

ABSTRACT

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JURIDICAL ANALYSIS OF THE POSITION OF SEPERATED CREDITORS HOLDING MORTGAGE RIGHTS IN BANKRUPTCY

(viii + 101 pages)

The purpose of conducting this research is to find out the the arrangement of the position of separatist creditors for mortgage holders in bankruptcy in terms of the positive law in force. The method of research being used is normative-empirical method, where this research was carried out with normative legal provisions, namely reviewing laws and regulations which was then supported by the empirical data through interviews with practitioners in the field of bankruptcy. The way to obtain data is to use the library study method, which is a method of collecting data bu conducting research on various literature such as books, journals and interviews. The result of the research in this thesis has shown that there is an inconsistency in the regulation of the position of a separatist creditor holding a mortgage in the context of bankruptcy in terms of the Mortgage Law and Bankruptcy Law. In the article 21 of the Mortgage Law it is said that the creditor holding the mortgage is not affected and can exercise his rights even if the debtor is bankrupt. However the Bankruptcy Law are not like that. When the debtor is declared bankrupt, the separatist creditor must comply with the rules contained in the Bankruptcy Law. The rules that must be complied include the stay period, whereby the separatist creditor can only exercise the rights of execution after the stay period ends. After the stay period ends, the separatist creditor must start exercising his rights within 2 months since the debtor experiencing insolvency. Likewise, the distribution of proceeds from the execution of separatist creditors holding mortgage rights is not entirely for the fulfillment of debt payments, but there are several types of preferred creditors whose receivables must take precedence. However, based on the results of the interviews, the exercise of the separatist creditor's right of execution is usually carried out by the curator and preference receivables as referred to Article 60 paragraph (2), in particular the wages of workers/laborers are usually not paid.

References : 32 (1949-2022)

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