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LEGAL CONSIDERATIONS FOR GUARANTEE PERSONNELS WITH RELATED TO DEBTOR PROPERTY LIMITATIONS IN THE FINANCIAL PROCESS

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Abstract:

This thesis uses normative juridical research because it focuses on library research, which essentially examines legal principles, legal systematics, and legal synchronization by analyzing them. The data used in this research is secondary data consisting of primary legal materials, namely the bankruptcy legislation and the Civil Code. Secondary material is sourced from books and literature related to bankruptcy. The data obtained were analyzed using the analytical description method. From the results of the research, it can be concluded that in the event of a bankruptcy of the main debtor, according to the statutory provisions on coverage, it can be held accountable for fulfilling the obligations of the main debtor if the assets of the main debtor are insufficient. In addition, in the bankruptcy provisions, the guarantor (personal guarantee) becomes equal in position to the debtor, so that the consequence is that the personal guarantee loses the right to manage his assets and his authority falls to the curator

Keywords: Personal guarantee, bankruptcy, debtor

1.INTRODUCTION

Talking about the needs of human life will certainly not end. Besides the increasing number (quantity) due to the need or biological growth, there is also an increase in quality (quality) along with the times. So it is not surprising, if humans always have various kinds of needs that demand to be always fulfilled, such as clothing, food, shelter and other needs that are tertiary (luxury). Along with the increase in these needs, both in the form of goods and services, there is also an increase in the need for business expansion for business people. Seeing the development of needs that are increasingly increasing in number is a potential prospective market, then encouraging every producer or provider of goods and services to as much as possible to fulfill these needs (Kristianto, 2009).

The existence of high demand will stimulate business people to compete to increase their supply. This is very reasonable, considering that the purpose of doing business of business actors is to get the maximum possible profit from the results of their business. But unfortunately, not all producers / business actors can fulfill that need. Considering that to expand the business, it requires a large amount of capital through an increase business capital, so business actors who do not have sufficient capital will try to obtain fresh funds that are able to realize their business expansion. The fresh funds can be obtained from various parties, both banking institutions and other financing institutions. In their function as a provider of credit facilities, banks or financing institutions need guarantees from credit recipients, this is important for the security of the capital that has been distributed and for legal certainty the fulfillment of the return of the financing / credit facilities that have been distributed.

As it is known, the essential element of credit is the trust of creditors in borrowing customers as debtors. This trust arises because of the fulfillment of all the conditions and requirements for obtaining credit, including the clear designation of the credit, the existence of collateral or collateral objects, and so on.

The credit guarantee essentially serves to guarantee the certainty of the debtor's debt repayment if the debtor fails to promise or is declared bankrupt. With this credit guarantee guarantee, it will provide a guarantee of protection, both for the security and legal certainty of creditors that their credit will continue to return even though the debtor's customer defaults, namely by executing the object of the bank's credit guarantee.

The provision of guarantees by debtors to creditors can also be seen as a prudent perspective by creditors (prudent), that is, if the debtor's customer is declared in default, the bank or financing institution can easily execute the guarantee given by the debtor customer based on the design of the legal relationship that has been made previously. Thus, the guarantee in providing credit is a "powerful" means of securing credit extension.

In general, in the Civil Code (hereinafter the Civil Code) there are two parts to regulating guarantees. The first regulation is found in Book II of the Civil Code, chapters XX and XXI, concerning Material Security which in

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practice has been added to the Law on Mortgage and the Law on Fiduciary Security. The second regulation is about personal / corporate guarantor which is contained in Book III of the Civil Code Chapter XVII.

The formulation of guarantees in general can be seen in article 1131 of the Civil Code, namely all objects of a person, both movable and immovable, both existing and new ones, will be borne in the future for all individual engagements. Because this general guarantee is still considered inadequate by creditors so often creditors ask for additional guarantees or special guarantees. This special guarantee can be in the form of a material guarantee and individual guarantee (borgtocht) or in banking practice it is known as a Personal Guarantee.

Article 1131 of the Civil Code stipulates that the assets of the debtor are not only to guarantee the obligation to pay off debts to creditors obtained from the debt agreement between them, but to guarantee all obligations arising from the debtor's engagement. As according to the provisions of article 1233 of the Civil Code, an engagement (between a debtor and creditor) arises or is born because of an agreement between the debtor and creditor or arises or is born due to the provisions of law. According to article 1234 of the Civil Code, the form of an engagement is "to give something", "to do something", or "to not do something". In legal terms, an engagement in such a form is also called "achievement". The party that does not perform the performance is said to have committed "default". The everyday term is called "broken promise" or "default" (English: in default) (Sjahdeini, 2004).

In the material guarantee, the debtor who owes guarantees the goods to the creditor, as collateral for the debt that the debtor borrows. The collateral for these objects will be executed if the debtor defaults at a later date. Whereas in an individual guarantee, the guarantee provided by the debtor is not in the form of an object but in the form of a statement by a third party (guarantor or guarantor) who has no interest in either the debtor or creditor, that the debtor can be trusted to carry out the obligations agreed upon, provided that if the debtor does not fulfill his obligations, the third party is willing to carry out the debtor's obligations. This individual guarantee is usually stated in the form of a guarantee agreement which is always made together with the credit agreement.

In general, in accordance with the provisions found in article 1820 of the Civil Code, the guarantor in principle binds himself to fulfill his commitment to the creditor when the debtor himself is unable to fulfill the agreement he has made. So, if there is no default from the debtor to the creditor, then in principle the guarantor does not have any obligations to the creditor.

The reasons for this underwriting agreement are, among others, because the insurer has the same economic interest in the business of the borrower (there is a relationship of interest between the guarantor and the borrower), for example the guarantor as the director of the company as the largest shareholder of thethe company personally guarantees the company's debts and the two parent companies help guarantee the debt of the branch company (Fuadi, 2013).

Although the role of collateral in the credit agreement seems insignificant, in practice this guarantee provides security for creditors, it is precisely this juridical guarantee that provides legal certainty for repayment and repayment of loans that have been channeled. .

The juridical guarantee function is the legal certainty of repayment of debt in a credit agreement or in a debt or credit or the certainty of the realization of an achievement in an agreement. This legal certainty is by binding guarantee agreements through guarantee institutions known in Indonesian law. Material guarantee institutions can be in the form of mortgage, creditverban, Fiducia, Pawn institutions, while individual guarantee institutions can be in the form of insurance institutions (borgtocht), bank guarantees, and so on (Salim, 2016).

Along the way, sometimes the company's wheels have decreased and the production results cannot meet the company's costs. This event will certainly affect all activities and transactions within the company, including the payment of debts to creditors. This is included in default, where the debtor is unable to fulfill his responsibility to pay off the company's debts to creditors, such a condition can also be called bankruptcy.

Bankruptcy is a condition in which the debtor is unable to make payments on debts from his creditors. The condition of being unable to pay is usually due to financial distress of the debtor's business which has experienced a setback. Meanwhile, bankruptcy is a court decision that results in general confiscation of all assets of the bankrupt debtor, both existing and future. The management and settlement of bankruptcy is carried out by the curator under the supervision of the supervisory judge with the main objective of using the proceeds from the sale of the assets to pay all debts of the bankrupt debtor proportionally (prorate parte) and in accordance with the creditor structure. (Hasan, 1998).

The terms and conditions for bankruptcy have been regulated in Law Number 37 of 2004 concerning Bankruptcy and Postponement of Obligation to Pay Debt Article 2 paragraph (1) and (2), namely:

(1) A debtor who has two or more Creditors and does not pay in full at least one overdue debt which can be collected, shall be declared bankrupt by verdict. Court, fine at his own request or at the request of one or more creditors.

(2) The application referred to in paragraph (1) can also be submitted by the prosecutor for the public interest.

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The decision to declare bankruptcy changes the legal status of a person to become incapable of taking legal actions, controlling and managing his assets since the decision of the bankruptcy statement was pronounced. The main requirement to be declared bankrupt is that a debtor has at least 2 (two) creditors and does not pay off one of his overdue debts. In this payment arrangement, both the debtor's own interests and the creditor's interests are involved. With the declaration of bankruptcy, it is hoped that the debtor's bankruptcy assets can be used to repay all debtor debts in a fair and equitable and balanced manner. Bankruptcy does not release a person who is declared bankrupt from the obligation to pay his debts.

Bankruptcy is a commercial solution to get out of the debt problem that crushes a debtor, where the debtor no longer has the ability to pay these debts to his creditors. Thus, if the debtor realizes the condition of the inability to pay due obligations, then the step to submit a voluntary petition for self-bankcruptcy becomes a possible step, or the court will determine the bankruptcy of the debtor if Then evidence is found that the debtor is no longer able to pay debts that are due and can be collected (involuntary petition for bankcruptcy).

Bankruptcy causes the debtor who is declared bankrupt to lose all "civil rights" to control and manage assets that have been included in the bankruptcy estate. This "suspension" of civil rights is enforced by article 22 of the Bankruptcy Law as from the moment the decision to declare bankruptcy is pronounced. This also applies to the husband or wife of a bankrupt debtor who is married in a assets association.

The bankruptcy experienced will certainly have an effect on the material collateral that is given when you first enter into a capital loan loan agreement. Debtor assets can be distributed to creditors to settle their debts to creditors, based on Article 1132 of the Civil Code which states that: "The material is a collective guarantee for all those who deposit on it; income from the sale of these objects is divided according to the balance, that is, according to the size of the respective receivables, unless there are legitimate reasons for prioritization (preference rights) among these debtors.

The condition for the validity of an object or property of a Debtor that can be included as a bankruptcy bill is if the debtor's property or property entered as a bankruptcy bill meets the elements of Article 1131 of the Civil Code (KUH Perdata) which determines: All movable and immovable property belongs to the debtor, both existing and existing ones, becomes a guarantee for the debtor's individual engagements.

In addition (Ahmad Yani dan Gunawan Widjaya, 2002) to having implications for collateral for the debtor's property and assets, bankruptcy will also result in a request for accountability from the individual guarantor to participate in paying off debts, if the material collateral provided by the debtor to the creditor is insufficient for the amount of debt to be paid. This then became a concern for the author, with reference to the bankruptcy problems faced by PT. Meranti Maritime as the main debtor and Henry Djuhari as the Insurer.

The rights of a Personal Guarantee as stipulated by the Civil Code are usually referred to as special rights. These privileges consist of: the right to sue in advance (Voorecht van uitwinning), the right to share debts (voorecht van schuldsplitsing), the right to file a lawsuit (Article 1849, 1850 of the Civil Code) and the right to be dismissed from coverage due to obstruction from subrogation. due to creditor's wrongdoing.

Personal guarantee privileges in the form of the right to sue in advance as regulated in Article 1831 of the Civil Code which reads as follows: "The insurer is not obliged to pay to the creditor unless the debtor fails to pay his debt, in that case the debtor's property must be confiscated and sold first. to pay off the debt.

The provisions of this article mean that the insurer is only obliged to pay debtor's debt to the creditor after the debtor is negligent to fulfill his own achievements, so that the Personal Guarantee has the right to demand that the debtor's property be confiscated and sold first to pay off the debtor's debt to the creditor. So the Personal Guarantee is only obliged to pay the debtor's remaining outstanding debt after all of the debtor's assets and assets have been confiscated and sold.

However, usually in a personal guarantee agreement there is a clause where the personal guarantee releases his privileges. This matter is often not taken seriously by a personal guarantee, where the release of this privilege has serious legal consequences if the debtor does not fulfill his / her achievements (obligations) to his creditors. And one of the possible consequences is that the personal guarantee can be bankrupt.

2.FRAMEWORK

Legal research is a scientific activity based on methods, systematics, and certain thoughts, which aim to study one or several phenomena of a particular law by analyzing it, except that, there is also an in-depth examination of the legal facts to then seek a solution to the problem. - problems that arise in the symptoms concerned. Of course, in legal research, a legal researcher can carry out activities to reveal "legal truths" that are planned methodologically, systematically and consistently or by chance, for example by basing himself on circumstances or the method of chance (trial and error) in that activity. Therefore, it is not uncommon for an activity to seek "legal truth" based more on respect for an opinion or discovery that has been produced by a certain person or institution because of this

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authority or authority, so as to test its findings. Or is it more based on efforts made through mere experiences. Activities like this often ignore methods and systematics, besides being not based on solid thinking and planned work.

Legal theory which in English is called theory of law, while in Dutch it is called rechtstheorie has a very important position in the learning process and in the application of law because the existence of legal theory can help in the framework of solving various problems, where in in normative law it is not regulated. Legal theory has a very important position and regulations in thesis and dissertation research carried out by students who take the second (S2) and three (S3) level of education. This is because in every research proposal preparation or research report, thesis and dissertation are always included, reviewed and analyzed in the theories that will be applied in the research. One of the substances in a thesis and dissertation research report or proposal is the existence of a theoretical framework. The theoretical framework is used in analyzing the problems that are the focus of the study, whether the results of the research are in accordance with the theory used and / or will change and perfect the theory used or applied.

Based on the description of the concepts above, the theories that can be used to discuss the problems in this thesis are:

A. Legal Certainty Theory

Legal certainty is the certainty of legal rules. Not a certainty of action against or action in accordance with the rule of law. Vant Kant (2015) said that law aims to protect the interests of each human being so that these interests cannot be disturbed, based on Vant Kant's opinion, Utrecht expressed the opinion that law has the duty to guarantee legal certainty (rechtzeker heid) in human relations. For him the law guarantees one party to the other (Nurbani, 2015).

The theory of legal certainty contains 2 (two) meanings, namely, first, there are general rules that make individuals know what actions are allowed or not to be done, and second, in the form of legal security for individuals from government abuse because with the existence of general legal rules they can find out what only that may be imposed by the State on individuals. Legal certainty is not only in the form of articles in the law but also the consistency in the judges' decisions between the decisions of one judge and the decisions of another judge for similar cases that have been decided.

The relationship between this theory of legal certainty and the problem to be examined in this study is to see to what extent the rules contained in Law number 37 of 2004 concerning Bankruptcy are applied in legal action practices, especially regarding the legal consequences of personal guarantees in companies. the bankrupt.

B. Responsibility Theory

The concept of legal responsibility is closely related to the concept of rights and obligations. The concept of rights is a concept that emphasizes the notion of rights which is coupled with the notion of obligations. The general opinion says that rights to someone are always correlated with obligations to others. A concept related to the concept of legal obligation is the concept of legal responsibility. That a person is legally responsible for certain actions or that he bears legal responsibility, meaning that he is responsible for a sanction if his actions are contrary to applicable regulations.

According to Hans Kelsen in his theory of legal responsibility states that a person is legally responsible for a certain act or that he is bearing legal responsibility, the subject means that he is responsible for a sanction in an act that is contrary.

According to Abdulkadir Muhammad, the theory of responsibility in violating the law (tort liability) is divided into several theories, namely:

a. Liability due to intentional tort liability, the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant did would result in losses.
b. Liability due to illegal acts committed due to negligence (negligence tort liability), is based on the concept of error (concept of fault) relating to morals and laws that have been mixed (intermingled).
c. Absolute responsibility for violating the law without questioning the fault (stick liability), is based on his actions either intentionally or unintentionally, meaning that even though he is not his fault he is still responsible for the losses arising from his actions.

3.RESEARCH METHODS

Before describing the meaning of legal research methods, there is nothing wrong with first arguing that the methodology has several meanings, namely (a) the logic of scientific research, (b) the study of research procedures and techniques, and (c) a system of research procedures and techniques. Based on this, it can be said that the research method is a principal means of developing science and technology as well as the arts. Therefore, research aims to reveal the truth systematically, methodologically, and consistently.

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1. Approach Method

Based on the formulation of the problem and research objectives, the approach method used is juridical normative, namely by conducting document studies, in this case the research type approach to positive law, which is based on statutory regulations related to bankruptcy.

2. Research Specifications

The research specification used is legal research which is more descriptive-analytical in nature, which describes systematically and completely the material or material in the form of data and / or information derived from literature studies.

3. Data Collection Techniques

The data collection technique used in this study is library research as secondary data, consisting of primary legal materials, namely bankruptcy legislation and Civil Code, secondary material, which is sourced from books and literature related to law. bankruptcy.

4. Data Analysis Methods

Based on the nature of this research which uses descriptive analytical research methods, the data analysis used is a qualitative approach to primary data and secondary data. The descriptive includes the content and structure of positive law, which is an activity carried out by the author to determine the content or meaning of legal rules that are used as references in solving legal problems that are the object of study.

5. Research Location

To obtain the data needed in this study, the authors conducted research with literature studies obtained from visits to several libraries, including the Jayabaya University Notary Masters Library, the University of Indonesia Library, and the Trisakti University Law Faculty Library.

6. Authenticity Research

a. Ferry Sabela from the University of Indonesia in 2008 who researched "Analysis of the Execution of Personal Guarantee (Personal Guarantee) as a Personal Guarantee". This study examines the problems of the bank's efforts to resolve bad credit using personal guarantees as well as an analysis of the decision of the South Jakarta District Court No. 580 / Pdt.G / 2002 and the decision of the DKI Jakarta High Court No.322 / PDT / 2003 to carry out the execution of personal guarantees whether it is legally appropriate.
b. Lupita Maxellia from Sebelas Maret University Surakarta in 2016 who researched on "Legal Studies on Individual Collateral for Lending at Bank Mega Surakarta". This study examines the credit approval process and the consideration of Bank Mega in approving credit with individual guarantees, as well as the implications of credit approval with individual guarantees based on applicable laws and the form of legal liability of the guarantor in the case of non-performing loans at Bank Mega Surakarta.
c. Sasikirono from Gadjah Mada University in 2008 who examined the "Existence and Implementation of Personal Guarantee in Credit Agreements at PT Bank Internasional Indonesia, Tbk Banjarmasin Branch Office". This study discusses the existence of personal guarantees (personal guarantees) in every credit extension at PT. Bank Internasional Indonesia, Tbk Banjarmasin Branch and to find out if there is bad credit, whether the personal guarantee in the credit agreement is implemented as an effort to fulfill the obligations of the debtor.
d. Wahyu Kurniawan, SH. from Airlangga University in 2017 which researched on "Responsibilities of Personal Guarantee Providers (Borgtocht) in Bankruptcy Disputes". This study examines whether the personal guarantor (borgtocht) can be held directly accountable for fulfilling the debtor's obligations to the creditor without first holding the main debtor accountable and whether the personal guarantor (borgtoch) can be directly filed for bankruptcy if the main debtor defaults.
e. Albert Eudora Chandra from Airlangga University in 2007 who researched on "Execution of Individual Security (Borgtocht)". This research examines the implementation of individual guarantee (borgtocht) execution as well as the execution procedure for individual guarantee (borgtocht).

4.RESULTS AND DISCUSSION

A. Position of Personal Guarantee Relating to Limited Assets of the Debtor in the Bankruptcy Process

In research on the bankruptcy problem of PT. Meranti Maritime as the main debtor with Henry Djuhari as Personal Guarantee) as revealed by the Commercial Court Decision at the Central Jakarta District Court No. 16Pdt.Sus-GGL / 2017 / PN.Niaga.Jkt.Pst jo. Decision No. 88 / Pdt.Sus-PKPU / 2015 / PN.Niaga.Jkt.Pst, both the main debtor and the Guarantor, both have submitted a voluntary Postponement Request for Debt Payment (PKPU) jointly for their debts to several creditors.

During the PKPU process, the Commercial Court granted the PKPU filed by PKPU applicants, namely PT Meranti Maritime and Henry Djuhari, then the Commercial Court decided to postpone the Obligation to Pay Debt (PKPU) while PKPU Petitioners I (main debtor) and PKPU Petitioners II (guarantor Personal Guarantee) for a maximum of 43 days after the decision is pronounced.

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In the bankruptcy case experienced by PT. Meranti Maritime as the main debtor and Hendry Djuhari as the Personal Guarantee, it is known that the temporary PKPU process stipulated by the PKPU and Bankruptcy Law should have a temporary PKPU period of 45 days but in the PT Meranti Maritime-Henry Djuhari bankruptcy case, the PKPU process has been extended to progress. for 270 days.

> "In its decision, Chief Justice Titiek Tedjaningsih said the voting which was conducted last Friday (19/8) did not meet the provisions of Law No.37 of 2004. Moreover, the PKPU Meranti period has expired for 270 days."

As for the considerations of the Panel of Judges at the Central Jakarta Commercial Court, it was stated that in the voting PT PANN Maritime Financing was a creditor that held guarantees (separatists) supporting the Meranti peace proposal. Meanwhile, another separatist creditor PT Bank Maybank Indonesia Tbk actually rejected the proposal.

Thus, according to the assembly, the voting results did not represent at least 2/4 of the total invoices as stated in Article 281 paragraph 1b of the Bankruptcy and PKPU Law. The percentage of support who rejected Meranti's peace proposal was 65%, while those who supported Henry also had the same amount. The minimum percentage of creditors' claims should be 66%.

And furthermore, because creditors did not accept the peace plan proposal, the Commercial Court at the Central Jakarta District Court, dated August 22, 2016 determined that PT. Meranti Maritime and Henry Djauhari are in bankruptcy. Chief Justice Titiek Tedjaningsih said the peace proposal submitted by the debtor could not be accepted because it did not fulfill the quorum as regulated in Article 281 paragraph (1) letter b of Law No. 37 of 2004 concerning Bankruptcy and PKPU. The unfulfilled quorum under the terms is that peace proposals were accepted by at least half the number of separatist creditors who together represent at least two-thirds of the entire bill.

As a result of the creditors rejecting the peace plan based on these provisions, there was a change in the legal process, which was previously pursued by peaceful means based on PKPU, changed to using the process applicable in the bankruptcy provisions.

The elucidation of Article 292 of the Bankruptcy Law and PKPU states that the decision to declare bankruptcy on the refusal of a peace results in the PKPU debtor not being able to apply for reconciliation again and therefore the direct debtor's bankruptcy property is in a state of insolvency. In general public terms, insolvency is called "broke". Jack P Friedman in his book entitled "Dictionary of Business Term" provides the following meaning: "Insolvency is: a. Inability to meet financial obligations at maturity as is appropriate in business; or b. The excess of liabilities compared to assets in a certain time. "

The insolvency brings certain legal consequences to the bankrupt debtor, the curator appointed by the Commercial Court through a bankruptcy decision based on Article 261 jo. Article 15 of the PKPU and Bankruptcy Law has the authority to settle bankruptcy assets, including checking the list of receivables, then the bankruptcy assets are immediately executed and distributed to creditors. By law, the assets of the main debtor in casu the main debtor and the Personal Guarantee Guarantor become bankruptcy budgets which will be distributed to their creditors proportionally. PT Meranti Maritime as the main debtor who is a legal entity, which has separate assets from its permanent assets, henceforth loses the right to manage its assets. The bankruptcy decision also has legal consequences, which in Article 19 of Law no. 4 of 1998 jo. Article 21 of Law No.37 of 2004 stipulates that bankruptcy includes all assets of the debtor at the time the bankruptcy declaration was made, along with everything obtained during the bankruptcy, which means that the assets of PT Meranti Maritime, both existing and existing during the bankruptcy period, will serve as collateral for debt payments. the debt.

Personal Guarantee guarantor, who in this bankruptcy issue also acts as the President Director of PT Meranti Maritime, based on the Commercial Court ruling has also been declared bankrupt.

Even though the general provisions stipulate that in a company experiencing insolvency a director cannot be held personally responsible for the company's financial obligations, that is, in accordance with the doctrine laid down by the House of Lords in the decision of the case Salomon v Salomon & Co. Ltd that a company is a separate person who must fulfill its debts from the company's assets itself, however, the Insolvency Act 1986 contains a number of provisions regarding personal liability for members of the board of directors of a company which due to their mistakes have caused the company to experience insolvency. Likewise, court decisions show this position.

The establishment of the Personal Guarantee in a bankruptcy jointly with the debtor in the PT Meranti Maritime and Henry Djuhari case, the author assumes this is one of the consequences of the release of the guarantor's privileges agreed by the insurer in the deed of coverage.

As the author has previously stated in Chapter I, there is a situation in which in the underwriting deed, Henry Djuhari stated that he gave up his privileges. The legal consequence of the release of these special rights will have a direct impact on the authority of the Insurer to demand that the debtor's assets be confiscated and sold first, then if the debtor's assets are insufficient, the Insurer can be held accountable to pay off debtors' debts. In the event that a case is continued by the curator against the opposing party, the curator can file a cancellation of all the actions

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committed by the Debtor before he was declared bankrupt, if it can be proven that the debtor's actions were committed with the intention of harming the creditor and this is known by the opposing party.

B. Legal certainty for personal guarantee if the debtor's assets are insufficient to pay the debtor's debt to the creditors

Legal certainty for the Personal Guarantee related to the limited assets of the bankrupt debtor in this study can be said to have not been implemented because the Personal Guarantee (Insurer) was bankrupt at the same time as the debtor, which resulted in not fulfilling the prior execution of the debtor as stipulated in Article 1831 of the Civil Code, besides In this study, it is known that the execution of the assets of the debtor and the guarantor is still constrained due to both juridical and non-juridical obstacles, where PT Meranti Maritime complained about its bankruptcy problem to the Indonesian Parliament, so that the process of clearing the bankruptcy estate and the rehabilitation process as regulated by The law has not been implemented.

After settlement of the bankruptcy assets, there may be a condition that the bankruptcy assets are sufficient to pay debtors 'debts to creditors or otherwise the bankruptcy assets cannot be sufficient to pay off debtors' debts to creditors.

If the bankruptcy assets are able to meet the debts of the bankrupt debtor to its creditors, the next step is rehabilitation. Rehabilitation is the restoration of the good name of a debtor who was originally declared bankrupt, through a court ruling stating that the debtor has fulfilled his obligations (Article 215 of the Bankruptcy Law and PKPU).

Requests for rehabilitation must be announced in at least 2 (two) daily newspapers, each recognized creditor can file an objection against the application, by submitting an objection letter, accompanied by reasons at the court clerk and the clerk must provide a receipt This objection can only be filed if the requirements for the application letter are accompanied by evidence stating that all creditors who have been admitted satisfactorily have not been fulfilled.

The main objective of rehabilitation is to return the bankrupt debtor to the state it was in before the bankruptcy. With the end of bankruptcy, the bankrupt debtor will automatically return to its original state without the need for a request for rehabilitation. With this official rehabilitation, the bankrupt debtor will regain general trust and be able to continue his business without burden. A request for rehabilitation is submitted to the Commercial Court which originally examined the bankruptcy concerned. However, not all bankruptcies can be requested for rehabilitation. Only the following bankruptcy decisions can be submitted for rehabilitation, which are as follows:

1. When the bankruptcy ends with a conciliation.
2. If terminated after the debt is fully paid.
3. If the bankruptcy is imposed on the debtor's property.

Thus, if the debtor is unable to pay in full or there is no peace, rehabilitation will not apply. However, the bankruptcy can end and the bankrupt debtor regains his authority to take management and ownership actions (daden van beheer er daden van eigendom). Therefore, if the debtor or guarantor tries again after the bankruptcy is cleared, the creditor can still ask for the remaining debt to be paid in full, without the need to file a new lawsuit, but only ask to carry out the existing bankruptcy decision until all his verified debts are paid in full (Article 204 of the Bankruptcy Law. and PKPU). This is because an acknowledgment of debt in bankruptcy has the same legal force as a court decision which has permanent legal force (inkracht). So, it only remains to request his execution, which is strictly regulated in the provisions of Article 205 of the Bankruptcy Law and PKPU.

Furthermore, for creditors whose receivables have not been paid in full, creditors still have the right to sue. This is in accordance with Article 204 of the Bankruptcy Law and PKPU which stipulates that by binding the closing distribution list, creditors will regain the rights of execution regarding their unpaid receivables, which is also confirmed by Article 1131 of the Civil Code that debtors have the obligation to pay all debts. -the debt that is still not paid until it is paid off. Therefore, if in the future the debtor obtains more assets, these creditors still have the right to demand the repayment of the remaining debt.

As for the realization of the provisions that the author has stated above, in the research on the bankruptcy of PT Meranti Maritime and Henry Djuhari this was not carried out, considering that PT Meranti Maritime and Henry Djuhari, who were declared bankrupt due to their rejected peace plan proposal, could no longer file legal remedies . Because the PKPU decision is final and binding.

5.CONCLUSIONS

Based on the results of research and discussion conducted by researchers, the following conclusions are obtained:

1. The position of the Personal Guarantee in relation to the limited assets of the debtor in the bankruptcy process in this study is an alternative payment if the debtor's assets are insufficient, but in the case of Personal Guarantee, it is executed simultaneously based on the decision of the Commercial Court.

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2. The legal certainty of the Personal Guarantee related to the limited assets of the bankrupt debtor in this study can be said to have not been implemented because the Personal Guarantee (Insurer) was bankrupt at the same time as the debtor, which resulted in not fulfilling the prior execution of the debtor as stipulated in Article 1831 of the Civil Code. Also in this study it is known that the execution of the assets of the debtor and the guarantor is still constrained due to both juridical and non-juridical obstacles, where PT Meranti Maritime complained about its bankruptcy problem to the Indonesian Parliament, so that both the bankruptcy settlement process and the rehabilitation process as regulated by law has not been implemented.

6.ADVICE

1. In the author's opinion it is necessary to further stipulate in the provisions of the Bankruptcy and PKPU Law, that the release of special rights by the insurer should not conflict with the law and the debtor's obligations, namely that the debtor is the main party who should first be responsible for his legal actions and who it should have been declared bankrupt first or in this study the bankruptcy should be decided separately by the Panel of Judges.
2. Considering that voluntary PKPU is a form of good faith from the debtor in order to pay off his debts, as well as avoiding conspiracy practices between the parties in the bankruptcy process, which can "kill" the debtors in good faith, the author considers the need for amendments to Law no. 37 of 2004 which regulates and / or includes provisions related to the need to be regulated by an independent institution / academic institution that supervises and or examines voluntary PKPU decisions that end in bankruptcy;
3. For the sake of legal certainty for all parties, legal institutions need to be socialized again regarding bankruptcy as general confiscation, so that it is hoped that there will be no more overlapping confiscation or blocking of objects that have been publicly confiscated earlier under the Bankruptcy Law and PKPU;

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