

Debt Settlement Strategy: Concurrent Creditor Rights And Debtor Asset Security

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ABSTRACT

This research analyzes debt settlement strategies in fulfilling the rights of concurrent creditors to the debtor's assets used as debt collateral, considering Aristotle's concept of proportional justice. Through a normative juridical approach, this research explores applicable laws and regulations, case studies, and related literature to understand the dispute resolution mechanism between concurrent creditors and preferred creditors. The results show that the main challenge in achieving proportional justice for concurrent creditors arises when the debtor's assets are insufficient to fulfill all debt obligations. Some debt settlement strategies identified include debt restructuring, rescheduling payments, and mediation or arbitration mechanisms. Discussion of the research results highlighted the importance of legal protection for concurrent creditors in debt settlement, which aligns with Aristotle's concept of proportional justice. Policy recommendations include the expansion of the court's authority to handle cases involving conflicting creditor rights. This research is expected to contribute to the development of fairer and more effective policies for concurrent creditors and provide practical guidance for legal practitioners in handling cases involving debtor asset collateral.

Keywords: Debt settlement, Creditor's rights, Debtor's assets, Security

1. INTRODUCTION

In the dynamic era of the global economy, issues related to debt resolution have become increasingly complex and crucial. One of the primary aspects of focus in this context is the fulfillment of concurrent creditors' rights over debtor assets used as debt collateral. When a company or individual faces financial difficulties or even bankruptcy, creditors compete to secure their share of the pledged assets to satisfy their debt claims. The role of resolution professionals in corporate insolvency, for instance, has become critical in protecting creditor interests during these proceedings (Garg, 2023). Additionally, legal protection for creditors, particularly those whose debts are not secured by property rights, remains a key area of concern, with recent studies highlighting the vulnerability of concurrent creditors under current legal frameworks (Arifah & Adam, 2022).

In recent years, corporate debt growth has garnered significant attention across various countries. Recent data indicates a substantial increase in the amount of debt companies accumulate in various economic sectors, raising concerns about the associated financial risks, especially when companies encounter financial difficulties or even bankruptcy. High-profile corporate bankruptcy



cases have become the main focus, with particular attention on how the rights of concurrent creditors are applied in practice (Mugito, 2021). The allocation of assets to creditors during bankruptcy proceedings is essential for analyzing the effectiveness and fairness of debt resolution strategies, with some studies comparing the treatment of concurrent creditors in different legal systems, such as Indonesia and Singapore (Mugito, 2021).

Additionally, reviewing the literature on bankruptcy law, debt restructuring, and the fulfillment of concurrent creditors' rights provides essential insights into the existing legal framework and the issues that must be considered. Changes in legal policy, both at the national and international levels, also play an important role in determining the legal environment in which debt resolution takes place (Waryoko et al., 2022). For instance, recent developments in enforcing creditors' rights during asset sales in bankruptcy proceedings have been explored to understand the protection offered to secured creditors (Maraš & Kozar, 2021).

According to a report by Bank Indonesia, the non-performing loan (NPL) rate in Indonesia's banking sector has increased in recent years. In 2020, the NPL rate reached approximately 3.18% of the total banking credit portfolio, reflecting an increase from the previous year's 2.67%. Despite efforts at economic recovery in 2021, the NPL rate remained relatively high, reaching around 3.5% of the total credit portfolio. Factors such as declining income and economic uncertainty caused by the COVID-19 pandemic have been the primary contributors to the rise in NPLs in Indonesia's banking sector (Zulfikar, 2023). This data indicates that non-performing loans have become a significant issue for Indonesia's banking sector, underscoring the urgency of implementing effective debt resolution strategies. A deep understanding of the factors contributing to non-performing loans and the strategies to address them can help the banking sector mitigate financial risks and improve overall industry health (Khoirunnisa et al., 2023).

Statistical data on non-performing loans in the banking sector or specific industries reflect the level of risk faced by creditors and reinforce the argument for the importance of effective debt resolution strategies. Considering all these factors, research on debt resolution strategies and concurrent creditor rights becomes increasingly relevant in a dynamic global economy. Moreover, recent research highlights the importance of proportionality in judicial decisions affecting concurrent creditors, emphasizing the need for legal certainty in bankruptcy disputes (Satino & Fauzan, 2023).

According to data published by the Financial Services Authority (OJK) of Indonesia, the non-performing loan rate for motor vehicle loans by individuals has increased in recent years. In 2020, the NPL rate for motor vehicle loans reached around 2.5% of the total loans granted to



individuals, up from 2% in the previous year. Similarly, the NPL rate also showed a significant increase for home loans. In the same year, the NPL rate for home loans reached around 1.8% of the total loans to individuals, up from around 1.5% in the previous year. This data illustrates that non-performing loans have become a serious concern for individuals with motor vehicle or home loans, further highlighting the necessity of prudent financial management and the legal mechanisms available to manage these risks (Ramadhani, 2020).

In the context of law enforcement, asset seizure plays a critical role as an instrument to safeguard the interests of creditors over their claims. This includes actions to secure the debtor's property, which is the object of the dispute, until a court decision with permanent legal force is obtained. Asset seizure is not limited to movable property but can also be applied to immovable property, subject to certain conditions, including suspicions that the debtor may abscond or hide the property from creditors. Legal complexities arise, particularly in cases where the debtor's assets have been encumbered by a mortgage held by another creditor, creating conflicts in the prioritization of creditor rights (Ariffani et al., 2023).

Meanwhile, using accurate and valid data and facts from the case study of the Nganjuk District Court ruling No. 26/Pdt.G/2022/PN Njk forms an important basis for analyzing emerging issues. In that ruling, the request for asset seizure filed by Plaintiff resulted in Defendant being ordered to pay compensation to Plaintiff in cash amounting to IDR 1,322,588,000. However, Plaintiff could not enforce the asset seizure because Defendant's assets had already been encumbered by a mortgage held by Bank Tabungan Negara Mojokerto. The conflict arising from this situation highlights the complexities within the legal system regarding creditor rights prioritization, particularly in cases where a mortgage has been granted to another party (Hameed & Rafea, 2023).

To support the background of this research, the author uses accurate and valid data and facts, namely based on the case study of the Nganjuk District Court ruling No. 26/Pdt.G/2022/PN Njk. In that ruling, the court rejected the Plaintiff's request for asset seizure on land that had already been mortgaged. This ruling raised legal issues, as the asset seizure conducted by an ordinary creditor could not override the rights of a preferential creditor, namely the bank holding the mortgage on the land (Nurrohim & Erma, 2023). The legal issue of interest for further research is the strength of a request for asset seizure on an object that a mortgage has already encumbered. How did the Plaintiff, as a Concurrent Creditor, and Bank Tabungan Negara (BTN), as a Preferential Creditor, handle the legal positions of Arip Budi Santoso as the Plaintiff's Debtor and PT Arip Budi Joyo as BTN's Debtor?



This research explores debt resolution strategies considering concurrent creditor rights and the protection of debtor assets. A deep understanding of the applicable legal framework is essential in this regard. Reviewing previous literature is a crucial foundation to highlight scientific developments and practices related to this issue. Through this approach, the research will identify knowledge gaps that can be addressed to enhance our understanding of how concurrent creditor rights can be enforced fairly and proportionally. Previous studies have significantly contributed to this field, but the evolving economic and legal landscape necessitates further investigation (Bradley, 2020).

Furthermore, the legal issues related to debt resolution also require serious attention. Identifying and deeply understanding these issues will provide a solid foundation for formulating effective and sustainable debt resolution policies. Therefore, this research aims to enhance our understanding of the technical aspects of debt resolution and provide valuable insights into the legal issues that arise in this process. As recent studies suggest, the management and settlement of debtor's assets post-bankruptcy involve complex legal considerations that must be thoroughly examined (Mazur, 2022).

Thus, this research aims to expand our knowledge of debt resolution strategies and has strong practical relevance in developing more just and effective legal policies. Through a holistic and interdisciplinary approach, it is expected that this research can make a meaningful contribution to improving the overall debt resolution system.

2. RESEARCH METHOD

This research will employ a qualitative approach to delve into the complexities of legal issues related to the fulfillment of concurrent creditor rights in the context of asset seizure involving objects under mortgage. The qualitative approach is chosen for its flexibility in exploring various perspectives and relevant factors within a complex context.

1. **Case Study:** The research will focus on the case study of the Nganjuk District Court ruling number 26/Pdt.G/2022/PN Njk as the primary focal point. A thorough analysis will be conducted on the court's decision, including the legal considerations used in addressing creditor rights conflicts within the context of asset seizure.
2. **Document Analysis:** Additional data and information will be obtained through document analysis, including court documents, relevant legal regulations, and pertinent legal literature. This data will be used to support and complement the analysis of the selected case.

3. Interviews: Interviews may be conducted with parties involved in the case, such as lawyers, bank representatives, or other relevant stakeholders. These interviews aim to gain insights into the dynamics of creditor rights conflicts in fulfilling concurrent creditor rights.
4. Data Analysis: The collected data will be analyzed using a qualitative approach. This analysis will identify key themes, patterns, and factors influencing creditor rights conflicts within the context of asset seizure involving objects under mortgage.
5. Review and Validation: The analysis results will be reviewed and validated to ensure the accuracy and validity of the findings. The conclusions drawn will be based on strong evidence and careful analysis.

Through this comprehensive qualitative approach, the research aims to provide an in-depth understanding of the legal issues arising from fulfilling concurrent creditor rights in the context of asset seizure involving objects under mortgage.

3. RESULTS AND DISCUSSION

This research provides deep insights into the legal complexities related to the fulfillment of concurrent creditor rights in the context of asset seizure involving objects under mortgage. The following are the main findings of the study along with their discussion:

Case Study Analysis

Based on the analysis of the case study of the Nganjuk District Court ruling number 26/Pdt.G/2022/PN Njk, it was found that the court rejected the plaintiff's application for asset seizure because the defendant's assets had been mortgaged to Bank Tabungan Negara (BTN) Mojokerto. This situation created a conflict of creditor rights, wherein the concurrent creditor's rights could not override the rights of the preferred creditor, i.e., the bank holding the mortgage over the assets.

In the analysis of the case study of the Nganjuk District Court ruling number 26/Pdt.G/2022/PN Njk, several key points were revealed:

1. Rejection of the Seizure Request: The court's decision demonstrated that the plaintiff's request for asset seizure was denied. This indicates that the court rejected the plaintiff's attempt to seize the assets that the debtor had used to secure their debt.
2. The Bank mortgaged the defendant's Assets: The court's decision also revealed that the disputed assets had been mortgaged to Bank Tabungan Negara (BTN) Mojokerto. This indicates that BTN prioritized the assets as collateral for the debtor's debt.

3. Conflict of Creditor Rights: This court decision created a conflict of creditor rights, where the concurrent creditor's rights could not surpass the rights of the preferred creditor, namely the bank holding the mortgage over the assets. This highlights the complexity within the legal system concerning the priority of creditor rights in debt resolution.

Thus, the documentation from this case study analysis provides a deeper understanding of the dynamics of creditor rights conflicts in the context of debt resolution and illustrates the role that mortgages play in determining the priority of creditor rights.

Legal Implications

The discussion covers the legal implications of the ruling on the fulfillment of concurrent creditor rights in cases involving mortgaged assets. There is complexity in the legal system related to the priority of creditor rights, particularly when a mortgage has been granted to another party. This highlights the need to reassess legal regulations governing creditor rights in this context.

Efforts by the Plaintiff and Bank Tabungan Negara (BTN)

The discussion also addresses the efforts made by the plaintiff as a concurrent creditor and Bank Tabungan Negara (BTN) as the preferred creditor. The plaintiff may file an appeal or pursue other legal remedies against the court's decision, while BTN will endeavor to maintain its mortgage rights over the assets.

Based on the findings and analysis of the research, several recommendations can be proposed to improve the fairness and effectiveness of the legal system in resolving creditor rights conflicts. These include expanding the court's authority to handle cases involving conflicts between concurrent creditors and parties with mortgage rights and enhancing transparency and accessibility to information on creditor rights in this context.

Aristotelian Proportional Justice Theory

Aristotle's theory of proportional justice, as developed in his work "Nicomachean Ethics" (Irwin, 2019), is a concept that emphasizes "mesotes" or equality, which includes a balanced appreciation of a person's actions in terms of both quality and quantity (Zulkarnain, 2018). In this context, justice is understood as giving what is deserved according to individual needs or differing situations (Chroust & Osborn, 1941).

The implications of Aristotle's proportional justice theory in the study "The Fulfillment of Concurrent Creditor Rights Against Debtor's Assets Used as Debt Collateral to Achieve Proportional Justice (Case Study of Nganjuk District Court Ruling 26/Pdt.G/2022/PN Njk)" are as follows:



1. **Proportionality Assessment:** In this case, Aristotle's theory of proportional justice can be applied to assess whether the court's decision to reject the asset seizure request over the mortgage rights adequately considers the appropriate proportion or comparison between the concurrent creditor's rights (the plaintiff) and the separatist creditor's rights (the bank holding the mortgage). The research can evaluate whether the granting of asset seizure aligns with each party's relative contributions or positions.
2. **Balance and Equality:** Aristotle emphasizes the importance of balance and equality in awarding rewards or sanctions. This research implies that the court needs to ensure that the decision does not disproportionately benefit one party but rather creates a fair balance between the rights of concurrent and preferred creditors.
3. **Appropriate Recognition:** Aristotle's concept of proportional justice emphasizes that individuals or groups should receive recognition corresponding to their contributions or achievements. In this research, the implication is that the court's ruling should provide fair and proportional treatment to both concurrent and preferred creditors based on their contributions to the debtor's debt resolution.

Thus, the application of Aristotle's proportional justice theory can aid in evaluating the fairness and balance in court rulings related to asset seizure requests over mortgage rights in the case under study.

To address the complexity of fulfilling concurrent creditor rights, the following solutions can be proposed:

1. **Strengthening Legal Protections:** There is a need to strengthen legal protections for concurrent creditors when the debtor's assets have been mortgaged to another party, such as a bank. This could include revising or clarifying legal regulations that govern the priority of creditor rights in this context.
2. **Mediation or Arbitration:** Utilizing mediation or arbitration mechanisms can be a solution to resolve conflicts between concurrent creditors and preferred creditors, such as banks. Mediation or arbitration can help the parties reach a fair and mutually beneficial agreement without involving lengthy and costly court processes.
3. **Debt Restructuring:** Debt restructuring efforts could be a solution to address the financial difficulties faced by the debtor and ensure that all creditors receive a fair share of their debt fulfillment. Debt restructuring can be carried out voluntarily between the debtor and creditors or through a structured legal process.



4. Expanding Court Authority: Courts may be given additional authority to handle cases involving conflicts between concurrent creditors and parties with mortgage rights. This could help ensure that decisions are made fairly and proportionately to consider all interests.

By implementing these solutions, it is hoped that conflicts can be reduced and fairness enhanced in fulfilling concurrent creditor rights in the context of asset seizure involving mortgaged objects.

Integration with Islamic Justice Concepts

In Islam, the concept of proportional justice is reflected in various principles and values related to wealth distribution, the fulfillment of rights, and debt resolution. The following are some theories and scholars relevant to the concept of proportional justice in Islam:

1. **Principle of Al-Mizan (Balance):**

Implication: This principle emphasizes the importance of maintaining balance in all aspects of life (Mudin et al., 2021), including debt resolution. In this study's context, the implication is that the distribution of the debtor's mortgaged assets should be carried out proportionally and equitably, considering the rights of all parties involved, to achieve proportional justice.

2. **Principle of Al-'Adl (Justice):**

Implication: The principle of justice is one of the main principles in Islam (Robbi & Mahmud, 2020). In this study's context, the implication is that debt resolution should be based on proportional justice, where each party is treated fairly according to their claims and rights.

3. **Principle of Al-Qist (Legal Certainty):**

Implication: This principle emphasizes the importance of ensuring legal certainty and stability (Chintya, 2023). This research implies that the debt resolution process should be conducted transparently and based on clear rules, thus creating proportional justice.

4. **Principle of Al-Muwafiqat (Conformity):**

Implication: This principle emphasizes the importance of conformity and balance in all actions. In this research's context, the implication is that debt resolution should reflect conformity and balance between the rights of creditors and debtors, thereby achieving proportional justice.

Through applying these values and principles in the research, it can be understood how Islam views the concept of proportional justice in the context of debt resolution. This helps to explore the moral and legal implications of various decisions related to creditor rights in Islam.

Applying Aristotle's proportional justice theory and its integration with Islamic principles in debt resolution can have significant positive impacts. By considering the contributions or needs of



each party, debt resolution can be fairer and align with the underlying moral principles of justice. This can reduce conflicts and dissatisfaction that may arise from perceived unfair resolutions by one party. Additionally, integrating proportional justice concepts into policy recommendations can create a more equitable legal system. However, challenges remain in objectively assessing each party's contributions or needs, making careful design of resolution mechanisms necessary. Integrating these philosophical principles with legal practices can lead to a more just and ethical legal system.

Land Mortgage Rights

Mortgage rights are a type of security that grants certain creditors priority over others (Setiawan & Sari, 2019). This includes aspects such as the rights and obligations attached to the involved parties and the formation, execution, and resolution mechanisms within the context of debt agreements (Sihombing, 2022).

Mortgage rights are an accessory agreement to the primary debt agreement, meaning that the security agreement depends on the primary agreement (debt agreement) (Syamsiah & Nurviana, 2022). If the primary agreement is nullified, the security agreement is also nullified. The accessory nature of mortgage rights ensures that they can only be granted as a single security over land and cannot be encumbered with other security rights (Andayani et al., 2020).

Mortgage rights provide legal certainty for creditors regarding the priority of their claims when the debtor defaults (Lubis & Harahap, 2023). With mortgage rights, the preferred creditor has a higher priority than concurrent creditors in claiming their debts.

The process of granting mortgage rights involves several stages, including forming an agreement between the debtor and creditor, registering the mortgage rights, and resolving the debt (Aufima, 2020; Lubis & Harahap, 2023). The debtor has the right to use the secured assets but is obliged to comply with the agreement and pay off the debt according to the agreed terms.

This theoretical approach to the research problem in this literature review includes an in-depth analysis of the key concepts relevant to mortgage rights and the application of these concepts in the context of the Nganjuk District Court case 26/Pdt.G/2022/PN Njk.

4. CONCLUSIONS

This study highlights the complexities of fulfilling concurrent creditor rights in asset seizure when the assets have been mortgaged to another party, such as a bank. If the application for asset seizure adjustment by a concurrent creditor is denied, as seen in the case of the Nganjuk District Court decision No. 26/Pdt.G/2022/PN Njk, the concurrent creditor is left without legal certainty,



which is the very purpose of laws and regulations. The court's decision becomes ineffective and unenforceable, as no other debtor assets are available for seizure besides those already mortgaged to Bank BTN.

Recommendations

To ensure that concurrent creditors have the right to legal protection and certainty, the government must establish guidelines that provide effective solutions for concurrent creditors to receive payment from debtors. This can be achieved through Supreme Court Instructions or other regulations, including:

1. Court Determination: If the evidence presented by the creditor is an authentic deed (Notarial Deed), the concurrent creditor should be allowed to request a court determination to proceed with the asset seizure adjustment. This would provide stronger legal protection and expedite the resolution process.
2. Court Ruling: If the evidence presented by the concurrent creditor is a private deed or equivalent, the concurrent creditor must file a lawsuit in court and obtain a final and binding court ruling (inkrah) to enforce their rights.

These recommendations would not disadvantage the separatist creditors, such as banks, and preferred creditors, as their rights would still take precedence in debt repayment, secured from the proceeds of the auction of the mortgaged assets. Concurrent creditors would receive payment from the remaining proceeds after the debts to the separatist and preferred creditors have been settled.

By implementing these measures, the rights of concurrent creditors would be guaranteed and legally protected, thereby creating a more balanced legal certainty by the principle of proportional justice.

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