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Legal Certainty of Banks' Security Enforcement in Bankruptcy: Interpreting Article 59(1) of the Bankruptcy Law

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ABSTRACT

Article 59 paragraph (1) of Law Number 37 of 2004 requires creditors holding security rights over assets to exercise their enforcement rights no later than two months after the commencement of insolvency. This provision creates difficulties for banks when the date of the bankruptcy declaration, the expiration of the stay on enforcement, and the commencement of insolvency do not coincide. This normative legal research analyzes the relationship among Articles 55, 56, 59, 60, 178, and 292 of the Bankruptcy Law through statutory, conceptual, and case-law approaches. The findings demonstrate that the two-month period is calculated from the commencement of insolvency rather than automatically from the date of the bankruptcy declaration. The time limit restricts the secured creditor's authority to enforce the security independently but does not extinguish the bank's preferential right to the proceeds from the sale of the collateral. Constitutional Court Decision Number 181/PUU-XXIII/2025 further clarifies the commencement of insolvency in bankruptcy proceedings arising from Suspension of Debt Payment Obligations (PKPU): insolvency takes effect when it is declared by operation of law by the supervisory judge at a creditors' meeting and recorded in the minutes of the meeting. This article proposes the recording of a verifiable triggering date, written notification to creditors, and early coordination of auction procedures. It also proposes an amendment to Article 59 to expressly specify the enforcement actions that must be completed within the two-month period.

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INTRODUCTION

The extension of credit inherently involves risk when a debtor is no longer able to fulfill its payment obligations. To mitigate such risk, banks may require security rights over assets that grant them preferential rights to repayment from specified assets. For banks, the value of security lies not only in the existence of the secured assets but also in the legal certainty that such assets can be enforced and that the proceeds from their sale can be applied toward repayment of the outstanding debt. When a debtor is declared bankrupt, the bank's individual interests intersect with the bankruptcy mechanism, which is designed to administer and liquidate the debtor's assets for the benefit of its creditors. The intersection of these interests places a bank holding security rights over assets in a special position as a secured creditor (*kreditor separatis*) (Silalahi and Claudia: 2020).

This legal position is grounded in several provisions that must be interpreted in conjunction with one another. Article 21 of Law Number 4 of 1996 preserves the authority of a mortgage right holder to exercise its rights even when the grantor of the mortgage right has been declared bankrupt. Meanwhile,

Article 55 paragraph (1) of Law Number 37 of 2004 recognizes the right of creditors holding pledges, fiduciary security, mortgage rights, hypothecs, or other security rights over assets to enforce their rights as if no bankruptcy had occurred. However, Article 55 paragraph (1) expressly subjects the exercise of such rights to the provisions of Articles 56, 57, and 58. Accordingly, recognition of a bank's enforcement rights cannot be separated from the applicable time limits and procedures governing bankruptcy proceedings (Republic of Indonesia: 1996; Republic of Indonesia: 2004).

The relationship among these provisions is significant because bankruptcy does not extinguish security rights over assets but affects the manner and timing of their enforcement. Article 56 paragraph (1) provides for a stay of secured creditors' enforcement rights for a maximum period of 90 days from the date on which the bankruptcy declaration is rendered. Article 59 paragraph (1), on the other hand, requires secured creditors to exercise their rights no later than two months after the commencement of insolvency. The different starting points for these two periods indicate that the date of the bankruptcy declaration, the period of the enforcement stay, and the commencement of insolvency must be treated as distinct legal events. Studies concerning secured creditors have highlighted the tension between these time restrictions and the protection inherent in security rights over assets (Silalahi and Claudia: 2020; Yusticia and Rumesten: 2020).

The interpretive issue centers on the phrase "after the commencement of insolvency" in Article 59 paragraph (1). This phrase establishes the commencement of insolvency as the triggering event for the two-month time limit. Therefore, the proposition that a bank invariably has "two months from the bankruptcy declaration" does not accurately reflect the wording of the provision. An incorrect determination of the starting date may have significant consequences: a bank may be deemed to have failed to exercise its enforcement rights within the prescribed period, while the curator and other creditors may rely on a different date to determine when responsibility for the sale of the collateral shifts. Certainty regarding the relevant date is particularly important because enforcement proceedings, including preparations for the sale of collateral, involve measures that cannot always be completed immediately after insolvency commences (Republic of Indonesia: 2004; Yusticia and Rumesten: 2020).

These difficulties become even more apparent in bankruptcy proceedings arising from a Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang* or PKPU) proceeding. The Elucidation of Article 292 of Law Number 37 of 2004 links a bankruptcy declaration, under certain circumstances, to an immediate state of insolvency. However, a question arises as to when such insolvency becomes legally effective for purposes of calculating the parties' respective rights and time limits. Through Decision Number 181/PUU-XXIII/2025, the Constitutional Court provided a conditional interpretation of the Elucidation of Article 292: the state of insolvency takes effect when it is declared by operation of law by the supervisory judge at a creditors' meeting and recorded in the minutes of that meeting. This decision provides a verifiable basis for determining the commencement date of insolvency in cases falling within its scope. Although the decision does not alter the wording of Article 59 paragraph (1), it is directly relevant to its application because Article 59 uses the commencement of insolvency as the starting point of the prescribed time limit (Constitutional Court: 2026).

The need for a verifiable starting date is also related to the practical need to prevent the retroactive reduction of the period available for enforcement. Nursaid and Yahanan demonstrate that a retroactively determined insolvency period may reduce the effective opportunity available to secured creditors to exercise their rights. For banks, this issue concerns their ability to realize the value of collateral and estimate the amount of outstanding debt that can be recovered. For curators and other creditors, a clearly established date is necessary to determine when the sale of collateral must be conducted within the mechanism for liquidating the bankruptcy estate. These competing interests demonstrate that the issue under Article 59 paragraph (1) is not merely a matter of calculating a two-month period, but also of

establishing a common and reliable temporal reference point for all parties involved (Nursaid and Yahanan: 2020).

In addition to determining the commencement of the time limit, the legal consequences arising upon its expiration require careful distinction. Article 59 paragraph (2) provides for the curator to take over the sale of secured assets once the period granted to secured creditors has expired, while continuing to respect the secured creditor's rights to the proceeds of the sale. Accordingly, the expiration of the bank's opportunity to sell the collateral independently cannot automatically be equated with the extinguishment of its right to obtain repayment from the proceeds of the collateral. Likewise, the legal position of the portion of the bank's claim that remains unsatisfied by the proceeds of the sale must be distinguished from the bank's rights over the secured asset itself. Without such distinctions, an explanation of the consequences of the expiration of the statutory period may provide an overly broad impression that the secured creditor's rights are extinguished altogether (Republic of Indonesia: 2004; Silalahi and Claudia: 2020).

Based on these issues, this study addresses two research questions. First, how should the starting point and scope of the two-month time limit under Article 59 paragraph (1) be interpreted systematically, particularly following Constitutional Court Decision Number 181/PUU-XXIII/2025? Second, what are the legal consequences of the expiration of this period for a bank's authority to enforce collateral and its right to obtain repayment? This study focuses its analysis on three matters that are frequently conflated in discussions of bankruptcy law: the commencement of the statutory time limit, the expiration of the authority to sell collateral independently, and the continuing right to the proceeds from the sale of collateral. Distinguishing these three matters is expected to provide a more legally certain interpretation for banks, curators, and other creditors.

RESEARCH METHODS

This study employs a normative legal research method to address the issue of legal certainty concerning the time limit for the enforcement of security by banks after a debtor has been declared bankrupt. The objects of analysis are the legal norms governing the rights of creditors holding security rights over assets, the relationship among those norms, and the legal consequences arising upon the expiration of the enforcement period. Normative legal research was selected because the principal question addressed in this article concerns the meaning and application of legal provisions, particularly the phrase "after the commencement of insolvency" in Article 59 paragraph (1) of Law Number 37 of 2004. This study does not employ interviews, observations, or empirical measurements of the time required to conduct auctions (Muhaimin: 2020).

This study applies three approaches. First, the statutory approach is used to examine Article 59 paragraph (1) in conjunction with Articles 55 through 60, Article 178, and Article 292 of Law Number 37 of 2004, as well as Article 21 of Law Number 4 of 1996. These provisions must be read together because a bank's right to enforce security, the stay on the exercise of that right, the commencement of insolvency, and the transfer of responsibility for the sale of collateral to the curator are governed by different statutory provisions (Republic of Indonesia: 1996; Republic of Indonesia: 2004).

Second, the conceptual approach is employed to distinguish the right of independent enforcement from the preferential right to obtain repayment. This distinction provides the basis for determining whether the expiration of the two-month period terminates the bank's entire legal position as a secured creditor (*kreditor separatis*) or merely restricts its authority to sell the collateral independently. In developing this analytical framework, the study examines academic perspectives on the relationship between security rights over assets and the collective liquidation of a bankruptcy estate, including debates concerning the time limitations imposed on secured creditors (Rusli: 2019; Silalahi and Claudia: 2020; Yusticia and Rumesten: 2020).

Third, the case-law approach focuses on Constitutional Court Decision Number 181/PUU-XXIII/2025. This decision was selected because it provides a conditional interpretation of the Elucidation of Article 292 of Law Number 37 of 2004 regarding the point at which insolvency takes effect in bankruptcy proceedings arising from a Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang* or PKPU) proceeding. The study examines both the operative part of the decision and the Court's legal reasoning to determine its implications for calculating the time limit under Article 59 paragraph (1). The scope of the decision's implications is carefully delineated: the decision interprets the Elucidation of Article 292 and does not amend the wording of Article 59 paragraph (1) (Constitutional Court: 2026).

The primary legal materials examined in this study consist of Law Number 37 of 2004, Law Number 4 of 1996, and Constitutional Court Decision Number 181/PUU-XXIII/2025. Secondary legal materials include textbooks on bankruptcy law, books on legal research methodology, and journal articles discussing the legal position of secured creditors, the time limit for the sale of collateral, and issues arising from the retroactive determination of insolvency. The work of Nursaid and Yahanan is specifically used to identify legal issues arising when the determination of the commencement of insolvency effectively shortens the period available to creditors to exercise their enforcement rights (Nursaid and Yahanan: 2020). The legal materials were collected through a literature review of statutory texts, copies of judicial decisions, books, and journal articles. Statutory provisions and judicial decisions were verified against the official publications of the respective issuing institutions.

The analysis is conducted qualitatively in three stages. First, the study identifies the legal events that trigger each relevant statutory period, namely the date of the bankruptcy declaration for the stay on enforcement and the date of the commencement of insolvency for the time limit prescribed under Article 59 paragraph (1). Second, the study applies a grammatical interpretation to the temporal language and the obligation to "exercise its rights" under Article 59, followed by a systematic interpretation that examines the consequences of the expiration of the prescribed period under paragraph (2) in conjunction with the provisions governing the proceeds from the sale of collateral. Third, the resulting interpretations are used to assess separately their implications for the bank's authority to sell the collateral independently, the bank's rights to the proceeds of the sale, and the interests of other creditors. The conclusions of this study take the form of legal arguments and recommendations for statutory reform; they are not presented as empirical findings concerning the practices of all Commercial Courts or auction offices.

RESULTS AND DISCUSSION

1. Three Temporal Stages and the Position of Banks as Secured Creditors

A bankruptcy declaration places the debtor's assets under a general attachment, with their administration and liquidation entrusted to the curator. This mechanism enables creditors' claims to be resolved through a collective process. However, creditors do not all occupy the same legal position. A bank holding a valid security right over assets has a specific legal relationship with the collateral. This relationship grants the bank the right to obtain repayment from the value of the secured assets in accordance with the priority attached to its security right. In this context, the bank is classified as a secured creditor (*kreditor separatis*), namely, a creditor whose enforcement rights remain legally recognized even after the debtor has been declared bankrupt (Republic of Indonesia: 2004; Rusli: 2019).

The legal basis for this recognition is found in Article 55 paragraph (1) of Law Number 37 of 2004. This provision stipulates that holders of pledges, fiduciary security, mortgage rights, hypothecs, or other security rights over assets may enforce their rights as if no bankruptcy had occurred. For banks holding mortgage rights, this recognition is consistent with Article 21 of Law Number 4 of 1996, which preserves the authority of a mortgage right holder when the grantor of the mortgage right is declared

bankrupt. Nevertheless, the phrase "as if no bankruptcy had occurred" must be read in conjunction with the limitations expressly referred to in Article 55 paragraph (1), namely Articles 56, 57, and 58 of the Bankruptcy Law. Accordingly, the bank's security rights over the collateral remain intact, while the exercise of its enforcement rights is subject to the specific rules governing bankruptcy proceedings (Republic of Indonesia: 1996; Republic of Indonesia: 2004).

These provisions establish three temporal stages that must be distinguished. The first stage begins when the bankruptcy declaration is rendered. From this date, Article 56 paragraph (1) stays the enforcement rights of secured creditors for a maximum period of 90 days. The Elucidation of this provision associates the stay with the possibility of reaching a composition, optimizing the value of the bankruptcy estate, and facilitating the performance of the curator's duties. Thus, the stay serves a specific function in the administration of bankruptcy proceedings; it does not extinguish the bank's claim or the security right underlying that claim (Republic of Indonesia: 2004).

The second stage concerns the expiration of the stay. Article 57 paragraph (1) provides that the stay terminates by operation of law if the bankruptcy proceedings end earlier or when insolvency commences as referred to in Article 178 paragraph (1). Rather than merely waiting for the stay to expire, a creditor whose rights are stayed may also invoke the mechanism under Article 57 to request the curator to lift the stay or modify its conditions. If the curator rejects the request, the provision allows an application to be submitted to the supervisory judge. The existence of this mechanism demonstrates that the 90-day period constitutes the maximum duration of the stay rather than a mandatory waiting period that banks must, in every case, observe until its final day (Republic of Indonesia: 2004).

The third stage begins when the bankruptcy estate enters a state of insolvency. It is from this event that Article 59 paragraph (1) calculates the maximum two-month period within which secured creditors must exercise their rights. Consequently, the 90-day period and the two-month period cannot automatically be aggregated into a single enforcement period. They regulate different matters: Article 56 limits the duration of the stay following the bankruptcy declaration, whereas Article 59 limits the period available to a bank to commence the exercise of its enforcement rights after insolvency begins. This distinction is important both for the bank's scheduling of enforcement measures and for the curator, who must determine when he or she is authorized to demand the surrender of the collateral pursuant to Article 59 paragraph (2) (Republic of Indonesia: 2004; Silalahi and Claudia: 2020).

2. Determining the Commencement of Insolvency and the Impact of the Constitutional Court Decision

Article 178 paragraph (1) of Law Number 37 of 2004 provides for several circumstances under which the bankruptcy estate becomes insolvent by operation of law: when no composition plan is proposed at the creditors' claim-verification meeting, when a proposed composition plan is not accepted, or when confirmation of the composition is rejected by a decision that has acquired final and binding legal force. The relevant event in a particular case must therefore be identified before calculating the time limit under Article 59 paragraph (1). The date of the bankruptcy declaration alone does not necessarily determine when insolvency begins, because proceedings concerning the possibility of a composition may continue after the bankruptcy declaration has been rendered (Republic of Indonesia: 2004).

The distinction between a legal event and evidence establishing the date of that event has practical significance. Under Article 178 paragraph (1), insolvency arises *by operation of law* when the prescribed conditions are satisfied. Nevertheless, for banks, curators, and other creditors, the fulfillment of those conditions must be ascertainable through relevant procedural documents, such as the minutes of a creditors' meeting or a decision concerning confirmation of a composition. Without a commonly verifiable basis for determining the relevant date, one party may consider that the statutory period has already commenced while another may still be awaiting certainty regarding the outcome of the

composition proceedings. A retroactive determination of the commencement date is particularly problematic where it effectively reduces the period available to the bank to commence enforcement. This issue has also been identified by Nursaid and Yahanan in their study concerning the retroactive determination of insolvency periods (Nursaid and Yahanan: 2020).

The issue assumes a particular form when bankruptcy arises from Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang* or PKPU) proceedings. The Elucidation of Article 292 of Law Number 37 of 2004 links a bankruptcy declaration, under the circumstances governed by that provision, directly to a state of insolvency. A question subsequently arises as to when that insolvency becomes legally effective for purposes of calculating the period limiting the rights of secured creditors. Different interpretations have direct consequences: if the commencement date is deemed to be the date of the bankruptcy declaration without adequate clarity for the parties, part of the two-month period may elapse before the bank has a verifiable legal basis upon which to act.

Constitutional Court Decision Number 181/PUU-XXIII/2025 addresses this issue within the scope of the Elucidation of Article 292. The Court held that the Elucidation must be interpreted to mean that the state of insolvency arising as a consequence of the bankruptcy declaration takes effect when it is declared by operation of law by the supervisory judge at a creditors' meeting and recorded in the minutes of that meeting. The Court emphasized the importance of temporal certainty for parties whose rights are subject to statutory time limits, including secured creditors. Accordingly, in bankruptcy proceedings falling within the scope of Article 292, the declaration of the supervisory judge and the minutes of the creditors' meeting provide an important basis for identifying the commencement of the two-month period under Article 59 paragraph (1) (Constitutional Court: 2026).

The scope of the decision must, however, be carefully observed. The Constitutional Court did not amend the wording of Article 59 paragraph (1), nor did it establish an identical procedure for determining the commencement of insolvency in every type of bankruptcy proceeding. In bankruptcy proceedings governed by Article 178 paragraph (1), the events specified in that provision remain the basis for analysis. In proceedings falling within the scope of Article 292, the conditional interpretation established in Constitutional Court Decision Number 181/PUU-XXIII/2025 must be taken into account. This distinction provides a more precise answer to the question of when the statutory period begins than the generalized proposition that it is simply "two months from the bankruptcy declaration" (Republic of Indonesia: 2004; Constitutional Court: 2026).

3. The Meaning of "Exercise Its Rights" Within the Two-Month Period

Article 59 paragraph (1) requires a secured creditor to "exercise its rights" no later than two months after the commencement of insolvency. The interpretation of this phrase determines whether a bank must complete the sale of the collateral within two months or whether it is sufficient for the bank to commence enforcement within that period. In this respect, the Elucidation of Article 59 paragraph (1) cannot be disregarded. The Elucidation states that the expression "must exercise its rights" means that the creditor must have commenced the exercise of its rights. Accordingly, the proposition that every sale of collateral must be completed before the expiration of the two-month period is inconsistent with the official Elucidation of the Law (Republic of Indonesia: 2004).

Although this clarifies the basic interpretive position, the operational issue is not entirely resolved. The Law does not specify in detail which actions are sufficient to demonstrate that enforcement has commenced. Is an internal decision by the bank to enforce the collateral sufficient? Must an auction application have been submitted to and received by the competent authority? What if an auction has been scheduled before the statutory deadline but is to take place after that deadline? The Elucidation of Article 59 paragraph (1) establishes that the sale need not necessarily be completed within two months, but it does not provide a uniform standard for identifying the initial act of enforcement across different methods of execution.

From a systematic interpretive perspective, the phrase "has commenced the exercise of its rights" is more convincingly associated with an external act that is concrete, relevant to the chosen method of enforcement, and capable of being verified by reference to a specific date. Preparatory measures undertaken solely within the bank are difficult to distinguish from an intention that has not yet been implemented. By contrast, an auction application that has been submitted, a sale measure undertaken in accordance with the applicable procedure, or another legally relevant enforcement step may provide evidence that the bank has entered the enforcement stage. This analysis constitutes a proposed interpretation of the phrase contained in the Elucidation of Article 59 paragraph (1), rather than a list of actions expressly prescribed by the Law. The ultimate assessment remains dependent on the type of collateral, the method of enforcement, the available documentation, and the circumstances of the particular case (Republic of Indonesia: 2004).

Article 59 paragraph (2) must be read in conjunction with this Elucidation. This paragraph requires the curator, after the expiration of the period prescribed in paragraph (1), to demand the surrender of the secured assets and subsequently sell them in accordance with Article 185, without prejudice to the secured creditor's rights to the proceeds of the sale. Read together, these provisions raise a further question: what is the legal status of an enforcement process that was commenced within the prescribed period but remains incomplete when the two-month period expires? The Law does not provide a detailed mechanism governing the transition of an ongoing enforcement process. It would therefore be inappropriate to state categorically that every item of collateral remaining unsold on the final day automatically proves that the bank has failed to comply with Article 59 paragraph (1). Conversely, an initial step undertaken merely as a formality without reasonable subsequent progress may also be inconsistent with the objective of expediting the liquidation of the bankruptcy estate. This is precisely where evidence of the commencement of enforcement and the subsequent progress of the enforcement process must be assessed (Republic of Indonesia: 2004; Yusticia and Rumesten: 2020).

For banks, a significant practical consequence of this interpretation is the importance of documentation. The date on which documents concerning the commencement of insolvency are received, the date on which enforcement measures are initiated, proof of receipt of an enforcement or auction application, and correspondence with the curator should all be consistently recorded. Such documentation does not create new rights, but it assists in establishing whether the bank commenced exercising its rights within the prescribed period. For the curator, the same documentation assists in determining when the obligations under Article 59 paragraph (2) should be performed. Where disagreement arises, the core issue in dispute should be precisely identified: whether it concerns the commencement date of insolvency, the existence or absence of an initial enforcement measure, or the subsequent continuation of the sale process.

4. Consequences of the Expiration of the Time Limit for Banks and Other Creditors

The legal consequences of the expiration of the period under Article 59 must be distinguished according to the particular right concerned. The first issue concerns the bank's authority to control the sale of the collateral. Article 59 paragraph (2) places the curator in the position of demanding the surrender of the secured assets for sale in accordance with the liquidation procedure after the statutory period has expired. Accordingly, where the bank has not commenced exercising its rights within the prescribed period, the legal basis for the bank to retain independent control over the sale becomes weaker. However, in cases where the bank can demonstrate that enforcement was commenced within the prescribed period, the relationship between the ongoing enforcement process and the curator's authority requires further assessment under Article 59 paragraph (1), its Elucidation, and paragraph (2) (Republic of Indonesia: 2004).

The second issue concerns the right to the proceeds from the sale of the collateral. Article 59 paragraph (2) expressly provides that a sale conducted by the curator does not prejudice the secured

creditor's rights to the proceeds of that sale. This provision prevents the transfer of responsibility for the sale to the curator from being equated with the extinguishment of all protection arising from the security right. Accordingly, the proposition that a bank "automatically becomes an unsecured creditor" merely because the enforcement period has expired is an oversimplification that does not reflect the wording of Article 59 paragraph (2). The bank's rights to the proceeds from the collateral must continue to be recognized and calculated in accordance with the applicable legal provisions (Republic of Indonesia: 2004).

The third issue concerns any deficiency remaining after the value of the collateral has been realized. Article 60 paragraph (1) requires a creditor exercising enforcement rights to account to the curator for the proceeds of the sale and to surrender any surplus remaining after deduction of the debt, interest, and costs. Article 60 paragraph (2) must also be taken into account where there are privileged creditors holding a higher priority under the relevant provision. Furthermore, Article 60 paragraph (3) provides that where the proceeds of the sale are insufficient to satisfy the secured claim, the secured creditor may submit the deficiency against the bankruptcy estate as an unsecured claim after requesting verification of the claim. Thus, unsecured creditor status applies to the portion of the claim that remains unsatisfied by the proceeds of the collateral, rather than automatically to the entire claim that was originally secured (Republic of Indonesia: 2004).

This distinction is also relevant to other creditors. If the bank delays commencing enforcement or if the sale of collateral is postponed without certainty, the liquidation of the bankruptcy estate may likewise be delayed. Conversely, if the curator takes over the sale while disregarding evidence that the bank has already commenced exercising its rights in accordance with the Elucidation of Article 59 paragraph (1), a dispute over authority may arise and further obstruct the sale. Both possibilities demonstrate that procedural certainty benefits all creditors. The objective is not merely to determine who is authorized to sell the collateral, but also to ensure that its value can be realized and that the proceeds can be distributed in accordance with the applicable order of priority (Silalahi and Claudia: 2020; Yusticia and Rumesten: 2020).

5. Interpretive Framework and Directions for Legal Reform

Based on the relationship among Articles 55 through 60, Article 178, the Elucidation of Article 59 paragraph (1), and Constitutional Court Decision Number 181/PUU-XXIII/2025, an interpretive framework may be formulated as follows. First, the date of the bankruptcy declaration constitutes the starting point of the stay under Article 56, whereas the date of the commencement of insolvency constitutes the starting point of the two-month period under Article 59 paragraph (1). Second, the determination of the commencement of insolvency must follow the procedural path applicable to the particular case: either the circumstances specified in Article 178 paragraph (1) or, for cases falling within the scope of Article 292, the interpretation of the Elucidation of Article 292 as established by the Constitutional Court. Third, the relevant requirement within the two-month period is that the creditor must have commenced exercising its rights, as expressly stated in the Elucidation of Article 59 paragraph (1). Fourth, the transfer of responsibility for conducting the sale to the curator does not extinguish the creditor's rights to the proceeds of the collateral under Article 59 paragraph (2) (Republic of Indonesia: 2004; Constitutional Court: 2026).

This framework resolves much of the interpretive difficulty but nevertheless reveals a continuing need for statutory reform. The Law does not determine the minimum external act required to establish that enforcement has commenced, how to assess enforcement measures that were initiated within the prescribed period but continue beyond the two-month deadline, or the coordination procedure to be followed where the bank and the curator disagree regarding the progress of enforcement. As a proposal for future legal reform (*de lege ferenda*), Article 59 could be clarified by specifying the documentary evidence establishing the commencement date of insolvency, the criteria for determining when

enforcement has commenced according to the type of collateral and method of sale, an obligation to notify the curator of the progress of enforcement, and procedures for dealing with enforcement proceedings that remain ongoing when the statutory period expires. Such reform would seek to reduce disputes without undermining the function of the statutory deadline as a mechanism for promoting the timely liquidation of the bankruptcy estate.

At the implementation level, banks and curators should operate on the basis of the same documentary evidence concerning the relevant dates. In particular, in bankruptcy proceedings falling within the scope of Article 292, the declaration of the supervisory judge at the creditors' meeting and the minutes of that meeting must be taken into account in accordance with Constitutional Court Decision Number 181/PUU-XXIII/2025. The next step is to record the enforcement measures actually undertaken by the bank, together with their dates and subsequent progress. Such documentation and coordination practices constitute recommendations derived from the issues examined in this study; they do not constitute new procedural obligations created by the Constitutional Court's decision (Constitutional Court: 2026).

CONCLUSION

The time limit under Article 59 paragraph (1) is calculated as two months from the commencement of insolvency, whereas the stay of enforcement rights under Article 56 is calculated from the date on which the bankruptcy declaration is rendered and applies for a maximum period of 90 days. These two periods have different starting points and perform different legal functions. In bankruptcy proceedings falling within the scope of Article 292, Constitutional Court Decision Number 181/PUU-XXIII/2025 clarifies that insolvency takes effect when it is declared by operation of law by the supervisory judge at a creditors' meeting and recorded in the minutes of that meeting (Republic of Indonesia: 2004; Constitutional Court: 2026).

The Elucidation of Article 59 paragraph (1) confirms that a creditor must have *commenced* exercising its rights within the two-month period; the sale of the collateral does not necessarily have to be completed within that period. What still requires greater legal certainty is the determination of which actions constitute sufficient evidence that enforcement has commenced and how an enforcement process that was initiated within the prescribed period but remains incomplete should be treated. Where responsibility for the sale is transferred to the curator pursuant to Article 59 paragraph (2), the bank's rights to the proceeds of the collateral remain protected. Any portion of the claim that remains unsatisfied by the proceeds of the sale may be submitted as an unsecured claim pursuant to Article 60 paragraph (3), subject to the claim-verification process. Reform of Article 59 is therefore necessary to clarify the criteria for determining the commencement of enforcement and the procedures applicable to enforcement proceedings that extend beyond the statutory period.

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