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**Legal Status of Collateral Taken Over (AYDA) by Banks through Auction
in Bankruptcy Cases: Review of SEMA Number 3 of 2023**

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Article	Abstract
<p><i>Received: Des 02, 2025; Reviewed: Jan 07, 2026; Accepted: Feb 09, 2026; Published: Feb 26, 2026</i></p>	<p><i>Collateral Taken Over (Agunan Yang Diambil Alih/ AYDA) is a collateral execution mechanism by banks in the context of resolving problem loans as regulated in the Financial Services Authority Regulation POJK Number 40 of 2019 and the Banking Law/ PPSK (Development and Strengthening of the Financial Sector). Through the auction mechanism, banks can obtain ownership of collateral that was previously the object of collateral security. However, problems arise when the debtor is declared bankrupt after the auction is carried out and the Bank as the creditor has been appointed as the buyer through the AYDA mechanism. This study aims to analyze the legal provisions of AYDA by Banks through auctions, as well as the position of AYDA by Banks in bankruptcy cases. This study uses a normative juridical method with a statutory and conceptual approach. The results of the study indicate that AYDA obtained through auctions constitutes a legal transfer of rights, and substantively, ownership has transferred to the bank. Therefore, AYDA assets should not be included as bankruptcy estate. There needs to be further regulations regarding the position of AYDA by Banks to avoid multiple interpretations of the legal status of these AYDA assets.</i></p> <p>Keywords: <i>AYDA, Bankruptcy, Auction, Mortgage Rights, Bankrupt Boedel, Separatist Creditors.</i></p>

A. INTRODUCTION

The concept of collateral arose from the need in banking practices, particularly when applying for credit or financing, to mitigate risk. In banking terms, collateral is often referred to as "collateral." Collateral is a security that can be valued in money, namely in the form of certain objects submitted by the debtor to the creditor as a result of a debt agreement or other agreement. Certain objects submitted by the debtor to the creditor are intended as collateral for the loan or credit facility provided by the creditor to the debtor until the debtor repays the loan.

If the debtor defaults, the certain objects will be valued in money, then will be used to repay all or part of the debtor's loan or debt to the creditor. In other words, collateral here functions as a means or guarantee of fulfillment of the debtor's loan or debt if the debtor defaults before the loan or debt matures.

In banking practice, when the debtor defaults or fails to fulfill his obligations, the bank as the creditor holding the mortgage has the right to execute the collateral object through an execution auction mechanism as regulated in Article 6 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (Undang-Undang Hak Tanggungan). In the implementation of the auction, it is not uncommon for conditions to occur where the auction is not sold or there are no buyers. In such situations, based on Article 12A paragraph (1) and paragraph (2) of Law Number 10 of 2008 concerning Amendments to Law Number 7 of 1992 concerning Banking (Banking Law) as amended in Law No. 4 of 2023 concerning PPSK, Commercial Banks as Holders of Mortgage Rights can purchase part or all of the collateral known as Collateral Taken Over (AYDA), either through auction or outside of auction based on voluntary surrender by the owner of the Collateral or based on the power to sell outside of auction from the owner of the collateral in the event that the debtor customer does not fulfill obligations to the Bank, with the provision that the purchased collateral must be disbursed as soon as possible.

The AYDA mechanism is essentially a form of asset takeover by the bank to rescue uncollectible receivables. However, in practice, legal issues arise when after the execution of the mortgage auction, where the bank has been appointed as the buyer based on the Auction Minutes, the debtor is then declared bankrupt by the commercial court. Article 1131 of the Civil Code stipulates that all of the debtor's assets, both movable and immovable, both existing and future, become collateral for every agreement entered into by the debtor. Based on this article, it can be concluded that the bankruptcy estate consists of all the assets/properties owned by the debtor. Assets that do not belong to the bankrupt debtor cannot be included in the bankruptcy estate. However, the position of the debtor's assets that have been taken over by the bank through AYDA is under special conditions. The transfer of ownership that occurs is not in the normal conditions of sale and purchase as is generally the case, but is a temporary transfer after which the Bank still has to find a permanent buyer for the assets obtained from the AYDA. This creates uncertainty regarding the legal status of the assets that have been auctioned, whether the assets that have been auctioned and purchased by the bank can be considered to have left the debtor's control and thus are not included in the bankruptcy estate, or whether they can still be claimed by the curator as part of the bankruptcy estate.

This is further complicated by the Supreme Court Circular Letter (SEMA) Number 3 of 2023 which provides guidelines for judges in handling bankruptcy and suspension of debt payment obligations (PKPU) cases. In the SEMA, it is emphasized that as long as the AYDA has not been sold, the bank's status remains as a separatist creditor and the AYDA object is a bankrupt estate, however, when the AYDA object has been sold, while there are still remaining receivables, the bank can collect it in the status of a concurrent creditor. The problem is, in AYDA originating from the auction mechanism, there is a provision in Article 87 of PMK 122 of 2023 that the Bank as a creditor can purchase its own collateral with the purpose of

purchasing for another person or party who must be appointed within a period of 1 (one) year from the auction. The article also emphasizes that if within 1 (one) year the Bank cannot appoint a permanent or actual buyer, then The bank is appointed as the actual buyer and can transfer ownership of the asset to the bank's name.

By looking at these conditions, it appears that there is uncertainty and potential overlap in determining the legal status of assets obtained by banks through the AYDA mechanism resulting from the auction of execution of mortgage rights, especially when the debtor is declared bankrupt after the auction. Therefore, it is deemed necessary to conduct an in-depth legal study to provide clarity regarding the legal certainty of the status of these assets, so this study takes the title "Legal Status of Collateral Taken Over (AYDA) by Banks through Auction in Bankruptcy Cases: Review of SEMA Number 3 of 2023"

B. MATERIALS AND METHOD

Based on the background above, the problem formulation that will be discussed in this research is:

1. What are the regulations regarding the takeover of collateral through Collateral Taken Over (AYDA) by Banks based on the Banking Law?
2. What is the legal position of AYDA by Banking through the auction mechanism if the debtor is declared bankrupt after the auction is carried out?
3. How is the review of SEMA Number 3 of 2023 in relation to AYDA in bankruptcy cases?

The research method used in this study is a normative juridical research method that uses two approaches, namely the statutory approach and the conceptual approach. The statutory approach is used to examine the provisions related to the execution auction of Mortgage Rights, the mechanism of AYDA by banks, and bankruptcy regulations in relation to AYDA. The conceptual approach is used to analyze the concept of legal certainty, the position of AYDA as a bank asset, the normative relationship between the execution auction and the bankruptcy estate, and how AYDA is viewed from the perspective of SEMA Number 3 of 2023. The legal materials used include primary, secondary, and tertiary legal materials obtained through literature studies. All legal materials are analyzed qualitatively using the method prescriptive-analytical to assess legal certainty regarding assets obtained by banks through AYDA in the context when the debtor is declared bankrupt later.

C. RESULT AND DISCUSSION

1. Provisions regarding Asset Acquisition through Collateral Taken Over (AYDA) based on the Banking Law

The definition of Collateral Taken Over, hereinafter referred to as AYDA in accordance with Financial Services Authority Regulation Number 40/POJK.03/2019 concerning Asset Quality Assessment of Commercial Banks, is an asset obtained by the Bank either in part or in full by means of purchase through auction or outside of auction based on voluntary surrender by the collateral owner or based on the power to sell outside of auction from the collateral owner, in the event that the debtor does not fulfill its obligations to the Bank.

Collateral Taken Over (AYDA) is a legal concept directly related to the resolution of non-performing loans in the banking sector. Collateral Taken Over were essentially born out of the need for banks to restore their asset quality when debtors fail to meet their payment obligations. Within the context of banking regulations, Collateral Taken Over (AYDA) is not a form of investment or asset acquisition by banks, but rather a collateral execution mechanism that has been carried out following strict legal procedures. The existence of Collateral Taken Over (AYDA) serves as a form of protection for the bank's financial stability and also serves as evidence that the asset takeover mechanism is not carried out arbitrarily, but rather is a final step taken through a formal execution process.

The provisions in Article 12A of the Banking Law as amended in Law No. 4 of 2023 concerning PPSK, explain that:

1. Commercial Banks can purchase part or all of the Collateral, either through auction or outside of auction based on voluntary surrender by the Collateral owner or based on the power to sell outside of auction from the collateral owner in the event that the debtor customer does not fulfill his obligations to the Bank, with the provision that the Collateral purchased must be disbursed as soon as possible.
2. In the event that the Debtor Customer does not fulfill his obligations as referred to in paragraph (1) within a certain period of time, and there are no problems with ownership of the collateral, the general bank can purchase some or all of the collateral, either through auction or outside of auction.

Based on the Law, Banks, in this case Commercial Banks as creditors, are authorized by law to take over collateral from their defaulting debtors. Furthermore, Bank Perekonomian Rakyat or formerly Bank Perkreditan Rakyat (BPR), which is not a category of Commercial Bank, was initially unable to take over collateral through AYDA, but since the issuance of Constitutional Court Decision Number 102/PUUXVIII/2020, the decision corrected Article 12A of Law No. 10 of 1998 so that not only Commercial Banks can carry out AYDA, but Rural Banks are also authorized to purchase part or all of the collateral through AYDA.

AYDA by banking in principle consists of two ways, the first is through voluntary submission by the collateral owner to the Bank as the creditor and the second way is through an auction process, which in this case is an auction of execution of mortgage rights. The auction of execution of mortgage rights is the implementation of the creditor's preferential rights or in this case the bank as the holder of material collateral in the form of mortgage rights, as regulated in Article 6 of the UUHT, namely the right to sell the object of mortgage rights at its own power through a public auction if the debtor defaults. The mechanism of AYDA through Auction is regulated in Article 87 of PMK 122 of 2023 concerning Instructions for the Implementation of Auctions with the following provisions:

1. Financial services institutions as creditors can purchase collateral in auctions as long as it is regulated and does not conflict with statutory regulations.
2. In the event that a financial services institution will purchase collateral as referred to in paragraph (1), the financial services institution must submit to the Auction Officer a statement in the form of a notarial deed containing a statement that the purchase is being made for another party who will be appointed later within a period of 1 (one) year from the date of the auction.
3. If the time period as referred to in paragraph (1) has been exceeded, the Auction Officer will appoint a financial services institution as the buyer.

Based on the provisions of the POJK, the Banking Law/PPSK, and PMK 122 of 2023, it can be concluded that AYDA by banks is a legal mechanism in accordance with existing legal regulations, as long as it complies with these regulations. In order for a bank as a creditor to purchase its debtor's assets at auction, the bank must submit a statement letter to the Auction Officer at the KPKNL (National Property Rights Office). Act of Command) which contains a

statement that the purchase made by the bank is for another party who will be appointed later within a period of 1 (one) year from the date of the auction. If within the 1 year period the bank has not appointed the actual buyer, the Auction Officer will declare the creditor bank as the buyer.

The implication of this auction is that when the 1 year period has passed, the Bank that has been appointed as the actual buyer through the auction minutes has the right to transfer the name of the asset to the relevant Bank, so that the asset that previously belonged to the debtor has transferred ownership to the Bank, and according to the provisions, the asset must be transferred to the bank's name. This transfer of name process confirms that the bank becomes the full owner of the AYDA, not just a collateral holder or holder of property rights.

With the transfer of ownership from the debtor to the Bank through Auction AYDA, the Bank's position changes from initially holding the material guarantee for the asset, to now being the owner of the collateral taken over to pay off the debtor's debt.

2. Legal Status of AYDA by Banks through Auction Mechanism in the Event that the Debtor is Declared Bankrupt Later.

In bankruptcy law, the basic concept that must first be understood is that bankruptcy encompasses all of the debtor's assets at the time the bankruptcy decision is rendered. Articles 21 and 24 of Law Number 37 of 2004 concerning Bankruptcy and PKPU emphasize that from the moment a debtor is declared bankrupt, all of the debtor's assets, both tangible and intangible, become bankruptcy estates and are under the management and settlement of a curator. Bankruptcy law adopts the principle of universality, namely that all assets belonging to the debtor at the time of the bankruptcy decision must be collected and then distributed to creditors according to their level.

The next thing that also needs to be understood is the status of assets taken over by banks through the AYDA auction mechanism. In general, the status of AYDA assets can be divided into two categories. First, AYDA assets that have not reached a period of 1 (one) year, where the bank has not appointed a permanent buyer so that there has been no transfer of ownership. Second, AYDA assets that have passed a period of 1 (one) year, where based on the provisions of PMK Number 122 of 2023 concerning Auction Implementation Guidelines, the bank is designated as the actual buyer, so that legally, based on the auction minutes, there has been a transfer of ownership of the assets from the debtor to the bank.

In the first category, where the appointment of the Bank as the buyer is through a purchase statement for another person has not yet passed 1 (one) year, in this case the Bank's position is still as the holder of the mortgage rights, and the assets are still in the name of the debtor because there has not been a transfer/appointment of the actual buyer. If later during that period the debtor is declared bankrupt, then referring to Article 21 of the Bankruptcy Law, where bankruptcy covers all of the debtor's assets, if we look at the ownership documents that have not yet been transferred, it is true that the assets still belong to the debtor, and the Bank's position is as a separatist creditor. During the auction period which has not yet reached 1 (one) year, the Bank's status is a "temporary buyer". The Bank based on Act of Commandor Purchase Statement for Others, is authorized based on the Auction Minutes to appoint the actual buyer in accordance with the given time limit. Banks that do not appoint the actual buyer by the end of the 1 (one) year period, the Auction Officer will appoint the Bank as the actual buyer. In the absence of the appointment of the actual buyer, the position of the AYDA assets remains the property of the debtor.

If we look at the conditions, where the AYDA assets are still in the name of the debtor, and the Bank does not yet have perfect rights over the AYDA assets, then if bankruptcy occurs, the question arises whether an asset that has not been fully transferred to the bank or another appointed permanent buyer can still be categorized as a bankrupt boedel if the debtor is declared

bankrupt after the auction takes place but before the bank becomes a permanent buyer. It should be noted here that the Bank is bound by

The auction appointed it as the buyer of the AYDA, which based on the auction minutes, the Bank has the right to take over the debtor's assets and must sell them within 1 (one) year. In the event of bankruptcy, the Bank holding the mortgage has the position of a separatist creditor, which gives the Bank a special position, namely the right to exercise its rights as if there was no bankruptcy, but is limited to a period of 60 days called the insolvency period. The execution referred to here is by conducting an auction within that period. The problem is, what happened here is that the auction was carried out before the bankruptcy occurred. The Bank has exercised its right of execution, and from the execution of the collateral through the auction, the Bank has been declared a temporary buyer. The question is, how can the Bank as a separatist creditor exercise its right of execution? Is it by holding another auction, even though the auction has been held previously? Or is it possible to regulate another provision, namely within 2 (two) months of the insolvency period, the Bank can exercise its rights but not through an auction mechanism, but by appointing a permanent buyer through a letter based on *acta de commando* previously created? And then, after the deadline has expired, and the Bank has not been able to appoint a permanent buyer, will the assets ultimately return to the debtor's possession, and can the curator be included as a bankrupt estate.

This is where the legal vacuum exists, namely regarding the position of the Bank as a separatist creditor who also acts as a temporary buyer in the auction of AYDA. There is no clear regulation regarding the position of the Bank that purchases AYDA and the position of the collateral taken over by the bank when bankruptcy occurs, when the bankruptcy occurs when the Bank's status is still not the actual buyer, and there has not been an appointment of a permanent buyer.

The second category, namely when the AYDA auction has been carried out, and the period is 1 (one) years have passed, so there has been a transfer of rights to the collateral to become the property of the Bank. In this condition, the position of the Bank has become the owner of the asset, because the auction official has appointed the Bank as the permanent buyer, and the Bank has also completed the transfer obligation for the AYDA asset by first acquiring the mortgage rights, and then taking over the asset by transferring the ownership name to the Land Agency. The Bank's rights are full/perfect over AYDA's assets and the position of AYDA's assets no longer belong to the debtor, but have transferred to the Bank.

In the land law regime, the validity of land ownership is determined formally through registration at the Land Office as the authorized institution. This principle is emphasized in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), specifically Article 19 paragraph (2) letter c, which states that land registration aims to provide legal certainty and legal protection to rights holders through the submission of valid proof of rights as a strong means of proof. Furthermore, Government Regulation Number 24 of 1997 concerning Land Registration clarifies this rule, especially through Article 32 paragraph (1) which states that a certificate is a strong means of proof regarding the physical and legal data contained therein, as long as it cannot be proven otherwise. This means that when the name of the bank has been recorded on the certificate after the implementation of AYDA, then according to land law, the bank obtains complete ownership of the land.

Thus, when the AYDA has gone through the formal process, starting from execution or voluntary handover, purchase through auction (if done), the appointment of the bank as the buyer, and the process of changing the name on the certificate, then all administrative and legal requirements for the transfer of ownership have been fulfilled. Consequently, the bank is no longer in the position of holding the material collateral for the mortgage object, but has changed into the owner of the land rights fully recognized by law. At this point, the asset can no longer

be considered part of the debtor's assets, because the transfer of rights is final and perfect according to Indonesian land law.

What if the Bank has not completed the transfer of land rights and then goes bankrupt? Article 37 paragraph (1) of PP 24/1997 states that the transfer of land rights due to a sale and purchase can only be registered after being proven by a deed made by a PPAT or in the case of a sale and purchase conducted through an auction, then proven by an Auction Minutes. The Auction Minutes are a valid sale and purchase deed, and are the basis for the transfer of ownership from the debtor to the Bank. With the Auction Minutes, the Bank can transfer land rights. So normatively, the Bank has become the owner of the AYDA assets, however, the transfer is not yet complete. Legally, even though the transfer of rights has not been recorded in the land register, with the auction minutes having permanent legal force as a deed of sale, the Bank's ownership of the AYDA assets is sufficiently strong, and the debtor no longer has any rights to the assets since the appointment of a permanent buyer.

Based on the discussion above, because the debtor's rights were extinguished before the debtor was declared bankrupt, these assets cannot be included in the bankruptcy estate. Under bankruptcy law, the bankruptcy estate only comprises assets still belonging to the debtor at the time the bankruptcy decision was pronounced. Because the Collateral Taken Over (AYDA) were transferred to the bank through an execution auction before the bankruptcy decision was issued, the curator does not have the authority to repossess these assets into the bankruptcy estate. This is an important aspect that provides legal protection for the bank and ensures that the legitimate execution process cannot be disrupted by subsequent bankruptcy proceedings.

With the transfer of ownership to the bank, the bank's legal status changes as the owner of the Collateral Taken Over (AYDA), the bank no longer holds a secured creditor over the object. A secured creditor exists only as long as the bank still holds the Mortgage Right over the asset serving as collateral. Once the collateral has been executed and transferred to the bank, the collateral is extinguished and replaced by ownership rights. Therefore, the bank no longer has preferential rights over the object in the context of bankruptcy. The bank's position as the legal owner of the Collateral Taken Over (AYDA) cannot be equated with its position as a secured creditor with the right to execute the collateral.

However, situations may arise where the value of the Collateral Taken Over obtained through auction is insufficient to pay off all of the debtor's debts. In such circumstances, there are still outstanding receivables. With regard to these remaining receivables, the bank's position in bankruptcy changes to that of a concurrent creditor. A concurrent creditor is a creditor who does not have collateral rights and must share the repayment proportionately (*pari passu*) with other concurrent creditors. Therefore, the bank can only collect its remaining receivables by following the distribution mechanism for the proceeds of the settlement carried out by the curator. This change in position reflects the principle of balance in bankruptcy law, namely that separatist rights only apply limited to the value of the collateral that can be executed. Once the execution is carried out and the collateral rights are extinguished, the bank no longer has any privileges beyond the claims of a regular creditor.

Overall, this set of provisions demonstrates that AYDA obtained through an execution auction provides strong legal certainty for banks. Acquiring AYDA through a state auction mechanism ensures that the process is transparent, accountable, and has formal legitimacy. The transfer of ownership, which occurs before the debtor is declared bankrupt, ensures that the assets are beyond the reach of the bankruptcy court. At the same time, the law provides fair limits: the bank's separatist rights cannot exceed the value of the executed collateral, and any remaining receivables must be collected as unsecured creditors. Thus, the law provides a balanced framework between legal certainty for banks and fairness for other parties in the bankruptcy process.

However, this principle is not absolute, as it only applies to assets that were truly still the debtor's property at the time the bankruptcy decision was rendered. This means that if, before the bankruptcy decision was rendered, a legal transfer of ownership had occurred to another party, in this case, a bank, through the AYDA mechanism, then those assets are not included in the bankruptcy estate. This is important because bankruptcy law cannot repossess assets that have passed out of the debtor's legal control through a legal process and have met the requirements for formal execution.

Therefore, in the case of AYDA obtained through an execution auction of Mortgage Rights, the asset no longer belongs to the debtor when the bankruptcy decision is issued. The Auction Minutes, as an authentic deed, serve as evidence that the transfer of ownership occurred before the bankruptcy. Therefore, from that point on, the object cannot be included in the scope of the bankruptcy estate. The curator, in carrying out his duties, has no authority to seize, withdraw, or take control of assets that have been transferred to the bank. This transfer of rights closes the door to any form of legal action that seeks to re-include the asset in the bankruptcy estate.

3. Review of SEMA Number 3 of 2023

Circular Letter No. 3 of 2023 states that AYDA is not defined as the sale and purchase of collateral, but rather as the voluntary transfer of collateral to a bank for sale to settle a debt. As long as the AYDA remains unsold, the bank remains a secured creditor, and the AYDA object remains the same is a bankrupt estate, however, when the AYDA object has been sold, while there are still remaining receivables, the bank can collect them in the status of a concurrent creditor.

However, banks face a practical risk: if they delay completing the transfer permanent purchaser, the conflict with the curator could escalate. The curator could argue that the transfer of rights is incomplete and that the property should be placed in bankruptcy for the protection of all creditors. However, the curator's legal position remains that they cannot revoke the bank's separatist rights until the mortgage has been extinguished.

This condition shows that there is legal vacuum (legal gap) This is evident in the regulations regarding the status and legal protection of AYDA assets that have not been transferred to permanent purchasers when the debtor is declared bankrupt. On the one hand, SEMA Number 3 of 2023 confirms that as long as the bank still has the status of temporary buyers, Collateral Taken Over remain considered part of the bankrupt estate. However, PMK 122 of 2023 concerning Auction Implementation Guidelines provides banks with up to one year to appoint a permanent buyer or, if no buyer is found, to designate the bank as the permanent buyer after that period. These two legal regimes coexist but are not fully aligned, thus opening up the opportunity for differing interpretations among curators, banks, supervisory judges, and even the bankruptcy panel. The curator may interpret the assets as fully controlled by the bankrupt estate from the time the bankruptcy decision is pronounced, while the bank may argue that its preferential rights as a secured creditor should remain in place until a permanent buyer is found or until the one-year period stipulated in the PMK, thus retaining priority rights to execute the collateral even though the debtor has gone bankrupt.

This regulatory vacuum has the potential to create legal uncertainty in practice. There are no explicit regulations addressing how to balance the bank's separatist authority during the temporary purchase period with the curator's obligation to secure and control the entire bankrupt estate. This lack of regulatory harmony also raises the risk of a conflict of interest, with the curator's interest in maximizing the value of the bankrupt estate for all creditors, while the bank's interest in securing assets already substantially acquired through the auction of Collateral Taken Over (AYDA). In the absence of regulations that explicitly define the time limit and procedures for executing Collateral Taken Over (AYDA), during insolvency, the curator may delay or even refuse the transfer process to the permanent buyer on the grounds that the assets

remain part of the bankruptcy estate. This can be detrimental to the bank, as the assets become "pending" and require the approval of the curator or supervising judge for any legal action. This renders the original purpose of AYDA as a mechanism to expedite the resolution of bad debts ineffective.

In perspective legal protection for banks, This legal vacuum has the potential to create significant risks. Banks may lose certainty over assets they have economically acquired through auctions, but are still legally subject to the bankruptcy regime, which considers these assets part of the bankruptcy estate because they have not yet become permanent purchasers. This has the potential to lead to financial losses, asset depreciation, legal disputes, and limitations on banks' ability to take strategic steps to resolve non-performing loans. Therefore, an in-depth study and the establishment of specific regulations are needed that explicitly regulate the legal status of AYDA assets during the temporary purchaser stage, the deadline and procedures for appointing permanent purchasers in the event of a bankrupt debtor, the relationship between PMK Number 122 of 2023 concerning auctions and bankruptcy law, and a priority mechanism for banks to complete collateral execution without being hampered by the debtor's bankruptcy status. More detailed and harmonized regulations are needed to ensure that the legal objective of AYDA, which is to provide solutions for resolving non-performing loans while maintaining banking sector stability, can be achieved without compromising the principles of *paritas creditorum* and the principle of justice in bankruptcy. Therefore, legal reform is urgently needed to avoid overlapping interpretations and to ensure banks receive adequate legal protection for the AYDA assets they legally acquired through the Mortgage Rights execution auction mechanism.

What about the SEMA, which asserts that Collateral Taken Over that have not been transferred to another party, remain the debtor's assets and become part of the bankruptcy estate in the event of bankruptcy? In general, without bankruptcy, these assets are fully bank assets and serve as a deduction or offset against outstanding debts under a credit agreement.

The issue of the validity of the SEMA, which states that AYDA assets that have not been transferred or transferred to another party are still considered the debtor's assets and can be included in the bankruptcy estate if the debtor is declared bankrupt, has created normative tension in legal practice. This is especially true because under normal conditions outside of bankruptcy situations, AYDA assets that have been taken over by the bank, either through an execution auction mechanism or voluntary transfer, are fully declared bank assets and are no longer part of the debtor's assets. In banking practice, once a bank obtains a valid AYDA, the value of the asset becomes a deduction from the bank's receivables and is recorded on the bank's balance sheet as an asset that must be immediately liquidated in accordance with the provisions of the Financial Services Authority. Therefore, from a civil and banking law perspective, control and ownership of the asset have been transferred to the bank, raising the question of why SEMA 3 of 2023 actually places the asset as part of the bankruptcy estate if the debtor experiences bankruptcy before the asset is transferred to another party.

Conceptually, the provisions of SEMA 3 of 2023 appear to be based on the view that before the transfer of ownership to another party, the bank is still considered to hold the asset as a "substitute for payment" or quasi-collateral, not as the full owner who has completed the entire series of rights transfers. SEMA positions the transfer of ownership as an indicator of perfect ownership, so that as long as the transfer of ownership has not been carried out, even though the AYDA execution process has been valid and completed, the asset is still considered the debtor's property in the context of bankruptcy law. This approach aims to protect other creditors in the bankruptcy estate from being disadvantaged by execution actions that have not been administratively perfected. However, this approach contradicts the principles of land law and property security law, because once the auction or voluntary transfer process is complete, the mortgage is extinguished and the bank has obtained the legal basis to carry out the transfer.

At this stage, substantively, the debtor's ownership has ended and the bank's rights as the new owner have been born.

This conflict has significant implications. If SEMA is strictly enforced, banks that have taken over collateral through the AYDA mechanism could lose their status as owners and be demoted to concurrent creditors if the debtor turns out to be bankrupt before the title change process is completed. However, in legal and administrative realities, the title change process cannot always be carried out immediately, as it depends on the completeness of the documents, the process at the land office, and the potential for third-party objections. Therefore, placing the bank as a concurrent creditor in this situation clearly does not reflect substantive justice, considering that the bank has carried out the execution in accordance with legal provisions and has incurred costs and reduced its receivables based on the AYDA value.

Furthermore, the approach of SEMA No. 3 of 2023 is inconsistent with the principle of *parate executie* granted by the Mortgage Law through Article 6, where the mortgage holder has strong execution authority and the results of such execution should be final, including the transfer of ownership of the mortgage object to the auction buyer or to the bank as a temporary buyer. If the asset is then returned to the bankruptcy estate simply because the name has not been changed, there will be an inconsistency between property security law, land law, banking law, and bankruptcy law.

Ultimately, this issue highlights the need for legal harmonization between banking regulations, land law, and bankruptcy law. Collateral Taken Over acquired by banks through legal procedures should remain recognized as bank assets even before the transfer of ownership, as the transfer process is substantively complete and only requires administrative completion. Without such harmonization, banks will be vulnerable, losing protection as secured creditors, and potentially incurring significant losses without adequate remedial mechanisms.

4. CONCLUSION

Overall, the provisions regarding Collateral Taken Over (AYDA) confirm that the takeover of assets by banks is a legitimate and legally justified collateral execution mechanism, either through voluntary surrender or through an auction for the execution of mortgage rights, as long as it meets the procedures in POJK 40/2019, Article 12A of the Banking Law as amended by Law No. 4 of 2023 concerning PPSK, and PMK 122 of 2023. Banks, including BPRs, are authorized to purchase collateral from debtors who are in default, one of the ways being through an auction for the execution of mortgage rights.

After the execution of the Mortgage Right auction, the transfer of rights to the AYDA assets has basically occurred legally through the Auction Minutes, even though the bank still has the status of a temporary buyer and has not appointed an actual buyer within a period of one year. Because the debtor's rights to the assets have been extinguished since the auction was carried out, the assets no longer belong to the debtor when the bankruptcy decision is issued. Thus, the auctioned AYDA assets cannot be included in the bankruptcy estate, and the curator does not have the authority to withdraw or control them, because the objects have legally left the scope of the bankruptcy estate since the auction execution took place.

The issuance of Circular Letter of the Minister of Finance Number 3 of 2023 ultimately created uncertainty by placing Collateral Taken Over (AYDA) that had not been transferred to the bank as part of the bankruptcy estate, even though in substance these assets had been transferred to the bank through a legal execution mechanism. The disharmony between the SEMA and PMK 122 of 2023 and the principles of land, banking, and bankruptcy law created a

legal vacuum that could potentially harm banks. Without clearer and more integrated regulations, the existence of SEMA Number 3 of 2023 could create the risk of conflict between curators and banks, weaken protection for secured creditors, and hamper the effectiveness of Collateral Taken Over as an instrument for resolving bad debts. Therefore, stricter regulations are needed to ensure legal certainty over Collateral Taken Over.

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