the execution are still left after repayment, then the rest will be put into the bank to be distributed to other creditors. This is a form of protection for the legal certainty and economic interests of separatist creditors.

c. The right to file for bankruptcy,

Separatist creditors are also protected procedurally because they have the right to file a bankruptcy application against the debtor in accordance with the explanation of Article 2 paragraph (1) of the PKPU Law. It is important to maintain the value of their collateral, especially when the debtor is uncooperative or trying to transfer assets.

d. Although separatist creditors in Indonesia receive special legal protection. However, it is also limited by the principle of balance and curator/court supervision, as in the suspension of execution.

Separatist creditors themselves are parties who have receivables that are guaranteed by material rights to the debtor's property, such as mortgages, fiduciaries, or dependents. According to Article 55 of Law Number 37 of 2004 concerning Bankruptcy and PKPU,

separatist creditors have the right to execute their collateral as if there were no bankruptcy, unless there is a legal reason for the suspension, for example for the benefit of boedel or during the PKPU period. The characteristic of separatist creditors is the existence of special security attached to certain objects, so that they are outside the order of concurrent creditors in the principle of *concursus creditorum*. In Dutch law, a similar concept is known as a "*separatist schuldeiser*", which is also legally given special status in *the Faillissementswet*, specifically Article 57 which states that a separatist creditor can still exercise the right of execution of his guarantee even if the debtor has been declared bankrupt.

Separatist creditors have a unique position in that they hold property security rights such as dependents, mortgages, or fiduciaries, which confer direct execution on the object of the collateral without having to be fully subject to the principle *of concursus creditorum*. In Indonesian law, as stipulated in Articles 55 and 56 of Law Number 37 of 2004, separatist creditors are basically allowed to execute their security rights, although the execution can be temporarily suspended during the bankruptcy process, especially during the "*stay period*" or if there is a PKPU. This postponement aims to maintain the sustainability of the debtor's business and avoid haphazard asset releases that can harm other creditors. However, separatist creditors often feel disadvantaged because this limitation is considered to reduce the value of legal certainty over constitutionally guaranteed executory rights. After the delay period ends, the separatist creditor may exercise his right of execution within a period of no later than two months from the commencement of the insolvency situation, as stipulated in Article 59 paragraph (1) of the Bankruptcy Law. If the separatist creditor does not exercise his rights within that period, the curator has the right to demand the surrender of the object that is collateral for further sale, without prejudice to the rights of the separatist creditor to the proceeds of the sale of the collateral (Rahayu, Hartini. 2018).

In contrast, in the Dutch legal system set out in *the Faillissementswet*, separatist creditors are also recognized and treated as privileged parties, but they can generally continue to execute their guarantees even after a declaration of bankruptcy, except in exceptional circumstances. The Netherlands emphasizes the principles of efficiency and feasibility (*doelmatigheid and billijkheid*) as the basis for restricting separatist rights, and these restrictions must also have a strong legal basis or judicial consideration (Solinge, Gerard Van., et.al. 2015). Therefore, in general it can be said that separatist creditors in the Dutch legal system have a wider range of execution autonomy compared to Indonesia, although they remain within the corridor of legal supervision that guarantees a balance between individual rights and collective interests. This suggests that although both countries recognize the existence of separatist creditors, the approach to the exercise of their rights in bankruptcy reflects a difference in orientation between the protection of individual interests and

the stability of the bankruptcy system as a whole.

The main characteristic of separatist creditors in both the Indonesian and Dutch legal systems lies in the recognition of "prior rights" or preferences in the debt payment process. This right gives a higher position than concurrent creditors, but it is different from preferential creditors such as the state or labor which are specifically regulated in laws and regulations. In this context, separatist creditors are not absolutely subject to the principle of equity, since property rights provide a legal basis for separating collateralized assets from bankrupt assets. However, the exercise of separatist rights may still be limited in practice, for example if the execution of the guarantee may interfere with the general interests of other creditors or the debtor's business continuity. In the Netherlands, separatist creditors are also recognized and granted the right to execute their collateral even if the debtor has been declared bankrupt. However, the exercise of such rights may be limited by the court if it is deemed to be detrimental to the public interest or other creditors. This reflects the principle of prudence and the balance between individual rights and collective interests in the Dutch legal system (Sentika, Adilah Dea., et.al. 2020).

The difference in legal structure between Indonesia and the Netherlands also affects the protection of separatist creditors. Indonesia adheres to a continental civil law system influenced by Dutch heritage, but in practice, the role of courts and curators in Indonesia tends to be more dominant in regulating and supervising bankruptcy proceedings, including the suspension of separatist rights through the *stay period* and PKPU mechanisms. Meanwhile, the Netherlands, which is also a country with a civil law system, applies a more flexible approach, where separatist creditors are still given execution space unless there is a strong legal reason justifying the delay. The Dutch legal system emphasizes the principles of proportionality and propriety (*redelijkheid en billijkheid*) in determining the boundaries between individual rights and collective interests, a principle that has not been fully implemented in legal practice in Indonesia.

In the stages of the bankruptcy process, the position of separatist creditors also has its own characteristics. At the bankruptcy application stage, separatist creditors can become applicants as stipulated in Article 2 paragraph (1) of the Bankruptcy Law, provided that there are at least two creditors and debts that have matured and can be collected. Once the bankruptcy declaration is established, the separatist creditors enter the stage of verification and management of the bankruptcy assets, where they can declare the right of execution and submit the details of the guarantee to the curator. At the stage of asset liquidation, the separatist creditor can execute the collateral object directly without having to wait for distribution to other creditors, except in circumstances where the law allows the intervention of the curator to maintain the continuity of the property. In the Netherlands, these stages are relatively similar, but separatist creditors have greater

room to settle their receivables without the need to coordinate directly with the curator, except in exceptional situations, such as when the object of the collateral is closely related to the debtor's company's vital assets.

Thus, in both the Indonesian and Dutch legal systems, separatist creditors receive strong legal recognition of their property rights. However, the approach to the execution of separatist rights in bankruptcy proceedings differs depending on the balance between the protection of individual interests and the stability of the bankruptcy collective system. Indonesia tends to impose greater restrictions on separatist rights through curatorial and court intervention, while the Netherlands encourages the free exercise of those rights as long as it does not violate the principles of propriety and justice.

As a continuation of the above discussion, it is important to highlight that these differing approaches not only reflect variations in legal frameworks but also have direct implications for market behavior, financing structures, and risk perceptions within the investment ecosystem. The economic consequences of recognizing the rights of secured creditors in bankruptcy proceedings significantly impact the success of debtor restructuring, creditor recovery rates, and the overall stability of the financial system. In the context of Indonesia, the restrictive approach toward secured creditors particularly through the limitation of collateral enforcement by bankruptcy trustees during insolvency often creates legal uncertainty and prolongs debt resolution processes. This negatively affects the recovery rates of secured creditors, as the value of collateral may decline during the stay period, while an inefficient bankruptcy process reduces creditor incentives to provide security-based financing. Moreover, obstacles to the enforcement of collateral can erode investor and financial institution confidence in the insolvency regime, thereby restricting private sector financing and weakening economic stability (Djaja, 2018).

In contrast, the Dutch legal system adopts a more flexible approach in regulating the rights of secured creditors, yielding relatively stronger economic outcomes. In this system, secured creditors may still enforce their collateral, but under judicial supervision to maintain balance with the interests of other creditors. This creates a more predictable and fair system, encouraging creditors to remain engaged in financing even under insolvency conditions. A study by the World Bank (2021) indicates that countries with insolvency regimes that adequately protect secured creditors tend to have higher debt recovery rates and more effective restructuring processes. In the Netherlands, insolvency proceedings are designed not only for liquidation but also as a restructuring tool, offering debtors an opportunity to continue operations particularly through mechanisms like pre-pack procedures or the WHOA (Wet Homologatie Onderhands Akkoord), which enhance long-term economic efficiency and stability.

Therefore, a legal approach that excessively restricts the rights of secured creditors, as seen in Indonesia, risks hampering credit growth, undermining the role of

collateral in the financial system, and reducing the success rate of debtor restructuring. Conversely, a more balanced approach such as that found in the Netherlands provides legal certainty, preserves the economic value of collateral, and supports the integrity and sustainability of the national financial system.

Secured creditors are partially exempt from the principle of *concursus creditorum*, which requires all creditors to come together in a single insolvency forum to resolve their claims proportionally. This exemption lies in their right to enforce collateral independently, as if bankruptcy had not occurred, as stipulated in Article 55 of Indonesia's Bankruptcy Law (Law No. 37 of 2004). However, this right is not absolute and is restricted by a 90-day stay period under Article 56. Tensions arise when the enforcement of collateral by secured creditors disrupts debtor restructuring efforts particularly when the collateral consists of essential business assets needed to maintain operations or develop a comprehensive restructuring plan. In such scenarios, unilateral enforcement by secured creditors can undermine collective recovery efforts and jeopardize the interests of other creditors.

Indonesia's rigid 90-day stay period often lacks the flexibility needed to accommodate complex insolvency cases. While intended to give time for administrators or courts to coordinate asset management and restructuring plans, there is no clear mechanism to extend or adapt this period based on the evolving needs of the insolvency estate. As a result, once the stay expires, secured creditors may proceed with enforcement even if it threatens the viability of restructuring efforts, leading to unfair asset distribution.

In contrast, the Dutch system allows for broader judicial discretion to determine whether and when secured creditors may enforce their collateral. Under Articles 57 and 58 of the *Faillissementswet* (Dutch Bankruptcy Act), courts can postpone enforcement if it would harm the overall insolvency process or obstruct restructuring. This approach provides greater flexibility in balancing the individual rights of secured creditors with the collective interests of the creditor body. It also supports the development of more realistic and sustainable restructuring proposals, with the judiciary acting as an impartial arbiter between competing interests.

Thus, the tension between secured creditors' rights and the *concursus creditorum* principle cannot be resolved through rigid legal provisions alone; it requires adaptive judicial mechanisms. Indonesia's inflexible approach tends to cause distributional conflicts and weakens restructuring prospects, whereas the Dutch model, based on judicial discretion, better accommodates collective fairness without eliminating secured creditors' entitlements. As such, equitable outcomes in insolvency depend largely on a legal system's ability to harmonize exclusive security rights with the principle of collective justice.

2. Dutch Legal Approach to Separatist Creditors and Balance with the Principle of *Concursus Creditorum*

The Dutch bankruptcy legal system also adheres to the principle *of concursus creditorum*, as reflected in the *Faillissementswet*. However, the Netherlands provides more room for separatist creditors to execute their guarantees, even after bankruptcy has been declared, as long as the action does not conflict with the principle of propriety (*redelijkheid en billijkheid*) or does not directly harm the bankruptcy bank. Separatist creditors in the Netherlands are generally not bound by the principle *of concursus*, unless there is an abuse of rights or a violation of the principle of good faith. This reflects a more pragmatic and functional approach to balancing the rights of individual creditors with the effectiveness of the bankruptcy process as a whole. Thus, the Dutch approach presents a model of legal protection that recognizes the autonomy of separatist creditors while maintaining the goal of bankruptcy as a collective process, which can be an important reference for legal development in Indonesia.

Dutch bankruptcy is regulated in the *Faillissementswet* (Dutch Bankruptcy Act), separatist creditors are granted the privilege to execute their guarantees even if the debtor has been declared bankrupt. This is in line with the principle *of prior tempore potior jure* (who comes first, first), which affirms the position of separatist creditors as parties who are not fully subject to the principle of *concursus creditorum*, which is the principle of equitable distribution of debt payments based on proportion. However, Dutch law also expressly regulates the limits on the exercise of these separatist rights, in particular in Article 57 of the *Faillissementswet*, which states that the exercise of the right of execution by separatist creditors must still take into account the continuity and fairness of the bankruptcy process as a whole.

Courts in the Netherlands are given the authority to suspend or suspend the right of execution if its execution is deemed to be detrimental to the public interest or detrimental to other creditors. This approach suggests a balance between the recognition of the property rights of separatist creditors and the collective protection of all creditors, as the essence of the *principle of concursus creditorum*. In practice, curators and bankruptcy judges in the Netherlands play an active role in ensuring that separatist rights are not abused to undermine the integrity of the bankruptcy process. Therefore, although separatist creditors have a stronger legal position, the Dutch legal system still upholds the principles of procedural justice and collective protection through strict judicial oversight of the exercise of these rights.

In the Indonesian bankruptcy legal system, separatist creditors are given the privilege to execute the collateral they control based on Article 55 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (UUK-PKPU). This right is *ius in rem* which is not lost even if the debtor experiences bankruptcy. However, to ensure that liquidation does not interfere with the collective management of the bankruptcy bond, Article 56 of the UUK-PKPU allows the curator to postpone the execution of the collateral for a maximum of 90

(ninety) days from the date the bankruptcy decision is pronounced (Silalahi, Din., et.al. 2020). This delay aims to maintain the value of the bankruptcy property and prevent certain creditors from obtaining profits that are detrimental to other creditors.

In practice, these restrictions often create tensions. For example, in the case of PT Humpuss Trading (Decision No. 02/Bankruptcy/2010/PN. Niaga.Jkt.Pst), separatist creditors, namely Bank Mandiri, experienced obstacles in the execution of tankers as collateral objects, which led to a potential decline in the value of collateral. This case reflects the problem of legal uncertainty faced by separatist creditors in Indonesia.

Meanwhile, in Dutch law, separatist creditors are recognized under Article 57 *of the Faillissementswet*, under which they remain entitled to execute the guarantee even if the debtor is declared bankrupt. Separatist rights in the Netherlands are seen as "recht van parate executie" (direct execution rights), but with the principle of prudence. This right may be suspended by the court if its exercise interferes with the bankruptcy process as a whole or harms other creditors (Faber, Dennis et.al 2014). For example, in the case of ING Bank v. curatoren van de gefailleerde X BV, ING Bank's enforcement of the right of guarantee against the debtor's property was delayed by the court because the property was considered strategic to maintain the maximum value of the bankruptcy estate.

In contrast to Indonesia, in the Netherlands the mechanism for supervising the execution of separatist creditors is strictly carried out by the courts, so that execution is not solely the absolute right of creditors, but must take into account the principle *of concursus creditorum* which demands a fair distribution of debt among all creditors (Vriesendorp, Reinout. 2018). This system offers a model of balance between the protection of individual rights and the collective interest, something that should be used as a reference in the reform of bankruptcy law in Indonesia.

For convenience, here is a comparison table of separatist creditors in bankruptcy in Indonesia and the Netherlands:

Table 1. Comparison of Separatist Creditors in Bankruptcy in Indonesia and the Netherlands

Aspects	**Indonesia**	**Netherlands**
Legal Basis	Law No. 37 of 2004 concerning Bankruptcy and PKPU	*Faillissements wet* (Dutch Bankruptcy Law)
Definition of Separatist Creditor	Creditors who hold property security rights (dependents, mortgages, fiduciaries)	Creditors with material rights (mortgage, pandrecht)
Execution of Right of Guarantee in Bankruptcy	Can execute, but can be suspended by the curator (max. 90 days)	Can execute directly, unless suspended by the court
Authority to Suspend Execution	Curator	Court
Execution Deadline	Maximum 2 months after the suspension period ends	There is no definite limit, depending on the judgment of the court and the curator
Purpose of	Giving the	Maintain the

Suspension	curator space to prepare an asset settlement plan	stability of the bankruptcy process and protect other creditors
Position in the Principle *of Concursus Creditorum*	Recognized as a party that is outside the principle of equity, but still limited	Recognized privileges, but subject to oversight for equitable distribution
Curatorial Role	Actively managing, having the authority to postpone execution	Coordinate; working with the courts, not directly delaying
Supervision of Execution	Limited (by curator, without court approval)	More strictly, the court also assesses whether the execution can be carried out
Balance with Other Creditors	Less proportionate in practice, potentially conflicting	It is more balanced, because the court can suspend it in the public interest

There are similarities in various aspects related to separatist creditors in Indonesia and the Netherlands, it is easier and more concise to follow the table of similarities to separatist creditors in Indonesia and the Netherlands:

Table 2. Equality for Separatist Creditors in Indonesia and the Netherlands

Aspects	Information
Recognition of Property Rights	Both legal systems recognize separatist creditors as having special rights to collateral
Priority over Guaranteed Results	The proceeds from the sale of collateral were first used to pay off separatist creditors
Can Execute Outside of the Bankruptcy Process	The execution of the guarantee is carried out independently, not through the distribution of the treasury
Non-Concurrent Creditors	Their legal standing is higher than that of unsecured creditors (concurrent)
Has Execution Restrictions	Executions can still be restricted or delayed by certain authorities

CONCLUSION

Separatist creditors play an important role in the bankruptcy system, both in Indonesia and in the Netherlands, due to their position as holders of property guarantees that provide preferential rights over the execution of collateral. Although both countries recognize the rights of separatist creditors, there are significant differences in their implementation and legal protection. In Indonesia, separatist creditors have the right of execution that can be suspended by the curator for a maximum of 90 days, but without strict judicial supervision mechanisms. In contrast, Dutch law provides greater room for courts to assess and balance the exercise of separatist creditors' rights with the principle *of concursus creditorum*, which demands justice for all creditors. Differences in the legal system adopted (civil law) also affect the structure of supervision, execution implementation, and legal protection for all parties in bankruptcy. Therefore, the protection of separatist creditors in the Netherlands is considered more balanced, transparent, and accountable.

Seeing the weaknesses in the practice of legal protection against

separatist creditors in Indonesia, it is time to reformulate the provisions of bankruptcy law, especially those that regulate the limits and supervision of curatorial actions in suspending execution. It is necessary to strengthen the role of the commercial court as an objective supervisor so that the rights of separatist creditors are protected but do not sacrifice the interests of other creditors. Indonesia can learn from the Dutch legal system, especially in applying the principles of proportionality and collective justice in bankruptcy. In addition, the strengthening of theoretical understanding of legal protection and comparative law also needs to be developed so that legal policies in Indonesia are not only juridically responsive, but also adaptive to international practice.

In conclusion, insolvency reform in Indonesia must focus on strengthening judicial oversight mechanisms and ensuring fair protection of creditors' rights. Amending Article 56 of Law No. 37 of 2004 to require court approval for the suspension of execution, along with the establishment of a creditors' supervisory committee, would promote greater transparency and accountability in the insolvency process. Additionally, enhancing the technical capacity of commercial court judges, mandating judicial review of critical curator decisions, and forming specialized insolvency panels with expertise in economics and finance are strategic steps to address structural weaknesses in current judicial practice. By adopting balanced principles as applied in the Dutch legal system, Indonesia can build a more efficient, predictable, and economically sustainable insolvency framework.

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