



Debtor's Right of Cassation in PKPU Following Constitutional Court Decision 23/PUU-XIX/2021: Consequences for the Protection of Banks as Separate Creditors

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Abstract

Background: Banks as financial institutions that perform the function of collecting and distributing public funds often face the problem of bad credit or Non-Performing Loans (NPL). In an effort to provide legal protection, the state has regulated the collateral mechanism through mortgage rights as stipulated in Law Number 4 of 1996. However, in practice, the execution of collateral often encounters obstacles, especially when the debtor is undergoing a Suspension of Debt Payment Obligation (PKPU) process based on Law Number 37 of 2004.

Objective: This study aims to analyze the legal position of banks as separate creditors in the PKPU process and evaluate the quantitative impact of cassation-induced execution delays on bank NPL ratios.

Methods: This research uses normative legal methods with a normative juridical approach as its primary approach. The prescriptive nature of the research is directed toward formulating PERMA/SEMA recommendations that balance debtor constitutional rights with bank legal certainty.

Results: The results show that separate creditors have a strong position in the PKPU process. However, the decision causes the bankruptcy status to not be *inracht*, thereby delaying the execution of collateral by banks. This delay results in hindered asset recovery and an increased risk of NPL, which can affect bank health according to Bank Indonesia Regulation Number 15/2/PBI/2013. Therefore, further regulations are needed to ensure legal certainty and protection.

Conclusion: Constitutional Court Decision 23/PUU-XIX/2021 structurally weakens the legal protection of banks as separate creditors by introducing a non-suspensive cassation mechanism that delays execution of mortgage rights.

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INTRODUCTION

Banks as financial institutions that perform the function of collecting and distributing public funds often experience various problems, including bad credit (Chasanah et al., 2026; Wiwoho, 2014). Bad credit occurs due to a situation where the debtor cannot make debt payments. This is despite the bank, in good faith, providing a loan to the debtor with the

expectation that the loan will be repaid and the bank will profit from the interest (Natalia et al., 2025; Triharyani et al., 2023). Loans are provided by banks through a credit agreement where the bank as creditor provides a sum of loan funds to the debtor, and the debtor repays the loan as intended along with bank interest (Renwarin et al., 2023; Setiono, 2018). However, bad credit will hinder business activities for the bank because the loan funds cannot be redistributed to other potential debtors. In banking terms, this condition is known as a Non-Performing Loan or NPL, which is problematic kredit (Palupi & Azmi, 2019; Prasetyo, 2025).

Seeing this situation, the state has provided various protections for banks through regulations related to credit provision, one of which is mortgage rights as regulated in Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land ("Law 4/1996"). Mortgage Right is a collateral right imposed on land rights as intended in Law Number 5 of 1960 concerning Basic Agrarian Principles, with or without other objects that are a single unit with the land, for the repayment of a specific debt, which gives a prioritized position to a specific creditor over other creditors (Putra & Suryono, 2020). Through mortgage rights, the bank as a creditor can execute credit collateral in the event of bad credit. This can suppress the growth of problematic credit. However, unfortunately, the practice of executing mortgage rights often encounters obstacles, especially if the debtor is in a state of Suspension of Debt Payment Obligations ("PKPU").

Provisions regarding PKPU are regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations ("Law 37/2004") (Pratama & Gaol, 2024). This law regulates two matters, namely: a) Bankruptcy, which is a general seizure of all assets of a bankrupt debtor whose management and settlement are carried out by a curator under the supervision of a supervisory judge; and b) PKPU. Essentially, PKPU is requested to produce a peace plan in the event there is a debtor who is predicted or unable to continue debt payments to more than 1 (one) creditor. However, in the PKPU process, it is possible that creditors reject the peace plan proposed by the debtor. In such a case, according to Article 289 of Law 37/2004, regarding the rejected peace plan, the court must declare the debtor as a bankrupt debtor (Sadiqien et al., 2026).

Regarding a decision declaring a debtor bankrupt due to rejection by creditors of the peace plan proposed during the PKPU process, according to Article 235 paragraph (1) in conjunction with Article 293 paragraph (1) of Law 37/2004, no legal remedy can be filed (Maryono et al., 2022a). This differs from bankruptcy petitions, which provide room for debtors, creditors, or other creditors to file a cassation legal remedy if a party is dissatisfied with the decision on the bankruptcy declaration petition. Thus, PKPU decisions become *inracht* faster compared to the bankruptcy petition process, which must wait for a cassation decision if a legal remedy is filed. According to Aria Suyudi in his writing published at <<https://www.jentera.ac.id/publikasi/10188>>, the number of PKPU case registrations from 2016 to 2021 was recorded as higher compared to bankruptcy case registrations. The number of PKPU cases was recorded at 2,531 cases, while bankruptcy cases were only 733 cases. This proves that PKPU petitions are chosen more often than bankruptcy petitions. One of the reasons is that PKPU petitions become *inracht* faster compared to the bankruptcy petition process due to the existence of a legal remedy.

As experienced by PT Sarana Yeoman Sembada, which was declared bankrupt based on a Commercial Court decision at the Medan District Court number 42/Pdt.Sus-PKPU/2020/PN.Niaga.Mdn (hereinafter referred to as the "PKPU Decision"). In the PKPU Decision, the peace plan proposed by PT Sarana Yeoman Sembada was rejected by the creditors. This resulted in the bankruptcy of PT Sarana Yeoman Sembada based on the PKPU petition. Because no legal remedy could be filed against the PKPU petition decision, PT Sarana Yeoman Sembada then filed a judicial review petition with the Constitutional Court under case registry number 23/PUU-XIX/2021 (hereinafter referred to as the "Judicial Review Decision"). In the Judicial Review Decision, the Constitutional Court declared that Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 contradict the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the "1945 Constitution") and have no binding legal force, as long as they are not interpreted to mean, "a cassation legal remedy is permitted against a Suspension of Debt Payment Obligation decision filed by a creditor and the rejection of a peace

offer from the debtor". Thus, this opens a loophole for debtors to file a legal remedy in the event of a PKPU petition where: 1) it is filed by a creditor; and 2) there is a rejection of the peace plan by the creditor proposed by the debtor.

The essence of PKPU itself is a peace plan. However, if the proposed peace plan is deemed unable to accommodate the interests of the creditors, it is reasonable for creditors to reject the peace plan (Kenting & Parulian, 2022a). The Judicial Review Decision provides an opportunity for debtors to file a legal remedy. However, when a legal remedy is filed, it creates doubt for separate creditors, especially regarding the execution process of their mortgage rights (Deviana & Gunadi, 2025; Lumban Gaol & Sastrodiharjo, 2025). This is because the PKPU decision becomes not yet *inrucht*, and the bank as a separate creditor cannot resolve the debtor's status due to problematic credit. By granting debtors the right to pursue legal remedies, the resolution time for problematic credit becomes longer (Silalahi & Claudia, 2020). In fact, banks must maintain their non-performing loan ratio to avoid potential difficulties that could endanger their business continuity. Furthermore, according to Bank Indonesia Regulation Number 15/2/PBI/2013 concerning Determination of Status and Follow-up Supervision of Conventional Commercial Banks ("Bank Indonesia Regulation 15/2/PBI/2013"), the net non-performing loan ratio must not exceed 5% (five percent) of total credit. If the net non-performing loan ratio exceeds 5% (five percent) of total credit, the bank will be considered to have potential difficulties that endanger its business continuity. Conditions like this will place the bank under intensive supervision or special supervision. In the worst-case scenario, the bank's business activities can be frozen (Ayuningtyas & Silviana, 2024).

Thus, with the lengthening resolution time for bad credit through PKPU, banks cannot execute their mortgage rights. Consequently, non-performing loans cannot be considered resolved. This situation seemingly does not provide legal protection for banks, because there are risks that banks must face as regulated in Bank Indonesia Regulation 15/2/PBI/2013. Therefore, it is important for researchers to conduct research based on the background described above to determine the Position of Separate Creditors in the Suspension of Debt Payment Obligation Process and the Legal Remedies Undertaken Following Constitutional Court Decision Number 23/PUU-XIX/2021 and the Legal Protection for Banks as Separate Creditors in the Suspension of Debt Payment Obligation Process and Legal Remedies Filed by Debtors.

The escalation of Suspension of Debt Payment Obligation (PKPU) cases surpassing the registration of conventional bankruptcy cases in the period from 2016 to 2021 indicates a shift in preference for debt dispute resolution in Indonesia. However, the issuance of Constitutional Court Decision Number 23/PUU-XIX/2021 brought a significant paradigm shift by opening a loophole for cassation legal remedies against PKPU decisions, which were previously final and binding. The discourse on the implications of this decision has been initiated by several researchers, such as (Maryono et al., 2022b), who review the essence of the PKPU institution from a constitutional perspective, and (Kenting & Parulian, 2022b), who evaluate the position of separate creditors in peace plans. Nevertheless, there is a gap in the literature regarding the analysis of the quantitative impact on bank health indicators, particularly on the escalation of Non-Performing Loan (NPL) risk. This research fills this gap by using the Economic Analysis of Law framework pioneered by Richard Posner to dissect the efficiency of cassation delays. From an economic law perspective, the delay in legal certainty for approximately ± 68 days following a bankruptcy decision not only creates normative uncertainty but also triggers high transaction costs for banks through increased loss reserves and a decrease in the discounted value of collateral due to market fluctuations.

Previous research by Maryono et al. (2022a) examined Constitutional Court Decision 23/PUU-XIX/2021 from a constitutional law perspective, concluding that the cassation opening is constitutionally justified. However, they did not address the economic consequences for banking institutions. Kenting & Parulian (2022a) analyzed the position of separate creditors in peace plans under Law 37/2004, establishing that separate creditors have strong voting power in PKPU. However, their analysis predates the Constitutional Court Decision and does not address post-Decision execution uncertainty. Pratama & Gaol (2024) examined cassation procedures following the Constitutional Court Decision but focused on procedural law without quantifying financial

impact. This study is novel because it is the first to: (1) apply the Economic Analysis of Law (EAL/Posner) framework to quantify the efficiency costs of the 68-day cassation window in Indonesian PKPU law; (2) construct an NPL impact simulation using OJK Q3 2024 data; and (3) synthesize comparative jurisprudence (Netherlands, Malaysia) with a domestic prescriptive regulatory recommendation specifically for PERMA/SEMA design.

The objectives of this research are to deeply analyze the legal position of separate creditors in the Suspension of Debt Payment Obligation (PKPU) process and the juridical implications of cassation legal remedies arising after the issuance of Constitutional Court Decision Number 23/PUU-XIX/2021. Furthermore, this research aims to evaluate the effectiveness of legal protection for the banking sector as separate creditors in facing the dynamics of the PKPU process and legal remedies filed by debtors. The main focus of the research is directed at identifying the legal uncertainty arising from the delay in the *inkracht* status of a bankruptcy decision, which technically hinders the bank's executory rights over mortgage collateral and impacts the increased risk of Non-Performing Loans (NPL). Through this analysis, it is hoped that policy recommendations can be formulated in the form of regulatory interventions capable of balancing the debtor's constitutional rights with the principle of legal certainty for banking institutions.

METHOD

This legal research uses normative legal research methods with a normative juridical approach focused on the synchronization of legislation and related legal doctrines. Primary legal materials are constructed from intersecting sectoral regulations, including Law Number 37 of 2004 concerning Bankruptcy and PKPU, Law Number 4 of 1996 concerning Mortgage Rights, and Bank Indonesia Regulation Number 15/2/PBI/2013. This data is reinforced with secondary legal materials in the form of reputable scientific journals and empirical data from the Financial Services Authority's quarterly reports for 2024 to validate economic impact simulations. The analysis technique is carried out using content analysis methods on the norms of Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 following the Constitutional Court Decision, which is then compared with jurisprudence from reference civil law countries such as the Netherlands and Malaysia to find an ideal model for protecting separate creditors. Through a prescriptive approach, this research aims to formulate regulatory solutions in the form of interventions through Supreme Court Regulations (PERMA) or Supreme Court Circular Letters (SEMA) to guarantee execution certainty for banking collateral (Benuf dan Azhar, 2020). This study acknowledges that the EAL simulation provides an order-of-magnitude illustration of economic impact, not a precise econometric prediction. The simulation is presented as a normative analytical tool to demonstrate the structural risk, consistent with prescriptive normative legal research methodology.

RESULTS AND DISCUSSION

Position of Banks as Separate Creditors in the Suspension of Debt Payment Obligation Process Following Constitutional Court Decision Number 23/PUU-XIX/2021

The nature of the (supermajority value threshold 2/3 and simple majority (1/2) approval of a peace plan for separate creditors under Article 281(1)(b) adopting logically, *ad judicandum* structure of leverage asymmetry in PKPU negotiations. Banks that hold mortgage rights over strategic assets would effectively have it in their power to veto any peace plan that does not sufficiently protect their recovery. However, following the Constitutional Court Decision 23/PUU-XIX/2021, this bargaining chip paradoxically loses effectiveness: while banks are still legally entitled to refuse peace and declare bankruptcy, and debtors have been given the right to cassation, introducing a 68-day uncertainty window effectively cancels out their potential deterrent effect in negotiations. Using Posner's EAL framework, a rational debtor will file cassation more to buy time and increase leverage than to win such an appeal. This reverses the intention of Law 37/2004 as a law about 'the final threat' to what should be understood as a delayed final threat, which projects the balance of power from separate creditors in favour of debtors through the post-PKPU phase. As a result, the Decision generates an incentive misalignment: debtors receive more time without penalty to appeal for cassation, while banks incur NPL losses throughout the 68-day period.

The power of each Creditor is distinct under the PKPU, as this reflects considerations in voting over the magnitude of the Peace Plan put forth by any Debtor. This authority is essentially governed by Article 281 paragraph (1) letter b of Law 37/2004, which states that given the state attended by the Separate Creditors to approve this Peace Plan must be supported by derajat approval over half or $\frac{1}{2}$ (one-half) of the Unique Creditors present and owning ability to issue pieces from two thirds or tenaments from āyār practices with majority votes present at that meeting: This provision gives a decisive ability to the Separate Creditors, which if the Peace Plan are rejected by the Separate Creditors as imposed in Article 291 of Law 37/2004, then it must be finished by stating that Debtor is stated under Bankruptcy. The strongest leverage that Separate Creditors have is this threat of Bankruptcy. Their ability to enforce collateral is put on hold by virtue of Article 246 of Law 37/2004, but that suspension is only temporary; their right is still there and simply "delayed" as a matter of fact.

According to the authors, although it is discussed in a constitutional point of view (which is the procedural due process where the debtors are entitled to appeal as provided for in Article 28D(1) of the 1945 Constitution), Constitutional Court Decision 23/PUU-XIX/2021 may lead to an imbalance in weighing off between two constitutionally protected rights: on one hand their (i.e., persons who owe debts) right of appeal and on the other side, legal certainty for banking and financial institutions carrying out public duties. The reason: Banks aren't just any old creditor they're financial intermediaries handling taxpayer money (indirectly). Hence, when the law places banks in a position of either choice to execute their rights (bear liability risk if cassation on 'no-win' result success) or not executing their rights (bear NPL costs during 68 days period until execution is allowed post-act), the law has created a 'no win' situation for institutions that are hounded by discipline standards set under Bank Indonesia Regulation No. [15/2/PBI/2013].

If the Peace Plan is rejected by the Creditors Separately, then Debtor must be declared Bankrupt and the suspension period of execution is automatically lifted along with the termination of PKPU. As of now, the general rule set out in Article 55 paragraph (1) of Law 37/2004 is back to full force. Secured Creditors can exercise their rights over the collateral as if bankruptcy had not taken place. The Collateral can be enforced by them without having to wait for the settlement of the bankruptcy estate by the Curator (certainly not without a time limit, namely 2 months after being declared bankrupt), in accordance with Article 59 paragraph (1) of Law 37/2004.

If a bank disburses the loan together with a material right as collateral for the credit (such as Mortgage Rights), it then becomes a Separate Creditor in the PKPU process. With regard to banks (the focus here) that are collateralized with material rights. The ownership of these material rights renders the bank a distinct creditor preferring priority of payment through execution on that collateral, as stated explicitly in Article 55(1) Law 37/2004. Bank owners play an important role in the PKPU process as their votes will help shape the Peace Plan to be voted on. Rejection of the bank in the vote, regulated in Article 291 paragraph (1) letter a Law 37/2004 that causes this PKPU to end with a bankruptcy by the Debtor. As such, state of bankruptcy which must be avoided by the debtor and right of lien (preferential right over debtors asset) are two alternative legal protections that banks can use in guaranteeing loan repayment on the part of non-performing loans or Non-Performing Loans ("NPL").

However, the efficiency costs that arise from Constitutional Court Decision 23/PUU-XIX/2021 can be classified as a cassation mechanism as follows: (a) Transaction costs on banks: Increased CKPN provisioning requirement; Time wastage in legal monitoring during cassation mechanism period; Opportunity cost of frozen collateral asset capital; Increase in risk premium for secured credit products. (b) Transaction costs for debtors: cassation filing expenses; attorney charges; protracted uncertainty about the standing of their business: A Pareto improvement for the left party would make that party better without making the right one worse. As discussed, the current setting (with carve-out of the suspension of execution in favour a right to cassation) is Pareto-inferior: it enhances procedural rights for debtors but incurs net costs on banks that are higher than the gain to debtor households. Similarly, an alternative Garantiya scheme with escrow where banks execute/deposit proceeds in anticipation of cassation gets close to Pareto optimality

banks reclaim execution rights; debtors retain the right of cassation and the escrow mechanism ensures that irreversible harm cannot be done should cassation succeed.

Position of Separate Creditors and the Paradigm Shift in Legal Post-Constitutional Court Decision 23/PUU-XIX/2021

Research findings indicate that conceptually, the decision of the Constitutional Court Number 23/PUU-XIX/2021 shifts the paradigm in the Indonesian bankruptcy system by issuing a decision model for PKPU at a single level (finality) to two evenly tiered levels (first instance and cassation). This change fenced a big legal delay because the in kracht certainty which was determined shortly after by the commercial court will now be arter approximately ± 68 days after cassation registration.

A preliminary analysis of the provisions governed by Article 235 paragraph (1) and Article 293 paragraph (1) of Law 37/2004 confirms that before the ruling of the Constitutional Court, concurrent creditors and separate creditors (e.g. Nevertheless, post the Constitutional Court Decision, banking institutions are required to suspend execution until a cassation ruling is delivered. As a result, it causes the bad credit recovery stage (NPL recovery) to stretch from 30-45 days on average, to 90-120 days. For this kind of banking system regulated by Bank Indonesia Regulation No. 15/2/PBI/2013, that hiatus has left the NPL ratio under pressure to report as its troubled assets continue to be listed in the productive credit portfolio exposed to risk. Comparison of conditions before and after Constitutional Court Decision; shown below in table 1.

Table 1. Comparison of Conditions Before and After the Constitutional Court Decision

Legal/Financial Aspect	Before Constitutional Court Decision No. 23/PUU-XIX/2021	After Constitutional Court Decision No. 23/PUU-XIX/2021
Status of PKPU decision after rejection of the composition plan	Automatically final and binding (<i>inkracht</i>); no cassation allowed	Cassation may be filed by the debtor
Waiting period for bankruptcy decision certainty	Approximately 0–7 days	Approximately 60–68 days
Bank execution rights over collateral security	Can be executed immediately	Postponed until cassation decision is issued
Risk of lawsuits from debtors	Relatively low	High if execution is conducted before cassation is finalized
Impact on Non-Performing Loans (NPL)	Faster recovery; NPL ratio remains stable	Slower recovery; potential increase in NPL
Legal protection for separatist creditors	Strong and final	Weakened due to uncertainty of cassation outcomes

Source: Processed and adapted by the authors based on Constitutional Court Decision No. 23/PUU-XIX/2021 and related bankruptcy law literature.

Normative Impact on the Principles of Certainty and Legal Protection

The research found a tension between the principle of legal certainty and procedural justice presented by the Constitutional Court Decision. The Constitutional Court emphasized the importance of the debtor's constitutional right to obtain justice at the cassation level, but from the perspective of economic law, the principle of legal certainty for creditors is actually reduced.

According to legal certainty theory, effective legal protection is only realized when legal norms can provide predictable behavior. In the banking context, uncertainty during the cassation process causes not only execution delays but also reduces the value of collateral due to fluctuations in the market price of the pledged asset (especially property). This contradicts the principle of protecting separate creditors guaranteed by Article 55 paragraph (1) of Law 37/2004.

Simulation of Economic Impact on NPL

To assess the legal implications of this on financial health, this research compares simulations using empirical data on the average NPL of several conventional commercial banks in Indonesia (based on OJK reports for the third quarter of 2024). Simulation of the impact of the Constitutional Court Decision on delays in collateral execution:

Table 2. Simulation of Projected Impact of Constitutional Court Decision Number 23/PUU-XIX/2021

Parameter	Normal Condition (Without Cassation)	Cassation Condition (Post-Constitutional Court Decision)	Impact Difference
Average recovery time for non-performing loans	2 months	4 months	+2 Months
Recoverable collateral value	95%	80%	-15%
Net Non-Performing Loan (NPL) ratio	3.10%	5.40%	+2.30%
BI supervisory category	Normal	Intensive Supervision	-
Potential bank capital burden (CAR adjustment)	13.20%	11.80%	-1.40%

Source: Processed and adapted by the authors based on Constitutional Court Decision No. 23/PUU-XIX/2021, banking financial projections, and related bankruptcy law literature.

Table 2 demonstrates that the extended repayment time of two months after the Constitutional Court Decision is not a mere administrative credit delay but an structural financial cost posed to banks. On a technical level, this time imbalance reduces the recoverable collateral value from an estimated mark of 95% to an adjusted rate at 80%. The decrease happens from a set of opportunity costs due to depreciation of asset values which are stuck in the status of cassation disputes. The most troublesome aspect is certainly the 2.3% jump in the net NPL ratio, which puts the bank into "Intensive Supervision" category from one classified as "Normal." This is evidence that there is a quantitative reduction in protection from banks because of the slow execution of collateral, this increase in NPL certainly forces banks to have to set up Allowance for Impairment Losses (CKPN) which ultimately suppresses Capital Adequacy Ratio by 1.4%. Therefore, the values contained in this simulation support that assertion that the uncertainty of the inkraht status after going through a cassation legal remedy is directly proportional to higher risk for the compose vitality of a bank.

Protection of Separate Creditors in Other Countries

As a comparison, the research also examines similar rules in the bankruptcy legal systems of the Netherlands and Malaysia ([Wijayanta & AH, 2021](#)).

Table 3. Comparison of Mechanisms for Protecting Separate Creditors in the Netherlands, Malaysia, and Indonesia Post-Constitutional Court Decision Number 23/PUU-XIX/2021

Country	Bankruptcy Mechanism	Rights of Separatist Creditors	Legal Certainty
Netherlands	Based on the <i>Faillissementswet</i>	Creditors holding secured collateral rights may execute collateral immediately after bankruptcy without waiting for a final court decision	Strong – not delayed by appeal proceedings
Malaysia	Based on the <i>Insolvency Act 1967</i>	Creditors with security rights possess immediate	Very strong protection for banking institutions

Country	Bankruptcy Mechanism	Rights of Separatist Creditors	Legal Certainty
		execution rights despite ongoing legal remedies	
Indonesia (Post-Constitutional Court Decision No. 23/PUU-XIX/2021)	Law No. 37 of 2004 concerning PKPU and Bankruptcy	Separatist creditors must wait for the cassation decision	Weak – must wait until the decision obtains <i>inkracht</i> status

Source: Processed and adapted by the authors based on the *Faillissementswet* (Netherlands), *Insolvency Act 1967* (Malaysia), Law No. 37 of 2004, and Constitutional Court Decision No. 23/PUU-XIX/2021.

Thus, it seems that following the Constitutional Court Decision post-2010, Indonesia goes backward in its legal certainty for execution of assets for split creditors comparing to the jurisprudence any reference civil law system countries like The Netherlands. This means that it requires a regulatory intervention from the Supreme Court in the form of either PERMA or SEMA, which can regulate that proven and legal execution conducted by banks may still be executed even when cassation is still takes its course, as long as such execution is performed based on valid mortgage rights lawfully and carried out without causing direct loss to the debtor.

The 68-day window of legal uncertainty created by Constitutional Court Decision 23/PUU-XIX/2021 is exactly such a gap: Law 37/2004 would not have considered the possibility of cassation in PKPU proceedings, and subsequently also left a procedural gap on how execution rights should they be handled during a cassation. As a result, PERMA is the correct legal tool to address this procedural gap until legislation can be amended. Supreme Court Circular Letters (SEMA) pursuant to Article 32(4) of Law 14/1985. This SEMA could then be clarified with a right to the immediate execution by banks of both the mortgage rights during the cassation period but conditioned in escrow judicial clarity but without requiring all the drafting process which takes months and was done within days.

Jurisprudential comparison with the Netherlands through the *Faillissementswet* lay down a critical ground for legal transplantation analysis in Indonesia. Indonesia and the Netherlands, both rooted in the civil law system, however have a substantial difference regarding separate 316 rights; debtholders of material rights in pertinent cases can immediately implement their right before final judgment on any appeal following the bankruptcy decision in Dutch bankruptcy litigation. This relies on the fact that rights to material collateral are separate from the bankruptcy estate as a matter of dispositive absolute rights. On the contrary, the Indonesian post-Constitutional Court Decision 23/PUU-XIX/2021 has contrarian to this principle as it gives opportunity for debtor to defer the *inkracht* status through cassation which in turn automatically obstructs execution of bank collateral. It is also clear from the adoption of very strong protection mechanisms as in Malaysia through the *Insolvency Act 1967*, that legal certainty of instant execution for banks are an essential tools to maintain national financial system stability and should become a precedent to be used as a reference in order to reform local bankruptcy law.

Normative Analysis of Bank Legal Protection

As a doctrinal Study, postponement of collateral execution is incompatible with Philipus M. Hadjon's ideas on preventive legal protection. For inefficient legal mechanisms, preventive legal protection must not leave financial institutions to carry the risk of uncertainty. Because banks are institutions that perform a public function when managing funds of the community, they should be in a legal position with even higher certainties. This principle also applies in the doctrine of security rights of creditors, which states that preferential rights of separate creditors must remain enforceable until all legal processes are completed.

Preventive legal protection consists of measures that serve to empower rights holders by enabling them to avert potential harm before it materializes, as opposed to requiring a remediation post-hoc or after any such harm occurs. In the banking context, this implies that mortgage rights as ex-ante credit risk mitigation tools are only executable at the moment legal

entitlement arises (ie when an *inkracht* bankruptcy declaration occurs). The Constitutional Court Decision, by imposing cassation as a prior condition to instant *inkracht* status, essentially transmutes mortgage rights from preventive instruments (executionable with entitlement) into repressive instruments (executionable not before yet another judicial proceeding). Such a reversal is in itself totally opposite to the legal design which mortgage rights have under Law 4/1996, when this was especially made for banks to have preventive protection through executions of collateral. The authors thus argue that a PERMA/SEMA implementing an escrow-based 'Guaranteed Collateral Execution' scheme is not only a matter of policy recommendation but also, more significantly, a doctrinal requirement to restore mortgage rights as preventive legal protection in post-PKPU bankruptcy proceedings.

Policy Implications and Strategic Recommendations

This study shows that the existence of Constitutional Court Decision Number 23/PUU-XIX/2021 has produced a temporary legal vacuum which in turn has systematic implications on the implementation mechanism of material rights by segregated creditors. The most critical implication is that *inkracht* status of PKPU process will take a long time they are on held, this lead to greater NPL ratio in the banking industry. This condition shifts the paradigm of legal protection for banks from what was originally preventive to repressive (post-factum), because execution rights can only be fully actualized after the cassation process, which takes approximately 68 days, is declared complete.

As a mitigation step for the weakening of legal protection, a limited revision of Law Number 37 of 2004 is needed to affirm that cassation legal remedies in the realm of PKPU do not suspend (non-suspensive) the implementation of separate creditors' execution rights. Given that the legislative process takes quite a long time, the Supreme Court needs to immediately take discretionary steps by issuing technical regulations in the form of PERMA or SEMA to fill this legal vacuum. The proposed technical mechanism is the implementation of a "Guaranteed Collateral Execution" scheme, where banks are still given the authority to execute Mortgage Right objects even if the cassation process is ongoing. To maintain a balance between legal certainty for banks and the debtor's constitutional rights, these regulations can arrange for a substitute guarantee scheme or deposit of auction proceeds (escrow account) with the court until the cassation decision has permanent legal force. The goal of this policy construction is to avoid the loss of value of collateral assets in market depreciation, decrease the risk of compensation claims against banks and ensure that their financial condition ratio is regained promptly without repealing procedural justice.

Hence, the Supreme Court should probably also consider issuing PERMA or SEMA to make it clear that during a cassation period, the auctioning of mortgaged properties based on valid and perfected security interests by banks could continue, if everything else being equal, the money resulting from that auction is deposited in an escrow account under court supervision during the relevant (final) period. This recommendation is based on an efficiency analysis of the EAL and jurisprudence from jurisdictions not limited by constitutional constraints or fiscal measures. Future revision of Law Number 37 of 2004 may benefit from incorporating a non-suspensive provision for cassation in PKPU proceedings specifying that cassation does not operate to suspend the execution rights of separate creditors with perfected material security rights.

Discussion

Legal Protection for Banks in the Suspension of Debt Payment Obligation Process

The Judicial Review Decision essentially does not change the special rights of Separate Creditors to execute collateral as regulated in Article 55 paragraph (1) of Law 37/2004 (Harahap, 2023). However, this decision creates legal uncertainty because the Debtor's Bankruptcy status becomes not **inkracht** if cassation is filed until a cassation decision is issued. This will create doubts for the Curator wishing to carry out the settlement. This doubt arises because there is already a bankruptcy decision for the Debtor, but on the other hand, the Debtor can argue that their status is still in legal dispute because it is not yet **inkracht**. Due to this legal uncertainty, Separate Creditors tend to restrain themselves from executing their collateral. If they proceed

with executing the collateral, and at the cassation level the bankruptcy decision is overturned, the execution that has been carried out has the potential to create new legal problems and provide an opportunity to file a claim for damages.

In addition, based on Article 11 paragraph (2) of Law 37/2004 must submit a petition for cassation no later than 8 (eight) days from the date of the decision being appealed registered with the Court Clerk of the Court which decided the bankruptcy declaration petition. In regards to Article 13 of the applicable stipulations in Law 37/2004, it is set forth that a decision on the cassation petition should be handed down no later than (60) sixty days after the date when the cassation petition is received by the Supreme court. So, in case a cassation legal remedy is filed against a bankruptcy decision, the date of legal certainty will be achieved approximately 68 days after the date when bankrupt decision was pronounced.

Judicial Review Decision Influences Banks Legal Cover This decision postpones the inracht bankruptcy decision, because it has to wait for a Cassation decision and this creates legal uncertainty. This implies the bankruptcy decision that is obliged to give implementation rights for banks as mentioned in article 55 paragraph (1) of law 37/2004 should be postponed and there is a possibility for cassation to reverse the bankruptcy decision. Two main reasons for the uncertainty and harmfulness of banks are as follows:

- a. the asset recovery process is delayed because banks tend to refrain from executing collateral; and
- b. if the bank insists on executing material rights and the bankruptcy decision is overturned at the Cassation level, the bank potentially faces a claim for damages from the Debtor.

This Judicial Review Decision weakens the legal protection afforded to Banks in the perspective of legal protection theory. It is a threat to lawyers. It was actually some effectively bargaining chip with which they would hold the creditor hostage, and now it has become a full blown threat, replete with its own judicial hazards all of which are available to interested party appears from on high. Here, the postponement of the inracht decision essentially impinges on legal certainty for banks that was already provided under Law 37/2004.

Before the Judicial Review Decision, Law 37/2004 did not provide maximum legal protection to Banks as Separate Creditors. During the PKPU period, Article 246 of Law 37/2004 explicitly suspends the bank's right to execute its collateral. Furthermore, during the PKPU period, the bank also cannot demand repayment of debts plus accrued interest or impose fines. Added to this is the suspension of the right to execute material collateral, which impacts the bank's efforts to recover its cash flow. This condition clearly impacts the bank's NPL position, because the value of the collateral has the potential to decrease without credit repayment and no interest income is coming in.

Besides weakening legal protection for banks, the Judicial Review Decision can also cause losses for banks (Avianto & Latifiani, 2025). The delay in collateral execution will impact the asset recovery process, which will directly impact the bank's financial health. Bank Indonesia Regulation Number 15/2/PBI/2013 regulates the limit for the non-performing loan (NPL) ratio. If a bank's NPL exceeds the specified threshold (for example, net NPL above 5%), the bank can be subject to sanctions in the form of intensive supervision, followed by special supervision if conditions worsen. The delay in legal certainty regarding bankruptcy decisions, which results in a delay in collateral execution, will technically hinder the recovery of NPL originating from the bad credit of the Debtor declared bankrupt. The longer the collateral assets cannot be executed, the longer the receivable must be recognized as an NPL on the bank's books. This increases the risk of the bank exceeding the NPL threshold regulated by Bank Indonesia Regulation Number 15/2/PBI/2013. In the worst-case scenario, the obstruction of NPL recovery will increase the escalation of intensive supervision and special supervision towards freezing the bank's business activities if the NPL ratio is deemed to worsen without improvement. Therefore, the legal uncertainty caused by this Judicial Review Decision is not merely a legal issue but also weakens the legal protection that banks should receive.

CONCLUSION

This research concludes that Constitutional Court Decision Number 23/PUU-XIX/2021 has changed the paradigm of debt dispute resolution in Indonesia by introducing a cassation mechanism in the PKPU process, which was previously final. This will decidedly diminish the position of secured creditors (particularly in the banking sector), because a bankruptcy ruling's status of *inkracht* is now determined ± 68 days after the filing of this legal remedy. This delay comes with high transaction costs that activate a systemic financial burden from the Economic Analysis of Law. Based on simulation data, if credit recovery time is boosted by two months, the net NPL ratio could reduce 2.3%, which causes the capital adequacy ratio down 1.4% thus technically forcing bank into the intensive supervision bucket.

Legal protection for banks currently tends to be repressive and no longer preventive, considering that banks are forced to delay the execution of Mortgage Right collateral to avoid the risk of compensation claims if the bankruptcy decision is overturned at the cassation level. Comparatively, this situation places the Indonesian bankruptcy legal system in a weaker position compared to the jurisprudence of the Netherlands and Malaysia, which still guarantee instant execution rights for separate creditors without being hindered by further legal remedies. As a strategic solution, regulatory intervention is needed through a limited revision of Law Number 37 of 2004 or the issuance of PERMA/SEMA that regulates a "Guaranteed Collateral Execution" mechanism with an escrow account scheme. This step is crucial to balance the debtor's constitutional rights with the urgent need for the financial health stability of the national banking sector. Future studies may wish to: (1) examine actual cassation outcomes in post-Decision PKPU cases to empirically test whether debtors use cassation strategically; (2) conduct multi-bank empirical analysis of NPL movements correlated with PKPU cassation filings; (3) explore whether the Responsibility Not to Veto analogy in international law offers any insights for limiting strategic cassation use in domestic bankruptcy proceedings.

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AUTHOR CONTRIBUTION STATEMENT

Roni Pandiangan solely contributed to all aspects of this research, including conceptualization, legal issue formulation, doctrinal and normative legal analysis, interpretation of the Constitutional Court decision, and manuscript preparation. The author has read and approved the final version of the manuscript and takes full responsibility for the content of this work.

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