

## **THE RIGHTS OF CREDITORS OF GUARANTEE HOLDERS IN A LIMITED LIABILITY COMPANY DECLARED BANKRUPT**

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**Abstrak.** *This study aims to analyze and explain the position of creditors as holders of the pledge of shares of a Limited Liability Company declared bankrupt. This study also aims to determine the legal remedies creditors can take if they experience these problems. This study uses a normative juridical research method with a statute and conceptual approach. The data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The collected legal materials are then analyzed using qualitative data analysis methods. The results show that the position of creditors as holders of the pledge of shares of a Limited Liability Company declared bankrupt is preferred creditors. However, the position of creditors will mutatis mutandis change from preferred creditors to concurrent creditors because the collateral object no longer exists. In addition, creditors can make efforts as holders of the pledge of shares related to Limited Liability Company declared bankrupt, namely preventive and repressive efforts. However, repressive efforts are insufficient to provide justice, certainty, and legal protection to creditors as holders of the pledge of shares. Therefore, it is recommended to creditors as holders of the pledge of shares to make preventive efforts: authentic deed, authorization letter to sell the collateral object, adding another collateral object, and auditing prospective debtors and collateral objects. In addition, it is recommended for the Government to harmonize and regulate several applicable laws and regulations regarding the pledge of shares. In this case, creditors as holders of the pledge of shares have more power, certainty, and legal protection in the pledge of shares agreement in the future.*

**Keywords:**  
*Bankrupt;  
Creditor;  
Debtor;  
Guarantee;  
Pledge of Shares.*

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### **INTRODUCTION**

The credit agreement is one way prospective debtors can obtain loan funds from prospective creditors. Many debtors choose their shares to be encumbered as a pledge or fiduciary security in credit agreements.<sup>1</sup> Many debtors make pledges of shares because they do not eliminate their rights as shareholders in the company. In

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<sup>1</sup>Pontoh, K. C. (2016). Jaminan Perlindungan Hukum terhadap Kreditur Pemegang Gadai Saham pada Bank Umum Nasional di Indonesia. *Lex Crimen*, 5(4), p. 155.

addition, the pledge of shares is increasingly in demand by debtors because of the ease with which they can obtain loans from creditors.

Shares signify participation or ownership of a person or entity in a company or Limited Liability Company. The form of shares is a piece of paper that explains that the paper's owner is the company that issued the securities.<sup>2</sup> This condition also shows a legal relationship between the shareholders and the Limited Liability Company.<sup>3</sup> In this case, there are rights and obligations. Article 60 section (1) section (2) of Law of the Republic of Indonesia Number 40 of 2007 on Limited Liability Company (hereinafter referred to as Law No. 40 of 2007), regulates that:

- (1) Shares are movable objects and give the rights ... to their owner.
- (2) Shares can be burdened by pledge or fiduciary security, unless otherwise regulated in the articles of association.

However, the provision above does not further regulate the rights and obligations of the parties. In addition, the provision above also does not regulate the execution mechanism if there are legal problems related to the object of the pledge.<sup>4</sup>

Pledge rights are accessory rights, the implications of which are based on the main content of the loan agreement. In this case, the pledge of shares is an additional guarantee of the loan agreement. Therefore, the creditor is entitled to a pledge of shares based on the loan agreement.<sup>5</sup> On the other hand, the pledge of shares is intended so that the debtor will provide certainty of debt repayment payment as agreed in the agreement deed. Creditors are also entitled to benefit from the company's shares if the debtor defaults.<sup>6</sup> In this case, the creditor has legally controlled the pledge of shares guaranteed by the debtor as shareholders.

New problems can arise if the creditor will control the pledge of shares, but the Limited Liability Company is declared bankrupt. Meanwhile, Colonial Regulations, Staatsblad Number 23 of 1847 on the Burgerlijk Wetboek voor Indonesie/the Civil Code (hereinafter referred to as the Civil Code) and other laws and regulations have not explicitly regulated the status of creditors regarding the issue of the agreement with the Limited Liability Company declared bankrupt. In this case, creditors can make efforts to maintain control of the pledge of shares. In addition, creditors can make efforts not to bear losses due to a Limited Liability Company declaring bankruptcy. On the other hand, a Limited Liability Company that is declared bankrupt will undoubtedly impact the value of the shares. The value of these shares can decrease drastically or even be

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<sup>2</sup>Supramono, G. (2014). *Transaksi Bisnis Saham dan Penyelesaian Sengketa Melalui Pengadilan*. Jakarta: Kencana Prenada Media Group, p. 3.

<sup>3</sup>Azizah. (2015). *Hukum Perseroan Terbatas*. Malang: Intrans Publishing, p. 85.

<sup>4</sup>Karim, M. & Abdullah, M. A. (2019). Tinjauan Yuridis Saham sebagai Objek Jaminan Kebendaan. *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan*, 3(1), pp. 188-189.

<sup>5</sup>Mutriadi, A. (2021). Gadai Saham dalam Sistem Perdagangan di Tinjau dari Hukum Perdata. *Jurnal Institusi Politeknik Ganessa Medan*, 4(2), p. 223.

<sup>6</sup>Sitompul, J. P. H., et al. (2016). Analisis Perjanjian Utang Piutang dengan Jaminan Gadai Saham pada Kasus Deutsche Bank Aktiengesellschaft Melawan Beckett PTE LTD. *Diponegoro Law Journal*, 5(3), p. 3.

of no value to investors or potential buyers. So that this condition is very detrimental to creditors as holders of the pledge of shares because they do not get legal certainty.

Based on the description above, this study aims to analyze and explain the position of creditors as holders of the pledge of shares of a Limited Liability Company declared bankrupt. In addition, this study aims to determine the legal remedies that creditors can take if they experience these problems.

## **METHOD**

This study uses a normative juridical research method with a statute and conceptual approach. The statute approach is carried out by reviewing and analyzing all laws and regulations interrelated with the studied legal issue.<sup>7</sup> At the same time, a conceptual approach is an approach that is based on the views and doctrines that develop in the science of law.<sup>8</sup> The types of data used are legal materials, including:

1. Primary legal materials include the Civil Code, Law No. 37 of 2004, Law No. 40 of 2007, and other laws and regulations;
2. Secondary legal materials that explain primary legal include books, articles, and materials obtained from the internet and discuss the pledge of shares; and
3. Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. The tertiary legal material used by the author is the Big Indonesian Dictionary and related legal dictionaries.

The data was collected using literature study techniques on primary, secondary, and tertiary legal materials.<sup>9</sup> The collected legal materials are then analyzed using qualitative data analysis methods with a statute and conceptual approach to conclude the research objectives.<sup>10</sup>

## **RESULTS AND DISCUSSION**

The right to a pledge of shares is a right that has been attached to every creditor. These rights arise based on the law, so there is no need for a special agreement.<sup>11</sup> The nature of creditors' rights as holders of pledges of shares based on Article 1133 of the Civil Code regulates that "*the right to precedence among creditors shall be based upon privilege, pledge, and mortgage.*" However, if the pledge of shares is otherwise regulated in the articles of association, then the guarantee has a specific nature.<sup>12</sup> Therefore, the parties to the loan agreement can add particular points. In this case,

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<sup>7</sup>Marzuki, P. M. (2013). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, p. 133.

<sup>8</sup>Muhammad, A. (2004). *Hukum dan Penelitian Hukum*. Bandung: PT. Citra Aditya Bakti, p. 52.

<sup>9</sup>Mamudji, S., et al. (2005). *Metode Penelitian dan Penulisan Hukum*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, p. 28.

<sup>10</sup>Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn), pp. 47-48.

<sup>11</sup>Bachmid, M. F., et al. (2022). Hak Kebendaan dan Pembebanan Lembaga Jaminan dalam Perspektif Hukum Perdata (KUH Perdata). *Lex Administratum*, 10(1), pp. 234-235

<sup>12</sup>Mafulah, H. (2020). Pengecualian Perjanjian yang Berkaitan Paten dan Lisensinya dalam Pengawasan Persaingan Usaha. *SIGn Jurnal Hukum*, 1(2), p. 88.

it regulates the delivery of the pledge of shares belonging to the debtor as collateral for the creditor's receivables. On the other hand, with special rights for creditors as holders of pledges of shares, their position is prioritized in repayment compared to other creditors who do not hold special rights.

### **A. Encumbrance of Pledge of Shares based on Loan Agreement**

The term pledge or pawn is the term "pand" in Dutch.<sup>13</sup> Encumbrance of the pledge of shares is an authority and privilege for creditors based on the Civil Code. In this case, the debtor must prioritize repayment to the creditor as holders of pledges of shares.<sup>14</sup> Furthermore, the position of creditors as holders of pledges of shares is emphasized in Article 1155 of the Civil Code, which regulates that:

*"Unless the parties do not otherwise regulate, in the event that the debtor or the pledgor does not comply with his obligations, the creditor shall be authorized, following the lapse of a specific term or in the event that no specific term was regulated, after a summons in respect of compliance, to sell the pledge in public pursuant to local customs and in accordance with the usual requirements, to settle the debt which is include the interest and costs incurred from the proceeds of the sale. In the event that the pledge is of commercial items sold at the market or securities traded on the stock market, then the sale can also take place in such locations, provided that two agents involved in such business is act as intermediaries."*

From the provisions in Article 1133 and Article 1155 of the Civil Code, it can be understood that creditors as holders of pledges of shares have special rights so that they must understand the process of the encumbrance of the pledges of shares. In this regard, the following are essential things that creditors must do in the process of the encumbrance of the pledge of shares, including the existence of an agreement, collateral object handover, and notification or announcement regarding the pledge of shares.

#### **1. Pledge of Shares Agreement**

Shareholders or other people authorized for and on behalf of shareholders as debtors make loan agreements the main agreement with creditors. In addition, the debtor makes a pledge agreement as an addendum agreement to provide guarantees for creditors.<sup>15</sup> As previously explained, a pledge is an *accessoir* (additional) right. The pledge agreement will not exist if the main agreement is not made. Therefore, the pledge agreement always accompanies the loan agreement. In contrast, loan agreements do not always require a pledge agreement.<sup>16</sup> The pledge of shares agreement regulates matters relating to pledges and shares as collateral

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<sup>13</sup>Salim, H. S. (2007). *Perkembangan Hukum Jaminan di Indonesia*. Jakarta: PT. Raja Grafindo Persada, p. 33.

<sup>14</sup>Muhammad, A. (1993). *Hukum Perdata Indonesia*. Bandung: PT. Citra Aditya Bakti, p. 14.

<sup>15</sup>Kaparang, N. N. C., et al. (2021). Tinjauan Hukum Pembatalan Objek Gadai Ketika Pemberi Gadai Melakukan Wanprestasi Menurut dari KUHPperdata. *Lex Privatum*, 9(6), pp. 26-27.

<sup>16</sup>Sutedi, A. (2018). *Hukum Hak Tanggungan*. Jakarta: Sinar Grafika, p. 25.

objects. The pledge of shares agreement contains the number of shares that can be used as collateral objects. In addition, the pledge of shares agreement may also contain provisions such as procedures for controlling and owning collateral objects if the debtor defaults.<sup>17</sup> In practice, most creditors require the debtor to make a pledge agreement in the form of an authentic deed. These requirements are intended so that creditors have more power, certainty, and legal protection to control the pledge of shares as collateral objects from the debtor.

## **2. Collateral Object Handover**

Collateral object handover is carried out from the debtor to the creditor after the parties agree on the loan agreement.<sup>18</sup> When the collateral object handover has been carried out, the action does not have implications as a form of surrendering property rights. In this case, the legal consequence of the collateral object handover is to position creditors as holders of the pledge of shares and not as shareholders.<sup>19</sup> Thus, the pledge of shares is declared valid if the shares which are the object of the collateral have been handed over by the pledgor to the creditor as regulated in Article 1152 of the Civil Code.

## **3. Notification or Announcement to the Company**

The debtor must notify the Limited Liability Company if he wishes to pledge. The notification is intended so that each shareholder knows the company's share ownership status. The notification is also regulated in Article 60 section (3) of Law No. 40 of 2007, in which lex specialist requires recording a register of shareholders and a special register of Limited Liability Company shares.<sup>20</sup> Without notification from the debtor to the Limited Liability Company, the Company's Board of Directors will not make a record to include creditors in a special register. So that in essence, the position of creditors as holders of pledges of shares of debtors is unclear. This condition also has the potential to cause legal problems in the future.

As stated above, it can be understood that the pledge of shares agreement can only occur if the shareholders make a loan agreement. Meanwhile, the encumbrance of the pledge of shares aims to provide power, certainty, and legal protection for creditors on loan agreements made to debtors. If the debtor denies the agreement/default, the collateral object becomes a solution to the debtor's obligations and responsibilities for the loan agreement.<sup>21</sup>

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<sup>17</sup>Putri, A. O. (2020). Perlindungan Hukum terhadap Hak Pemegang Jaminan Gadai Saham. *Lex Renaissance*, 1(5), pp. 116-117.

<sup>18</sup>Sutedi, A. (2018). *Op. Cit.*, p. 32.

<sup>19</sup>Putri, A. O. (2020). *Op. Cit.*, p. 117.

<sup>20</sup>Widiati, A., et al. (2017). Analisis Yuridis Perlindungan Hukum atas Tindakan Gadai Saham yang Dilakukan oleh Manajer Investasi terhadap Efek Investor. *Diponegoro Law Journal*, 6(2), p. 8.

<sup>21</sup>Susanti, S. (2018). Pembaharuan Hukum Penanggungan: Studi Perbandingan dengan Hukum Penanggungan (BORGTOCHT) di Belanda. *Jurnal Ius: Kajian Hukum dan Keadilan*, 6(3), pp. 379-380.

## **B. The Position of Creditors as Holders of the Pledge of Shares of a Limited Liability Company Declared Bankrupt**

The position of creditors as holders of pledges of shares with shareholders in a Limited Liability Company is different. The position of creditors arises because of the loan agreement. In this case, the creditor obtains a collateral object in the form of shares from the debtor as shareholders. Therefore, creditors must ensure that the Board of Directors of the Limited Liability Company makes a record to include creditors in a special register. With this recording, creditors as holders of pledges of shares have the status of preferred creditors. The record also provides power, certainty, and legal protection for creditors on loan agreements if the debtor defaults. In this case, the creditor has the right to sell shares as collateral objects to pay off the debtor's debt to the creditor.

Similar to the condition where a Limited Liability Company is declared bankrupt, the position of creditors as holders of pledges of shares remains the status of preferred creditors as regulated in Article 1133 of the Civil Code. Thus, if a Limited Liability Company is declared bankrupt, then all of the company's assets will become a guarantee of repayment for the loan agreement between the debtor and all creditors. This condition also implies, without exception, that all assets belonging to the debtor will become general guarantees for the repayment of their debts. In this case, both the object of ownership that has been agreed upon and that has not been previously agreed upon by the debtor to the creditor.<sup>22</sup> In addition, general guarantees are legal consequences that arise according to the applicable laws and regulations provisions.

Bankruptcy is a condition where debtors cannot make payments on their debts to all their creditors.<sup>23</sup> Shubhan argues that bankruptcy is a form of further implementation of the *paritas creditorium* principle and the *pari passu prorata parte* principle or what is currently known as the property law regime (*vermogensrecht*).<sup>24</sup> The principle of *paritas creditorium* implies that creditors have the same rights and position on all debtor's assets. Meanwhile, the principle of *pari passu prorata parte* implies that all debtor's property is a mutual guarantee for creditors and is distributed proportionally based on the amount of debtor debt.<sup>25</sup> In this case, the position of creditors as holders of pledges of shares is essentially unchanged, namely that the position of preferred creditors will take precedence in receiving payment of debtors' debts. In this regard, there are two possible positions for creditors as holders of pledges of shares if a Limited Liability

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<sup>22</sup>Prasetyawati, N. & Hanoraga, T. (2015). Jaminan Kebendaan dan Jaminan Perorangan sebagai Upaya Perlindungan Hukum Bagi Pemilik Piutang. *Jurnal Sosial Humaniora (JSH)*, 8(1), p. 125.

<sup>23</sup>Shubhan, M. H. (2008). *Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan*. Jakarta: Kencana Prenada Media Group, p. 2.

<sup>24</sup>*Ibid.*, p. 3.

<sup>25</sup>Christy, E., et al. (2020). Kepastian Hukum Hak Preferensi Pemegang Hak Tanggungan dalam Kasus Kepailitan. *Kanun: Jurnal Ilmu Hukum*, 22(2), p. 329.

Company is declared bankrupt, including:

1. Based on Article 55 section (1) of Law of the Republic of Indonesia Number 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as Law No. 37 of 2004), regulates that “*with due observance of the provisions ..., every Creditor holder of pledges, fiduciary security, encumbrance rights, mortgages, or collateral rights over other properties, can execute their rights as if there was no bankruptcy.*” This provision implies that creditors as holders of pledges of shares have a priority position or a personal legal relationship. In this case, the debtor has personal status and not as shareholders of the Limited Liability Company is declared bankrupt. So that what is judged by the debtor is the ownership right of his personal property, not the ownership right of the Limited Liability Company shares. However, if the debtor’s right of ownership is in the curator’s control, then the curator can suspend repayment as regulated in Article 56 of Law No. 37 of 2004. In this case, the suspension is for a maximum period of 90 (ninety) days from the date of the bankruptcy declaration decision. In addition, the suspension is intended so that the curator can sell the debtor’s right of ownership for the debtor’s business continuity. In contrast, creditors can apply for an accelerated suspension to the curator or the Supervisory Judge as regulated in Article 57 of Law No. 37 of 2004. In this case, if the request is granted, the creditor can speed up the execution time for the debtor’s right of ownership based on the value of the loan agreement.
2. Suppose the Limited Liability Company is declared bankrupt. In that case, a meeting will be held and attended by the curator, debtor, and creditor, led by a supervisory judge, and assisted by a substitute clerk.<sup>26</sup> The meeting aims to discuss the sale of the debtor’s right of ownership. In addition, it also aims to match or verify, ratify receivables, and discuss payment of debtors’ debts to creditors. As for the payment of debtors’ debts to creditors, the position of creditors will be ranked according to the applicable laws and regulations provisions. Therefore, the position of creditors as holders of pledges of shares remains to have the status of preferred creditors or creditors whose payment will take precedence.

As stated above, it is understood that the debtor and the Limited Liability Company are two different legal subjects. A loan agreement is a personal legal relationship between a creditor and a debtor. Therefore, if the value of the pledge of shares decreases due to the Limited Liability Company declaring bankruptcy, the sale of the collateral object is insufficient to pay off the debtor’s debt payments. In this case, the creditor still has the right to demand the remaining repayments by executing the debtor’s personal right of ownership. This condition is based on Article 1131 of the Civil Code, which regulates that:

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<sup>26</sup>Sinaga, S. M. (2012). *Hukum Kepailitan Indonesia*. Jakarta: Tatanusa, p. 119.

*“All movable and immovable properties of the debtor, either present or future, serve as securities for the personal obligations of the debtor.”*

On the other hand, there is another analysis of the position of creditors as holders of pledges of shares. In this case, if the sale of the collateral object is insufficient to pay off the debtor's debt payments, the position of creditors will *mutatis mutandis* change from preferred creditors to concurrent creditors because the collateral object no longer exists.

### **C. Legal Remedies for Creditors as Holders of the Pledge of Shares of a Limited Liability Company Declared Bankrupt**

Of course, the loan agreement often poses a risk for creditors. One of the risks that are most often present in loan agreements is the problem of the time of returning or paying debts from the debtor to the creditor.<sup>27</sup> In addition, the loan agreement requires a pledge of shares as an addendum agreement while the Limited Liability Company is declared bankrupt. In this case, it still creates new problems because the sale of the collateral object is insufficient to pay off the debtor's debt payments to creditors. In addition, the position of creditors may change from preferred creditors to concurrent creditors. Thus, as holders of the pledge of shares, creditors must make a series of efforts to protect their rights and positions. In this case, creditors can make preventive and repressive efforts.

#### **1. Preventive Legal Efforts**

In practice, several creditors as holders of the pledge of shares experience difficulties executing that collateral object. This condition is a problem that can harm the rights of creditors on the pledge of shares. Therefore, creditors must make prevention efforts as a solution to the potential for these problems. In this case, the efforts that creditors can take include:

##### **a. Pledge Agreement Made in the Form of an Authentic Deed**

Until now, no regulation stipulates that the making of a pledge agreement must be in the form of an authentic deed and cannot be an underhanded deed. In addition, the validity of the pledge agreement is not due to the evidence of a deed of agreement. However, a pledge is declared valid if the pledgor physically transfers the object of the pledge to the creditor (*inbezitstelling*). Therefore, the pledge agreement, as regulated in Article 1151 of the Civil Code, can be made through a written agreement in the form of an underhanded or authentic deed. In practice, most pledge agreements are made in authentic deeds to provide legal certainty to creditors.<sup>28</sup> Thus,

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<sup>27</sup>Djumhana, M. (2003). *Hukum Perbankan di Indonesia*. Bandung: PT. Citra Aditya Bakti, p. 329.

<sup>28</sup>Mait, T. K. (2019). Tinjauan Yuridis terhadap Eksekusi Gadai dan Perlindungan Hukum Menurut Hukum Positif di Indonesia. *Lex et Societatis*, 7(9), p. 48.



if the debtor defaults in the future, the creditors have more power, certainty, and legal protection in executing the collateral object.

**b. Additional Clause in the Pledge Agreement and Authorization Letter to Sell the Collateral Object**

As previously explained regarding the collateral object handover, the legal consequence is to position creditors as holders of the pledge of shares and not as shareholders. Therefore, adding a clause that creditors can act for and on behalf of debtors as shareholders are one of the efforts that can be made to avoid adverse risks in the future. In this case, as long as the debtor has not paid off the debt, the creditor can be involved and have voting rights in the General Meeting of Shareholders.<sup>29</sup> The issuance of an authorization letter is also an effort to prevent debtors from not having good faith and abusing their rights as regulated in Article 52 section (1) of Law No. 40 of 2007. Furthermore, adding a clause and issuing an authorization letter that creditors can sell the collateral object. In this case, the creditor will sell the collateral object if the debtor does not pay off the credit.<sup>30</sup> This condition is also an anticipation of creditors to get a good selling value of shares before the Limited Liability Company is declared bankrupt.

**c. Loan Agreement Adds Another Collateral Object Besides the Pledge of Shares**

The addition of another collateral object in the loan agreement is the creditor's effort to avoid the risk of fluctuations in the value of the company's shares. In addition, also to avoid the possibility of a Limited Liability Company being declared bankrupt. Collateral objects other than a pledge of shares can be right of ownership, fiduciary security, mortgage, securities, and encumbrance other collateral objects. With the addition of other encumbrance collateral objects, creditors can better anticipate potential losses due to a decrease in the value of shares or difficulties in executing the object of the pledge of shares if the Limited Liability Company is declared bankrupt. This effort will significantly provide power, certainty, and legal protection for creditors in the loan agreement agreed upon by the parties.

**d. Creditors Conduct Audits of Prospective Debtors and Collateral Objects**

Creditors must conduct legal and economic audits of prospective debtors and collateral objects. This effort is also a preventive effort from creditors

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<sup>29</sup>Megarita, M. (2014). "Perlindungan Hukum terhadap Debitur Pemberi dan Kreditur Pemegang Gadai Saham dalam Kredit Perbankan di Indonesia". *Dissertation*. Universitas Sumatra Utara, p. 142.

<sup>30</sup>Bahsan, M. (2007). *Hukum Jaminan dan Jaminan Kredit Perbankan Indonesia*. Jakarta: PT. Raja Grafindo Persada, p. 143.

to avoid the risk of future losses. Audits are also very commonly carried out by creditors when they get a loan application from a prospective debtor. Banks, as creditors, generally have the policy to audit prospective debtors before making loan agreements. The following are the legal aspects that can be identified in the audit process of prospective debtors and collateral objects, including:<sup>31</sup>

- 1) Collateral object legality;
- 2) The validity of the use of the collateral object;
- 3) Use of legal documents;
- 4) Potential disputes on collateral objects;
- 5) The nature of the designation and or licensing of the use of the collateral object.

Meanwhile, economic aspects that can be identified in the audit process of prospective debtors and collateral objects, including:<sup>32</sup>

- 1) The type and form of the collateral object;
- 2) Collateral object condition;
- 3) Ease of transfer of ownership of the collateral object;
- 4) Precise price level and collateral object marketing prospects;
- 5) The use and benefit of the collateral object.

This audit process will be challenging to carry out if the creditor does not have good analytical skills. Therefore, creditors can carry out due diligence, which generally takes longer. This case involves prospective debtors, lawyers, and accountants or third-party services. So that the implementation of due diligence can help creditors analyze and assess potential debtors before the loan agreement occurs. In addition, conducting an audit will minimize the risk level of the debtor defaulting on the loan agreement.

## **2. Repressive Legal Efforts**

As described above, preventive legal efforts aim to prevent risks or problems before they occur. If the risk has occurred and caused losses to creditors as holders of the pledge of shares, the next effort creditors can take is repressive legal action. In this case, the efforts that creditors can take include:

### **a. Creditors Propose to Accelerate the Suspension Period**

As described above, the curator can suspend repayments as regulated in Article 56 of Law No. 37 of 2004.<sup>33</sup> In contrast, creditors can apply

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<sup>31</sup>*Ibid.*, pp. 112-118.

<sup>32</sup>*Ibid.*, pp. 124-126.

<sup>33</sup>Sengkey, Y. (2015). Kedudukan Bank sebagai Pemegang Jaminan Kebendaan terhadap Adanya Penangguhan Eksekusi Objek Jaminan. *Lex Privatum*, 3(4), pp. 8-9.

for an accelerated suspension to the curator or the Supervisory Judge as regulated in Article 57 of Law No. 37 of 2004. In this case, if the request is granted, the creditor can speed up the execution time for the debtor's right of ownership based on the value of the loan agreement.

However, the suspension proposed by the creditor, in the end, does not have any significance if the pledge of shares is difficult to sell/execute due to the consideration that the Limited Liability Company is declared bankrupt. In addition, the value of the pledge of shares will be much lower than before the Limited Liability Company is declared bankrupt. From this description, it can be concluded that although the suspension period cannot fully protect the interests of creditors, it can at least provide an opportunity for creditors to accelerate the sale process of the object of the pledge of shares.

#### **b. Creditors Match or Verify Receivables**

As described above, after the Limited Liability Company is declared bankrupt, a meeting will be held and attended by the curator, debtor, and creditor, led by a supervisory judge and assisted by a substitute clerk.<sup>34</sup> The meeting aims to match or verify, ratify receivables, and discuss the payment of debtors' debts to creditors.<sup>35</sup> Therefore, the match or verification will give the position of creditors as holders of pledges of shares remains to have the status of preferred creditors or creditors whose payment will take precedence.

#### **c. Creditors through Mediation Procedures**

As previously explained, if the value of the pledge of shares decreases due to the Limited Liability Company declaring bankruptcy, the sale of the collateral object is insufficient to pay off the debtor's debt payments. In this case, the creditor still has the right to demand the remaining repayments by executing the debtor's personal right of ownership. This condition is also reinforced by the emphasis that the debtor and the Limited Liability Company are two different legal subjects. Therefore, the creditor can file a lawsuit against the debtor in default in the local district court. However, apart from filing a lawsuit to the district court, creditors can still take a quick, simple, effective, and low-cost dispute resolution step. Efforts that creditors can take in this case are through mediation procedures in court.

Efforts through the mediation procedure in court is a dispute resolution step through a negotiation process to reach an agreement for the parties

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<sup>34</sup>Sinaga, S. M. (2012). *Loc. Cit.*

<sup>35</sup>Simanjuntak, H. A. (2019). Penyelesaian Utang Debitor terhadap Kreditor Melalui Kepailitan. *Jurnal Justia, 1*(1), pp. 9-10.

assisted by the mediator.<sup>36</sup> In this case, the mediation process is generally private unless the parties wish otherwise.<sup>37</sup> The mediation process in court lasts 30 (thirty) days from the date of the order for mediation. Upon the parties' agreement, the mediation may be extended for a maximum period of 30 (thirty) days. That way, through mediation efforts, the creditor does not need to file a lawsuit for the default but seeks a mutual agreement to resolve the dispute.<sup>38</sup>

#### **d. Creditors File a Lawsuit**

If the mediation efforts taken by the creditor and debtor do not reach a mutual agreement, the creditor can file a civil lawsuit against the debtor. The lawsuit arose because the proceeds from the sale of the pledge of shares were insufficient to pay off the debtor's obligations to the creditor. Creditors can choose to file a simple lawsuit or a civil procedural lawsuit against the debtor. The choice of the lawsuit is determined based on the default value of the debtor. Lawsuits for civil proceedings are generally relatively time-consuming and have a more extended procedure than simple lawsuits. That way, a simple lawsuit is more profitable for the creditor.

As has been described several times that the debtor and the Limited Liability Company are two different legal subjects. So if the Limited Liability Company is declared bankrupt, it does not mean that the debtor's assets also become bankrupt. Therefore, filing a lawsuit against debtors is one of the repressive measures taken by creditors as holders of the pledge of shares in a Limited Liability Company is declared bankrupt.

### **CONCLUSIONS AND SUGGESTIONS**

Based on the results and discussion above, it can be concluded that the position of creditors as holders of the pledge of shares of a Limited Liability Company declared bankrupt is preferred creditors. However, suppose the sale of the collateral object is insufficient to pay off the debtor's debt payments. In that case, the position of creditors will *mutatis mutandis* change from preferred creditors to concurrent creditors because the collateral object no longer exists. In addition, creditors can make efforts as holders of the pledge of shares related to Limited Liability Company declared bankrupt, namely preventive and repressive efforts. Preventive efforts aim to avoid the risk of loss before it occurs. Meanwhile, repressive efforts aim to provide justice and legal certainty to creditors to resolve the debtor's default problem if the

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<sup>36</sup>Margono, S. (2021). Penerapan Mediasi Perdamaian oleh Kurator dalam Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU). *Sol Justisio: Jurnal Penelitian Hukum*, 3(1), pp. 356-357.

<sup>37</sup>Nugroho, L. D. (2017). Peluang Digunakannya Lembaga Mediasi untuk Menyelesaikan Permasalahan Debitor Pailit. *Rechtidee*, 12(2), p. 251.

<sup>38</sup>Hariyadi, H. (2020). Restrukturisasi Utang sebagai Upaya Pencegahan Kepailitan pada Perseroan Terbatas. *SIGn Jurnal Hukum*, 1(2), p. 121.

Limited Liability Company has been declared bankrupt. However, according to the applicable laws and regulations, repressive efforts are insufficient to provide justice, certainty, and legal protection to creditors as holders of the pledge of shares. Based on the description of these conclusions, it is recommended to creditors as holders of the pledge of shares to make preventive efforts: pledge agreement made in the form of an authentic deed, adding a clause in the pledge agreement and authorization letter to sell the collateral object, adding another collateral object besides the pledge of shares, and auditing prospective debtors and collateral objects. In addition, it is recommended for the Government to harmonize and regulate several applicable laws and regulations more strictly regarding the pledge of shares. In this case, creditors as holders of the pledge of shares have more power, certainty, and legal protection in the pledge of shares agreement in the future.

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