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The Legal Status of AYDA in Bankruptcy: Conflicts of Legal Norms and Implications for the Bankruptcy Estate

Chandra Nadhi¹, M. Hadi Shubhan², Faizal Kurniawan³, Qomara Sari^{4*}, Astrid Athina Indradewi⁵

¹Universitas Airlangga, Surabaya, Indonesia, chan.nadhi-2023@fh.unair.ac.id

²Universitas Airlangga, Surabaya, Indonesia, hadi@fh.unair.ac.id

³Universitas Airlangga, Surabaya, Indonesia, faizal@fh.unair.ac.id

⁴Universitas Airlangga, Surabaya, Indonesia, qomara.sari-2023@fh.unair.ac.id

⁵Universitas Airlangga, Surabaya, Indonesia, astrid.indradewi.in-2025@fh.unair.ac.id

*Corresponding Author: qomara.sari-2023@fh.unair.ac.id⁴

Abstract: This study examines the legal position of collateral in the form of debtor-owned land that has been taken over by a bank through Agunan yang Diambil Alih (AYDA) in bankruptcy proceedings, particularly to determine whether such collateral remains part of the bankruptcy estate after the debtor is declared bankrupt. This research employs a normative legal method using statutory and conceptual approaches. It analyzes regulations related to bankruptcy law and AYDA, including the Banking Law, the Bankruptcy and Suspension of Debt Payment Obligations (PKPU) Law, Financial Services Authority (OJK) regulations, and relevant Supreme Court Circular Letters. The study finds that collateral under AYDA that has been legally transferred to the bank is no longer part of the bankruptcy estate. Conversely, collateral that has not been legally transferred through AYDA remains included in the bankruptcy estate. This study provides legal clarity for banks, curators, and other stakeholders regarding the status of AYDA collateral in bankruptcy proceedings, thereby supporting greater legal certainty and minimizing disputes in practice. This research offers a focused legal analysis on the intersection between AYDA mechanisms and bankruptcy law, an area that remains relatively underexplored, particularly in relation to determining the status of transferred collateral within the bankruptcy estate.

Keywords: Agunan yang Diambil Alih (AYDA), Bankruptcy Estate, Bankruptcy Law, Non-Performing Loan.

INTRODUCTION

In business, capital plays a vital role. Beyond relying on the owner's personal funds, companies can secure financing in other ways, such as offering shares in the capital market or obtaining external funding. One common form of external financing is applying for a bank loan. Banks serve a key role in this process, as they collect funds from the public in the form

of deposits and channel them back into the economy through credit (Liu, Wea, & Kabba, 2025).

When extending credit, banks must first ensure their confidence by conducting a thorough analysis of the debtor's ability and capacity to meet their obligations as agreed (Pratiwi & Maulisa, 2023). This confidence is built through an assessment of five key factors: character, capacity, capital, collateral, and business conditions (Sumiyati & Mustafida, 2019). If the analysis indicates that the debtor is eligible for financing, the bank and the debtor will enter into a primary agreement in the form of a credit agreement.

Collateral is an important element in credit analysis, though it is not the main one. Its significance becomes more apparent when a loan turns non-performing (Usanti & Bakarbesy, 2013). Collateral can take the form of project assets, loan-financed receivables, or land. Accordingly, once the credit agreement is finalized, banks and debtors usually enter into an additional agreement to secure the collateral—such as a pledge, mortgage, land security right (*hak tanggungan*), or fiduciary security. Each of these serves as an accessory to the main credit agreement (Achmad & Indradewi, 2024).

According to Moch. Isnaeni, creditors should not rely solely on general security as provided under Article 1131 of the Indonesian Civil Code (KUHPer). To strengthen their legal position, they should also establish special security rights through a security rights agreement (Isnaeni, 2017). This provision states that the guarantor's entire estate—whether movable or immovable, present or future—may serve as security for the obligations owed to the creditor (Aldaba & Roisah, 2025). As a result, the guarantor's property also becomes part of the bankruptcy estate. In other words, without the application of this provision, the agreement between the creditor and guarantor would lose its legal force (Pangastuti, 2015). In practice, however, the application of security law often overlaps with other areas of law, particularly bankruptcy law. These overlaps frequently lead to legal disputes involving security rights holders, creditors, debtors, and curators (Ariyanto, 2022).

When a debtor defaults or fails to meet their obligations on time, one legal remedy available to the bank is to take over the collateral (Warsito & Sudarwanto, 2019), known as Foreclosed Collateral (*Agunan yang Diambil Alih* or AYDA). The legal foundation for AYDA is set out in Article 12A of Law No. 7 of 1992 on Banking, as most recently amended by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (Banking Law). Furthermore, Article 1 point 15 of the Financial Services Authority Regulation No. 40/POJK.03/2019 on Asset Quality Assessment of Commercial Banks (POJK No. 40) defines AYDA as assets acquired by a bank, either in whole or in part, through purchase at auction or outside of it. Such acquisition may be based on voluntary surrender by the collateral owner or under a power of attorney to sell outside an auction, in situations where the debtor has failed to meet their obligations to the bank.

In practice, disagreements often occur between curators and banks when a debtor is declared bankrupt by the Commercial Court. These disputes usually center on the legal status of collateral under AYDA—specifically, whether it should still be considered part of the bankruptcy estate. Legal disputes often arise when land subject to AYDA is still registered under the bankrupt debtor's name. In such cases, curators generally argue that the land continues to form part of the bankruptcy estate.

The Supreme Court has sought to harmonize the interpretation of AYDA in bankruptcy cases through Circular Letter No. 3 of 2023 on the Application of the Formulations of the 2023 Supreme Court Plenary Chamber Meeting (SEMA 3/2023). Yet, rather than providing clarity, the provisions on AYDA in this circular have given rise to varying interpretations among practitioners and stakeholders.

The disharmony between the Banking Law, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as the

“Bankruptcy and PKPU Law”), Law Number 4 of 1996 concerning Mortgage Rights over Land and Objects Related Thereto (hereinafter referred to as the “Mortgage Law”), and Supreme Court Circular Letter No. 3 of 2023 gives rise to legal uncertainty as to whether collateral that has been acquired through AYDA may still be qualified as part of the bankruptcy estate after the debtor has been declared bankrupt. On the one hand, the regulatory framework under the Banking Law indicates the transfer of ownership rights to the bank where the formal and material requirements of AYDA, particularly through an auction mechanism, have been fulfilled; on the other hand, the construction of AYDA under Supreme Court Circular Letter No. 3 of 2023 tends to position AYDA as a voluntary surrender without altering the status of the object as part of the bankruptcy estate until a sale to a third party occurs. This tension is not merely a theoretical issue, but has concrete implications for the position of secured creditors, the scope of the bankruptcy estate, and the limits of the curator’s authority in the administration and liquidation of the estate.

Previous research by Detria (2018), titled “*Legal Certainty of Mortgage Objects Held by Banks in the Implementation of Foreclosed Collateral (AYDA) for More than One (1) Year*,” shows that mortgage objects held by banks under AYDA for more than one year cannot be owned by the bank. This principle rests on the idea that collateral is not meant to become the creditor’s property. Article 12 of the Mortgage Law (UUHT) clearly prohibits any agreement that would allow creditors to take ownership of the mortgaged asset. In line with this, Article 12A of the Banking Law obliges banks to sell any foreclosed collateral without delay, so that the proceeds can be used to settle the debtor’s outstanding obligations. This study shares a similarity with earlier research in its discussion of AYDA as an alternative mechanism for resolving non-performing loans. What sets it apart, however, is that previous studies did not specifically explore how AYDA relates to bankruptcy law.

Research by Hartini (2016), titled “*The Legal Status of Secured Assets in Bankruptcy and PKPU (Case Study of Decision No. 18/Plw.Pailit/2013/PN.Niaga Sby jo. No. 06/Pailit/2011/PN.Niaga Sby)*,” examines the legal status of holders of separatist rights to secured assets included in the bankruptcy estate. From a normative perspective, Articles 56(1) and 59(2) of the Bankruptcy and PKPU Law appear to conflict with Article 21 of the Mortgage Law. While this study highlights the protection of separatist rights in bankruptcy, it does not go further to address the legal status of collateral taken over by banks through the AYDA mechanism.

Research by Subagyo & Kanthika (2023), titled “*Legal Protection for Separatist Creditors against Third-Party Collateral in Bankruptcy Cases (Case Study of Bankruptcy Case No. 21/Pdt.Sus.Gugatan Lain-Lain/2019/PN.Niaga Sby jo. Case No. 18/Pdt.Sus/PKPU/2018/PN.Sby)*,” highlights the importance of credit secured by collateral, as it grants creditors a separatist position with priority in repayment. The case study shows that, in practice, separatist creditors do not always receive the priority rights guaranteed to them. This research contributes to the broader discussion on legal protection for separatist creditors, but it does not specifically address the position of AYDA in bankruptcy cases—especially in situations where the collateral is still legally registered under the bankrupt debtor’s name.

Previous studies on AYDA and bankruptcy have generally focused on the certainty of AYDA as a banking instrument or on the protection of secured creditors in bankruptcy in general, without specifically examining the normative conflicts arising from the interaction between AYDA, secured transactions law, and bankruptcy law, including the view of the Supreme Court as reflected in Supreme Court Circular Letter No. 3 of 2023. This research specifically positions AYDA not merely as a technique for resolving non-performing loans, but as a legal construction whose determination will directly affect the composition of the bankruptcy estate and the distribution of proceeds from the liquidation of the estate among

creditors. Accordingly, the author adopts a critical stance toward the existing regulatory configuration and interpretative approaches, and proposes findings that are more coherent in order to ensure legal certainty for secured creditors without disregarding the protective function inherent in the bankruptcy law regime.

Based on the review of these three studies, a gap can be identified in the literature, namely the absence of a comprehensive analysis linking the AYDA mechanism with bankruptcy law issues, particularly concerning the conflict of norms between the Banking Law, the Bankruptcy and PKPU Law, the Mortgage Law, as well as the guidance of the Supreme Court under Supreme Court Circular Letter No. 3 of 2023. Accordingly, this research offers novelty in the form of an analysis of the legal status of collateral that has been acquired by banks through AYDA in bankruptcy proceedings, with a particular focus on land collateral registered in the name of the debtor, as well as its implications for the classification of such collateral as part of the bankruptcy estate.

Based on the foregoing background and identified research gap, this study seeks to address the central question of under what conditions collateral that has been acquired by a bank through AYDA must still be treated as part of the bankruptcy estate when the debtor is declared bankrupt, and under what conditions such collateral must be excluded from the bankruptcy estate on the basis that legal title has been transferred to the bank.

METHOD

The research method employed in this study is legal research. As explained by Peter Mahmud Marzuki, *legal research is carried out to resolve legal problems and the outcome of legal research is to prescribe what shall be done to resolve the legal problem* (Marzuki, 2022). This study adopts a normative approach, focusing on the regulations of bankruptcy law, the provisions governing AYDA, and other related legislation.

This study employs legal research, utilizing both the statutory approach and the conceptual approach. The statutory approach involves a thorough examination of all laws and regulations relevant to the legal issues under investigation. The researcher will examine the existing legal provisions related to bankruptcy law and AYDA that are relevant to the issues addressed in this study (Marzuki, 2016). These include, among others, Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment Obligations (the “Bankruptcy and PKPU Law”), the Banking Law, relevant Financial Services Authority regulations on AYDA, the Regulation of the Minister of Finance No. 122 of 2023 on Guidelines for the Implementation of Auctions (“MoF Regulation 122 on Auction Guidelines”), as well as other applicable legislation. The conceptual approach, meanwhile, draws on legal theories and doctrines that have been developed within the field of law (Marzuki, 2016). The researcher will examine views and doctrines related to bankruptcy law and AYDA.

RESULTS AND DISCUSSION

The Purpose and Procedure of AYDA

AYDA is defined in Article 1, point 15, of Bank Indonesia Regulation No. 14/15/PBI/2012 on the Assessment of Asset Quality of Commercial Banks as follows: *“Foreclosed collateral, hereinafter referred to as AYDA, refers to an asset acquired by a bank either through an auction or outside of an auction. This can occur either through the voluntary surrender of the collateral by its owner or via a power of attorney to sell outside the auction, in cases where the debtor fails to meet their obligations to the bank.”* Such assets must be liquidated promptly or within a period of one (1) year (Dilapanga, 2021). In general, AYDA is not specifically regulated regarding the stage of the auction at which it must be conducted (Prabandari, Nurdin, & Prasetyo, 2021).

Law No. 7 of 1992 on Banking did not include any provisions regarding AYDA. Provisions on AYDA were first introduced in Article 12A of Law No. 10 of 1998, which amended Law No. 7 of 1992, and were later revised by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector. The differences between the content of Article 12A under these two laws are as follows:

Table 1. Comparison of Law No. 10 Year 1998 and Law No. 4 Year 2023

LAW NO. 10 YEAR 1998	LAW NO. 4 YEAR 2023
<p>ARTICLE 12A</p> <p>(1) If a Debtor Customer fails to meet their obligations to the bank, the Commercial Bank may acquire some or all of the collateral. This can be done through an auction, outside of an auction with the collateral owner’s voluntary surrender, or based on a power of attorney from the owner to sell the collateral outside of an auction. Any collateral acquired in this way must be sold promptly to settle the debtor’s obligations.</p> <p>(2) The procedures for purchasing and liquidating collateral, as referred to in paragraph (1), will be further detailed in a Government Regulation.</p> <p>EXPLANATION : Paragraph (1) <u>The purchase of collateral by a bank through auction is intended to assist the bank in expediting the settlement of its Debtor Customer’s obligations.</u> If the Bank purchases the collateral of its Debtor Customer, it assumes the same status as any other non-bank purchaser. <u>The possibility for banks to purchase collateral outside of auction is intended to enable the accelerated settlement of the Debtor Customer’s obligations.</u> Banks are not allowed to keep the collateral they purchase permanently and must sell it as quickly as possible so that the proceeds can be promptly used by the bank.</p> <p>Paragraph (2) The key provisions that will be further detailed in a Government Regulation include, among others:</p> <ol style="list-style-type: none">The collateral that a bank may purchase is collateral securing loans that have been classified as non-performing for a specified period of time.;Purchased collateral must be liquidated within one year at the latest;During the one-year period, the bank may postpone obligations related to transferring rights over the collateral, in accordance with applicable laws and regulations.	<p>ARTICLE 12A</p> <p>(1) If a Debtor Customer fails to meet their obligations to the Bank, the Commercial Bank may acquire some or all of the Collateral. This can be done through an auction, through a voluntary surrender by the Collateral owner, or based on a power of attorney from the owner to sell the Collateral outside of an auction. Any Collateral acquired in this manner must be sold promptly..</p> <p>(2) If the Debtor Customer fails to fulfill their obligations as described in paragraph (1) within the specified timeframe, and there are no disputes over the ownership of the Collateral, the Commercial Bank may acquire some or all of the Collateral, either through an auction or outside of an auction.</p> <p>(3) The Commercial Bank must apply the purchase price of the Collateral, as described in paragraphs (1) and (2), toward settling the obligations of the relevant Debtor Customer to the Bank.</p> <p>(4) If the purchase price of the Collateral, as referred to in paragraph (3), exceeds the Debtor Customer’s obligations to the Commercial Bank, the surplus must be returned to the Debtor Customer after deducting auction costs and other expenses directly related to the Collateral purchase..</p> <p>(5) Additional provisions on the purchase of Collateral, as referred to in paragraphs (1) through (4), will be governed by a Regulation issued by the Financial Services Authority.</p> <p>EXPLANATION : <u>Sufficiently Clear.</u></p>

Source: Law No. 10 Year 1998 and Law No. 4 Year 2023.

The purpose of and principles underlying *Agunan yang Diambil Alih* (AYDA) as regulated in Article 12A of the Banking Law can be understood as providing banks with a mechanism to accelerate the settlement of obligations of debtor customers. The main purpose and guiding principle of AYDA are to help banks speed up the settlement of debtors' obligations. As emphasized by Nindyo Pramono in his work "*Disharmony Between the Rights of Secured Creditors over Security Interests vs. the Rights of a Curator in Managing the Bankrupt Estate*", AYDA rests on two core objectives: First, the bank must promptly realize the assets so that the proceeds from the sale can be used to repay non-performing loans. Second, the debtor receives written confirmation that their loan obligations have been fully settled (nihil), marking the complete resolution of rights and obligations between the bank and the debtor (Moechthar, 2019). From an accounting perspective, AYDA assets are recorded as assets held for sale and are managed in accordance with the relevant accounting standards and banking regulations.

Normatively, the implementation mechanism of AYDA pursuant to Article 12A paragraph (1) of the Banking Law may be carried out through: a. public auction; or b. private sale (e.g., voluntary surrender by the collateral owner or by power of attorney to sell outside auction). In practice, AYDA transactions are often accompanied by the preparation of formal documents such as a Deed of Sale and Purchase Agreement (*Perjanjian Pengikatan Jual Beli – PPJB*), Deed of Power of Attorney to Sell, and Deed of Vacating Land, all executed before a notary. The asset may then be sold through a public auction, a limited auction, a sale to strategic investors, or a direct sale to the debtor, provided that the debtor is given legal certainty regarding the settlement of the loan (Moechthar, 2019).

When considering the acquisition of collateral through the AYDA mechanism, it is also important to take into account the laws governing security rights (Silalahi & Claudia, 2020). When the collateral consists of land subject to a Hak Tanggungan (mortgage right), the implementation of AYDA must comply with the provisions of Law No. 4 of 1996 Mortgage Law over Land and Objects Related to Land (the "Mortgage Law"). This law serves as the main reference for the execution and sale of encumbered assets, ensuring that the rights of all parties involved are protected (Fajar, Qamar, & Alam, 2024).

Specifically, Article 12 of the Mortgage Law states that any agreement granting the mortgage holder automatic ownership of the encumbered property if the debtor defaults is legally null and void. This rule is intended to protect the interests of the debtor and other parties providing security, especially when the value of the collateral exceeds the debt. According to Sutan Remy Sjahdeini, this prohibition helps prevent the exploitation of the debtor's weaker bargaining position during loan negotiations and safeguards the value of the collateral, ensuring that the proceeds from its sale can be fully used to settle the debtor's debt (Sjahdeini, 1999).

Thus, Article 12 of the Mortgage Law clearly prohibits the bank, as the mortgage holder, from entering into any agreement that grants it ownership of the encumbered property. However, the bank may still purchase the collateral, as long as the acquisition follows the procedures set out in Article 20 of the Mortgage Law. When linked to the AYDA regulations, the explanation to Article 12A paragraph (1) of Law No. 10 of 1998 amending Law No. 7 of 1992 on Banking — which stated that "**banks are prohibited from retaining ownership of collateral they purchase and must promptly resell it so that the proceeds can be immediately utilized by the bank**" — has since been removed by Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector. However, under Article 12A paragraph (1) of the Banking Law, any collateral acquired by the bank must still be sold promptly.

In this context, "liquidated as soon as possible" means that the Rural Bank (BPR) must promptly take steps to sell the foreclosed assets (AYDA). If a purchaser makes a fair offer

that does not result in a loss to the BPR, the bank is required to complete the sale according to that offer and must not withhold or delay the transaction. Accordingly, the liquidation of AYDA should be carried out without unnecessary delay, including actively marketing and selling the assets.

The Financial Services Authority (Otoritas Jasa Keuangan – OJK), in its explanation of Article 40 paragraph (1) of OJK Regulation No. 1 of 2024 on the Asset Quality of Rural Banks (Bank Perkreditan Rakyat – BPR), clarifies the meaning of “liquidated promptly.” According to the provision, “liquidated promptly” means that the BPR must take immediate action to liquidate AYDA. If a buyer offers a fair price that does not result in a loss for the BPR, the bank must complete the transaction without withholding or delaying the sale. Accordingly, the liquidation of AYDA should be carried out promptly, including actively marketing and selling the assets.

As set out in Article 12A paragraphs (1) and (2) of the Banking Law, in conjunction with Article 12 of the Mortgage Law, when a bank seeks to execute AYDA by purchasing the encumbered asset, it must still follow the procedures outlined in Article 20 of the Mortgage Law, which states: (1) If the debtor defaults, the mortgaged property must be sold through a public auction to settle the secured debt, giving it priority over other creditors, based on: (a) the right of the first Mortgage holder to sell the encumbered object as referred to in Article 6; or (b) The executorial title contained in the Mortgage Certificate, as referred to in Article 14 paragraph (2); (2) By mutual agreement between the grantor and the mortgage holder, the encumbered property may be sold privately if such a sale is expected to achieve the highest possible price for the benefit of all parties. (3) Such private sale may only be carried out after one (1) month has elapsed since written notification by the grantor and/or the holder of the Mortgage to the interested parties and announcement in at least two (2) newspapers circulating in the relevant region and/or local mass media, provided no objections are raised. (4) Any agreement to execute the Mortgage in a manner contrary to the provisions of paragraphs (1), (2), and (3) shall be null and void by operation of law. (5) Until the auction is officially announced, the sale mentioned in paragraph (1) can be avoided if the debt secured by the Mortgage, along with any execution costs incurred, is fully repaid.

If the encumbered property is sold at auction, the seller must follow all requirements and procedures outlined in Ministry of Finance Regulation No. 122 on Auction Implementation Guidelines. Alternatively, if a private sale is needed to achieve the highest price, it must comply with all requirements and procedures set forth in Article 20 paragraph (3) of the Mortgage Law.

The requirements in Article 20 paragraph (3) of the Mortgage Law are designed to protect parties with an interest, such as second- or third-ranking mortgage holders and other creditors of the grantor. According to J. Satrio, the provisions of Article 20 are mandatory, as the legislature did not intend to allow any deviations from the prescribed procedures for executing Mortgages, given that considerations of public interest are embedded within this article (Satrio, 1998).

Ownership of AYDA

Banks may carry out AYDA either through an auction or outside of an auction, either by voluntary surrender from the collateral owner or through a power of attorney authorizing the sale outside of an auction. In practice, AYDA is often accompanied by the execution of a Sale and Purchase Binding Agreement (*Perjanjian Pengikatan Jual Beli* – PPJB), a Deed of Power of Attorney to Sell, as well as a Deed of Vacating, all of which are executed before a notary. The legal question that arises is whether the collateral automatically becomes the property of the bank after AYDA is implemented. The answer depends on whether the rights

to the collateral have been properly transferred in accordance with the applicable rules governing the transfer of rights.

According to Urip Santoso, the transfer of rights over land in an auction takes place once the auction minutes (*berita acara lelang*) or auction deed (*risalah lelang*) have been executed. Similarly, in a sale transaction, the transfer of land rights occurs upon the execution of a Sale and Purchase Deed (Akta Jual Beli) by the Land Deed Official (Pejabat Pembuat Akta Tanah – PPAT) (Santoso, 2011). To ensure legal certainty for third parties, the results of a sale or auction must be registered with the local Land Office (Kantor Pertanahan Kabupaten/Kota). Land registration is public in nature and upholds the principle of publicity, allowing the public to access both the physical and legal data, including information on the transfer of rights (Santoso, 2011). Accordingly, if AYDA is conducted through an auction, ownership of the collateral transfers to the bank once the auction minutes or deed is prepared. If AYDA is carried out through a sale, ownership transfers when the Sale and Purchase Deed is executed by the PPAT, with registration at the Land Office required to ensure legal certainty for third parties (Al Mursyid, 2021).

For AYDA carried out through a PPJB accompanied by a power of attorney to sell, the relevant bankruptcy rule is Article 34 of the Bankruptcy and PKPU Law. This article provides that agreements intended to transfer land rights based on prior arrangements cannot be enforced once a bankruptcy declaration has been issued. Accordingly, under this provision, assets subject to a PPJB remain the property of the bankrupt debtor and become part of the bankruptcy estate, as the PPJB cannot be enforced after bankruptcy is declared. However, developments in Supreme Court Circular Letter (SEMA) No. 4 of 2016 clarify that the transfer of land rights under a Sale and Purchase Binding Agreement (PPJB) legally occurs if the purchaser has fully paid the purchase price, taken possession of the property, and acted in good faith. Accordingly, the Supreme Court recognizes that the transfer of rights under a PPJB can take place when these three conditions—full payment, possession, and good faith—are satisfied. Due to the differing interpretations between bankruptcy law and Supreme Court guidance, disputes over the ownership of collateral under AYDA through a PPJB—particularly between banks and the curator—should first be resolved through Gugatan Lain-lain (Other Claims) in accordance with Article 3 paragraph (1) of the Bankruptcy and PKPU Law.

Regarding powers of attorney, Article 1813 of the Indonesian Civil Code (KUHPerdata) provides that a power of attorney ends when either the grantor or the attorney-in-fact is declared bankrupt. Therefore, if AYDA is conducted through voluntary surrender or a power of attorney to sell, the asset remains the property of the bankrupt debtor in accordance with Article 34 of the Bankruptcy and PKPU Law and Article 1813 of the Civil Code (Ginting, 2018).

In practice, banks sometimes carry out AYDA through an auction even after the debtor has been declared bankrupt. The legal basis for this practice includes Article 12A of the Banking Law and Article 59 paragraph (1) of the Bankruptcy and PKPU Law. This is also supported by auction implementation regulations, such as Ministry of Finance Regulation No. 122/PMK. Under Article 59 paragraph (1) of the Bankruptcy and PKPU Law, secured creditors are required to execute their collateral no later than two months after the commencement of insolvency. Meanwhile, PMK 122 permits financial service institutions acting as creditors to purchase their own collateral based on an *akte de command*. Article 87 of PMK 122 provides: (1) Financial service institutions, as creditors, may purchase their own collateral at auction, provided that such purchases are conducted in accordance with applicable laws and regulations.; (2) If a financial service institution intends to purchase collateral as described in paragraph (1), it must submit to the Auction Official a notarial deed stating that the purchase is made on behalf of another party, who must be designated within

one year from the date of the auction; (3) If the time period referred to in paragraph (2) lapses, the Auction Official shall designate the financial service institution as the buyer.

The requirement to provide an *akte de command* creates legal uncertainty for banks that wish to carry out AYDA within two months of the start of insolvency proceedings. The uncertainty revolves around the exact moment when land rights are transferred as a result of the auction—whether it occurs upon designation of the final buyer or as of the auction date—and to whom the rights are transferred. This issue is closely linked to whether the auctioned property remains part of the bankrupt debtor’s estate. For the sake of legal certainty, and in light of the enactment of Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector—which amended Article 12A of Law No. 10 of 1998 on Banking and its explanatory notes—the requirement for an *akte de command* in PMK 122 should be removed. With this requirement removed, and in accordance with Article 12A of the Banking Law and the explanation of Article 12 of the Mortgage Law, banks may purchase collateral at auction on the same terms as other bidders. Any collateral acquired by the bank must be liquidated promptly, with the technical details of such liquidation regulated by the Financial Services Authority under Article 12A paragraph (5) of the Banking Law. When the bank is declared the winner of the auction, it is recorded as the purchaser of the auctioned property in the auction deed or minutes. As noted earlier, land rights transfer to the auction purchaser upon the execution of these auction minutes (Santoso, 2011).

Articles 1(1) and 21 of the Bankruptcy and PKPU Law provide that when a debtor is declared bankrupt by the Commercial Court, all of the debtor’s assets are subject to general attachment (*sita umum*). Bankruptcy applies not only to assets owned by the debtor at the time of the judgment but also to assets acquired during the bankruptcy process. According to M. Hadi Shubhan, the purpose of general attachment is to prevent creditors from rushing to claim bankruptcy assets and to suspend transactions involving those assets that could harm the interests of creditors (Subhan, 2015). Furthermore, Article 69 paragraph (1) of the Bankruptcy and PKPU Law gives the curator the authority to manage and/or liquidate the bankruptcy estate. According to Ricardo Simanjuntak, bankruptcy assets are those owned by the bankrupt debtor and subject to general attachment, falling under the curator’s authority. Assets not owned by the bankrupt debtor are not part of the bankruptcy estate and, therefore, remain outside the curator’s authority (Simanjuntak, 2023). Consequently, if the curator determines that the debtor’s assets have been lawfully transferred to the bank through AYDA, those assets are no longer considered part of the bankruptcy estate.

The Supreme Court, through Supreme Court Circular Letter No. 3 of 2023, advances the following interpretation of AYDA: (a) AYDA is not construed as a sale and purchase of the collateral object, but rather as a voluntary surrender of the collateral to the bank to be sold for the repayment of debt; (b) as long as the AYDA object has not been sold, the bank remains in the position of a secured creditor and the AYDA object constitutes part of the bankruptcy estate, whereas if the AYDA object has been sold and there remains an outstanding claim, the bank may pursue the remainder as a concurrent creditor; and (c) the Supervisory Judge may refer to the Financial Information Service System (SLIK) of the Financial Services Authority (OJK), as updated by the bank, to determine the status of the debtor. The formulation in Supreme Court Circular Letter No. 3 of 2023 gives rise to normative tension with other statutory regulations, as it is overly general and does not distinguish whether the AYDA is conducted before or after the debtor is declared bankrupt, nor does it differentiate between AYDA executed through auction, a conditional sale and purchase agreement (PPJB), or a power of sale. Furthermore, the formulation in the Circular Letter stating that AYDA is not construed as a sale and purchase of the collateral, but merely as a voluntary surrender for purposes of repayment, is inconsistent with the provisions of Article 12A of the Banking Law, which clearly establishes that where AYDA is conducted

through an auction mechanism, it constitutes a sale and purchase by auction. Indeed, pursuant to Article 12A paragraphs (3) and (4) of the Banking Law, Commercial Banks are required to account for the purchase price of the collateral against the debtor's obligations, and where the purchase price exceeds the debtor's outstanding obligations, the excess must be returned to the debtor after deduction of auction costs and other directly related expenses.

The sharp divergence between the regulation of AYDA under Article 12A of the Banking Law and under Supreme Court Circular Letter No. 3 of 2023 indicates the existence of a conflict of norms that cannot be resolved solely through a technical or administrative banking approach. The Banking Law explicitly characterizes AYDA conducted through auction as a form of sale and purchase that results in the transfer of ownership rights, and even regulates the obligation to return any surplus proceeds to the debtor. In contrast, the construction under Supreme Court Circular Letter No. 3 of 2023 effectively suspends such transfer by continuing to qualify the AYDA object as part of the bankruptcy estate until a subsequent sale occurs. Such an approach ultimately risks undermining legal certainty with respect to AYDA and weakening the position of banks as secured creditors that have exercised their enforcement rights in accordance with positive law.

Conceptually, equating AYDA solely with voluntary surrender is untenable. If every AYDA object is treated as remaining part of the bankruptcy estate irrespective of the timing and method of its execution, the fundamental principle that only assets still owned by the debtor may form part of the bankruptcy estate becomes blurred, thereby extending the scope of general attachment beyond the limits prescribed by law (Ferels, Muttaqin, & Akyas, 2024). Therefore, it is submitted that a distinction must be drawn between AYDA that has juridically resulted in the transfer of ownership to the bank and AYDA that has not yet effected such transfer. Accordingly, the formulation under Supreme Court Circular Letter No. 3 of 2023 should be adjusted to ensure consistency with prevailing statutory regulations.

Other Civil Lawsuit concerning Foreclosed Assets (AYDA)

The dispute between the receiver and the bank concerning AYDA in the bankruptcy proceedings of the bankrupt debtor arose between the Receiver Team of PT Dwi Raksa (In Bankruptcy) as Plaintiff against PT Dwi Raksa (In Bankruptcy) as Defendant I, PT Bank OCBC NISP, Tbk. as Defendant II, the Land Office (BPN) of Gresik as Co-Defendant I, and the State Assets and Auction Service Office (KPKNL) of Surabaya as Co-Defendant II. In brief, the main issues in the case are as follows:

1. PT Dwi Raksa (In Bankruptcy) was declared bankrupt, along with all legal consequences, pursuant to the Decision of the Commercial Court at the Surabaya District Court No. 013/Pdt.Sus-Pailit/2022/PN.Niaga.Sby., dated 4 October 2022.
2. In the bankruptcy proceedings of PT Dwi Raksa (In Bankruptcy), PT Bank OCBC NISP, Tbk. submitted a claim to the Receiver Team. This claim has been verified and included in the list of fixed claims, consisting of a secured claim of IDR 100,352,770,327 and an unsecured claim of IDR 355,212,257,612. The claims of PT Bank OCBC NISP, Tbk. were secured by collateral consisting of three plots of land and their buildings, as evidenced by Freehold Title Certificates (SHM) No. 798, No. 695, and No. 508, all located in Ambeng-Ambeng Watangrejo. These properties were all registered under the name of Drs. Budi Santoso (also known as Doktorandus Budi Santoso) (hereinafter referred to as the "three plots of land and buildings").
3. During the insolvency period, PT Bank OCBC NISP, Tbk. carried out an execution auction of the three plots of land and buildings, generating net proceeds of IDR 55,559,799,000. Based on the evidence of Substitution Power of Attorney No. 1370 G/ARM-EB.AT/LL/I/2023, dated 4 January 2023, Statement Deed (Akta De Command) No. 02 dated 11 January 2023, and Auction Minutes No. 88/45/2023 dated 17 January

2023, it was established that the execution auction applied the principle of foreclosed assets (AYDA). Subsequently, the Receiver Team of PT Dwi Raksa (In Bankruptcy) filed an Other Civil Lawsuit with the Commercial Court at the Surabaya District Court.

Regarding the lawsuit, the Commercial Court at the Surabaya District Court issued its decision in Case No. 11/Pdt.Sus-Gugatan Lain-lain/2023/PN.Niaga.Sby., in conjunction with No. 13/Pdt.Sus-Pailit/2022/PN.Niaga.Sby., dated 11 September 2024, with the following rulings:

1. Granting the Plaintiff's claim in part;
2. The Court declared that the evidence submitted by the Plaintiff is valid and carries full legal force;
3. The Court declared that the auction conducted by Defendant II through Co-Defendant II of the Bankruptcy Estate of PT Dwi Raksa (In Bankruptcy)—covering Freehold Title Certificates (SHM) No. 798, No. 695, and No. 508 in Ambeng-Ambeng Watangrejo—was carried out according to AYDA principles and therefore does not constitute a sale and purchase of the bankruptcy estate of PT Dwi Raksa (In Bankruptcy).;
4. The Court declared that Freehold Title Certificates (SHM) No. 798, No. 695, and No. 508 in Ambeng-Ambeng Watangrejo remain part of the bankruptcy estate of PT Dwi Raksa (In Bankruptcy);
5. The Court declared that Defendant II is a secured creditor in the bankruptcy of PT Dwi Raksa (In Bankruptcy) (Defendant I), with collateral consisting of Freehold Title Certificates (SHM) No. 798, No. 695, and No. 508 in Ambeng-Ambeng Watangrejo.;
6. The Court ordered Defendant II to hand over the original ownership documents for Freehold Title Certificates (SHM) No. 798, No. 695, and No. 508 in Ambeng-Ambeng Watangrejo to the Plaintiff;
7. The Court declared that the Plaintiff is validly authorized to manage and/or liquidate—including through public auction or private sale—in accordance with Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the properties represented by Freehold Title Certificates (SHM) No. 798, No. 695, and No. 508 in Ambeng-Ambeng Watangrejo;
8. The Court ordered Defendant I, Defendant II, Co-Defendant I, and Co-Defendant II to comply with and adhere to the terms of the judgment in this case;
9. The Court declared that the judgment in this case constitutes an integral part of Case No. 13/Pdt.Sus-Pailit/2022/PN.Niaga.Sby.;
10. The Court ordered Defendant I and Defendant II to pay all costs incurred in this case, totaling IDR 3,189,000 (three million one hundred eighty-nine thousand rupiah).;
11. Dismissing the Plaintiff's claims for the remainder.

In response to this decision, PT Bank OCBC NISP, Tbk., as the Cassation Petitioner, filed a cassation appeal with the Supreme Court against the Decision of the Commercial Court at the Surabaya District Court No. 11/Pdt.Sus-Gugatan Lain-lain/2023/PN.Niaga.Sby., in conjunction with No. 13/Pdt.Sus-Pailit/2022/PN.Niaga.Sby., dated 11 September 2024. The Supreme Court, through Decision No. 187 K/Pdt.Sus-Pailit/2025, dated 13 March 2025, issued the following ruling:

1. The Court rejected the cassation petition filed by PT Bank OCBC NISP, Tbk.
2. The Court ordered the Cassation Petitioner (Defendant II) to pay the court costs at the cassation level, amounting to IDR 5,000,000 (five million rupiah).

The grounds upon which the Supreme Court rejected the cassation petition filed by PT Bank OCBC NISP, Tbk. are as follows. The cassation arguments are unfounded, as the *Judex Facti* did not err in the application of the law, with the core considerations as follows. PT

Dwi Raksa was declared bankrupt under the Decision of the Commercial Court at the District Court of Surabaya Number 13/Pdt.Sus-Pailit/2022/PN Niaga Sby, and based on the Inventory of the Bankruptcy Estate dated 21 November 2022, the bankruptcy estate consists of: a parcel of land measuring 1,770 m² and the building thereon located in Ambeng-Ambeng Watangrejo Village, Duduk Sampeyan District, Gresik Regency, East Java Province, as evidenced by Certificate of Ownership (SHM) Number 798/Ambeng-Ambeng Watangrejo, Survey Letter Number 134/11.05/2007, in the name of Drs. Budi Santoso; a parcel of land measuring 38,320 m² and the building thereon located in the same area, as evidenced by Certificate of Ownership (SHM) Number 695/Ambeng-Ambeng Watangrejo, Survey Letter Number 14/11.05/2000, in the name of Drs. Budi Santoso; and a parcel of land measuring 13,700 m² and the building thereon located in the same area, as evidenced by Certificate of Ownership (SHM) Number 508/Ambeng-Ambeng Watangrejo, Site Plan Number 102/1985, in the name of Drs. Budi Santoso.

Subsequently, PT Dwi Raksa (in bankruptcy) was declared insolvent based on the Minutes of Creditors' Meeting Number 13/Pdt.Sus-Pailit/2022/PN Niaga Sby dated 18 November 2022, with the position of claims of Defendant II comprising claims as a secured creditor amounting to IDR 100,352,770,327.00 (one hundred billion three hundred fifty-two million seven hundred seventy thousand three hundred twenty-seven rupiah) and concurrent claims amounting to IDR 355,212,257,612.00 (three hundred fifty-five billion two hundred twelve million two hundred fifty-seven thousand six hundred twelve rupiah). During the insolvency period, Defendant II (the Cassation Petitioner) carried out execution by auction over the three (3) aforementioned land certificates, as evidenced by Letter Ref. Number 023/HSLO/II/2023 dated 20 February 2023 concerning the Report on the Implementation of Mortgage Execution Auction from the legal counsel of the Cassation Petitioner (Defendant II), stating that the execution auction during the insolvency period over the three certificates had been successfully conducted, yielding net proceeds of IDR 55,559,799,000.00 (fifty-five billion five hundred fifty-nine million seven hundred ninety-nine thousand rupiah).

With regard to the execution auction conducted during the insolvency period by the Cassation Petitioner through Co-Respondent to Cassation II, based on the evidence of Substitution Power of Attorney Number 1370 G/ARM-EB.AT/LL/I/2023 dated 4 January 2023, De Command Deed (Statement) Number 02 dated 11 January 2023, and Minutes of Auction Number 88/45/2023 dated 17 January 2023, it is established that the execution auction carried out by the Cassation Petitioner applied the principle of *Agunan yang Diambil Alih (AYDA)*, in which context the Cassation Petitioner acted both as the seller and as the auction participant.

Since it was established that no actual sale of the land and buildings forming part of the bankruptcy estate occurred through the AYDA mechanism conducted by the Commercial Bank, then pursuant to Supreme Court Circular Letter No. 3 of 2023, the bankruptcy assets *a quo* remain part of the bankruptcy estate in the bankruptcy proceedings, and accordingly Defendant II (the Cassation Petitioner) remains a secured creditor. Furthermore, pursuant to Article 98 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, such secured creditor is obliged to deliver to the Plaintiff (the Curator Team) the original ownership documents of the bankruptcy estate of PT Dwi Raksa (in bankruptcy), namely the three (3) Certificates of Ownership (SHM) over the aforementioned land and buildings, for the purposes of administration and/or liquidation. Moreover, the grounds for cassation essentially constitute a repetition and reassessment of evidentiary findings.

In its considerations in Decision No. 187 K/Pdt.Sus-Pailit/2025, dated 13 March 2025, the Supreme Court relied exclusively on SEMA No. 3 of 2023, without taking into account the provisions of the Banking Law, which allow banks to conduct AYDA. As previously

explained, under Article 12A of the Banking Law, Article 59(1) of the Bankruptcy and Suspension of Debt Payment Obligations Law, and Article 87 of Minister of Finance Regulation No. 122 on Auction Implementation Guidelines, when a debtor is declared bankrupt, a bank has the right to acquire collateral assets through AYDA via an auction, provided this is done no later than two (2) months from the start of the insolvency period. The Supreme Court's decision also contradicts Supreme Court Circular Letter No. 2 of 2024 regarding the Implementation of the 2024 Plenary Chamber Meeting of the Supreme Court as Guidelines for the Judiciary ("SEMA No. 2 of 2024"), which clearly states that "assets belonging to guarantors or third parties cannot be considered part of the bankruptcy estate, unless proven otherwise." The three plots of land and their associated buildings were officially registered under the name of Drs. Budi Santoso (also known as Doktorandus Budi Santoso), not under PT Dwi Raksa (In Bankruptcy). Therefore, these properties should not be treated as part of the bankruptcy assets of PT Dwi Raksa (In Bankruptcy). Based on these considerations, the Supreme Court should have annulled the Decision of the Commercial Court at the Surabaya District Court No. 11/Pdt.Sus-Gugatan Lain-lain/2023/PN.Niaga.Sby. Jo. No. 13/Pdt.Sus-Pailit/2022/PN.Niaga.Sby., dated 11 September 2024, and dismissed the Other Civil Lawsuit filed by the Receiver Team of PT Dwi Raksa (In Bankruptcy).

CONCLUSION

Banks fundamentally possess the authority to carry out AYDA as expressly provided under Article 12A of the Banking Law. Pursuant to Article 12A of the Banking Law, Article 59 paragraph (1) of the Bankruptcy and PKPU Law, and Article 87 of Minister of Finance Regulation No. 122 concerning Guidelines for Auction Implementation, once the debtor has been declared bankrupt and has entered a state of insolvency, the bank as a secured creditor is granted a maximum period of two (2) months from the commencement of insolvency to execute the collateral, including through the AYDA mechanism by way of auction. Where such mechanism results in a lawful transfer of title to the bank, then both conceptually and normatively the object can no longer be classified as part of the bankruptcy estate, as it no longer constitutes part of the debtor's assets as referred to in Article 1 point 1 and Article 21 of the Bankruptcy and PKPU Law. Conversely, where AYDA is carried out through voluntary surrender or a power of sale that has not yet resulted in a transfer of title at the time the debtor is declared bankrupt, such collateral remains part of the bankruptcy estate under the authority of the curator.

In this context, the applicability of the *akte de command* provision under Minister of Finance Regulation No. 122 concerning Guidelines for Auction Implementation adds a further layer of uncertainty, particularly regarding the precise moment at which the transfer of title over land in AYDA through auction occurs and to whom such title is first transferred. Following the amendment of Article 12A of the Banking Law through Law Number 4 of 2023 on Financial Sector Development and Strengthening, maintaining the *akte de command* scheme is no longer aligned with the need for legal certainty, as it delays the bank's position as the definitive purchaser. Therefore, it is submitted that the *akte de command* provision under Minister of Finance Regulation No. 122 should be abolished, so that the bank may be directly designated as the purchaser in the minutes of auction and the transfer of title over the collateral can occur clearly at the time the minutes of auction are issued, while still being subject to the obligation to promptly liquidate such collateral in accordance with the regulations of the Financial Services Authority.

At the same time, the current regulatory configuration—particularly the interaction between the Banking Law, the Bankruptcy and PKPU Law, the Mortgage Law, and Supreme Court Circular Letter No. 3 of 2023—demonstrates the existence of a serious conflict of norms. The formulation of Supreme Court Circular Letter No. 3 of 2023, which construes

AYDA merely as voluntary surrender and continues to classify the AYDA object as part of the bankruptcy estate until a subsequent sale occurs, without distinguishing the timing and method of AYDA implementation, has the potential to deviate from other applicable legal rules and to diminish the protection afforded to secured creditors who have acted in good faith in enforcing their rights. This research firmly takes the position that Supreme Court Circular Letter No. 3 of 2023 must be interpreted with caution, and that the Supreme Court should recalibrate its formulation to ensure alignment with prevailing statutory regulations in order to provide legal certainty.

Accordingly, resolving the conflict of norms relating to AYDA in bankruptcy requires both interpretative and regulatory measures. In the short term, judicial practice and curators should adopt a clear distinction between AYDA that has already resulted in a transfer of title and that which has not, while upholding the principle that only assets still owned by the debtor may be classified as part of the bankruptcy estate. In the long term, normative clarification is required, whether through revision of Supreme Court Circular Letter No. 3 of 2023 and/or the formulation of more detailed regulations that explicitly distinguish the various methods and timing of AYDA implementation, so as to achieve coherence between banking law, secured transactions law, and bankruptcy law in determining the legal status of collateral acquired through AYDA.

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