

**POSITION OF PERSONAL GUARANTEE ASSET SEIZURE  
IN BANKRUPTCY PRINCIPAL DEBTOR****Jupenris Sidauruk, Sunarmi, Aflah****Fakultas Hukum, Universitas Sumatera Utara****Email : [jupenriss@gmail.com](mailto:jupenriss@gmail.com)**

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**ABSTRACT**

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General Seizure of Personal Guarantee Assets in the Bankruptcy of the Principal Debtor, can be carried out and regulated in the provisions of the Bankruptcy Law and Civil Law. So that the Personal Guarantee has responsibility for the bankruptcy statement of the principal debtor, but in practice there is an interesting phenomenon, for example, in the Medan District Court Decision Number 6/Pdt. Sus-Others/2019/PN. Niaga. Mdn. there is a phenomenon of the seizure of Personal guarantee assets without a bankruptcy statement against the Personal Guarantee. Normative legal research with a statutory regulatory approach and case studies. The results of this study indicate that Article 1832 of the Civil Code number 2 states that the position between the Principal Debtor and the Guarantor or Personal Guarantee or Borgtocht is the same as a Debtor. Personal Guarantee assets cannot be seized in the bankruptcy of the Principal Debtor, a sign that there is a bankruptcy statement against the Personal Guarantee and the Personal Guarantee releases its Special Rights. In Decision Number: 6/Pdt. Sus-Lain-lain/2019/PN. Niaga. Mdn Jo. Number: 2/Pdt. Sus. Bankrupt/2018/PN. Niaga does not reflect justice, therefore the Personal Guarantee assets are not included in the Bankrupt Boedel because the Personal Guarantee is not bankrupt, so that general seizure cannot be carried out and general seizure is not in accordance with the contents of the guarantee agreement that has been agreed upon by the creditor and guarantor.

**Keywords : Seize assets, Guarantors, Bankruptcies, Debtors.****Journal History**

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**INTRODUCTION**

Bankruptcy is not a new thing in Indonesia. Many companies in Indonesia have been declared bankrupt based on court decisions. In the event of bankruptcy,

assets are very important to fulfill the rights of creditors, both Preferred, Separate, Concurrent creditors. However, in its development, there are assets that have the potential to be seized as collateral, namely assets from the guarantor (Personal Guarantee).

A personal guarantee is a guarantee that creates a direct relationship with a particular individual, which can only be maintained against a particular debtor.<sup>1</sup> In other words, a personal guarantee can also be interpreted as a guarantee of a third party who acts to guarantee the fulfillment of the debtor's obligations. In other words, a personal guarantee is an agreement between a creditor and a third party, which guarantees the fulfillment of the debtor's obligations.<sup>2</sup> In a personal guarantee, it is always intended to fulfill the debtor's obligations, which are guaranteed in full or up to a certain part. The guarantor's assets can be seized and auctioned based on a court decision.<sup>3</sup>

In essence, when viewed from the bankruptcy law, it basically contains two important elements, namely the elements of justice and balanced protection between debtors and creditors.<sup>4</sup> Article 141, Article 164, and Article 165 of the UUK-PKPU regulate the agreement, but from the sound of these articles it is not written that the guarantor or individual guarantor can be declared bankrupt based on the UUK-PKPU. Article 1820 of the Civil Code, it can be seen that the individual guarantor has an obligation to pay the debtor's debt to the main creditor is unable to pay the debt, then the creditor can collect from the individual guarantor for his debt. In this case it can be concluded that the individual guarantor (Personal Guarantee), is in the position of a debtor.<sup>5</sup>

In the case that will be raised in this study, namely Decision No. 2 / Pdt.Sus Bankrupt / 2018 / PN.Niaga. Mdn. Jo. Decision Number: 6 / Pdt. Sus-Other / 2019 / PN. Niaga. Mdn. In this decision, a problem arises if in a guarantee agreement there is a main debtor and a guarantor debtor (as a personal guarantor) where the main debtor's assets have not been auctioned and the Personal Guarantee does not release its special

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<sup>1</sup> R. Tjiptoadinugroho, *Perbankan Masalah Perkreditan Penghayatan, Analisis dan Penuntutan*, Jakarta: Pradya Paramita, 1971, p. 66.

<sup>2</sup> Hermansyah, *Hukum Perbankan Nasional Indonesia, Edisi Kedua*, Jakarta, Prenada Media Group, 2014, p. 74.

<sup>3</sup> *Ibid.*

<sup>4</sup> Sunarmi, *Hukum Kepailitan*, (Depok: Kencana, 2017), hlm. 28.

<sup>5</sup> Putri Avi Afifah dan Eddie Imanuel Doloksaribu, *Analisis Yuridis Penggunaan Aset Personal Guarantee dalam Melunasi Utang Pailit*, Fakultas Hukum Universitas Katolik Indonesia Atma jaya, hlm. 147

rights, thus creating legal uncertainty and injustice over the assets belonging to the Personal Guarantee which are seized without first being declared bankrupt.

## METHOD

As for the types study the law used by the author in compiling This research is study law normative . It is said that's it Because This research has the relationship with law or *legal research* which will always lead to the nature of normative and proper put forward What just approach as well as material the law .<sup>6</sup>Therefore , the author use technique studies library research to collect research data , namely by conducting search and data collection or source readings of a nature scientific and still similar or in line with the title this research , so that Can used as a research basis as well as analysis of the problems faced . As study law normative then it is certain to use approach statute *approach* .<sup>7</sup>

## DISCUSSION

### Foreclosure Asset In Bankruptcy

Foreclosure in a way civil own same meaning that is action put treasure riches defendant in a way force is in a state of security in a way official based on order court or judge.<sup>8</sup>

Items placed in the guard , in the form of the disputed item , but may also be the goods that will made into as tool payment on debtor's debt repayment , by way of sell auction the confiscated items .<sup>9</sup> Determination and maintenance confiscated goods , ongoing during the inspection process , until There is decision a court of competent jurisdiction law remains , which states whether it is valid or not the confiscation .<sup>10</sup>

Bankruptcy Law does not define what is meant by seizure or confiscation will but this law regulates two form confiscation that is confiscation guarantee and seizure general . According to Article 10 of the Bankruptcy Law , seizure guarantee is confiscation carried out on part or all of treasure riches debtor use protect interest creditors . Application confiscation guarantee can submitted to the court by each

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<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2019), p . 58

<sup>7</sup> Bambang Synggono, *Metode Penelitian Hukum*, (Jakarta: Raja Grafindo Persada, 2016) p .

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<sup>8</sup> M. Yahya Harahap, *Hukum Acara Perdata Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan*, (Jakarta: Sinar Grafika, 2008). p . 282.

<sup>9</sup>Ibid.

<sup>10</sup>Ibid.

creditor, the prosecutor's office, Bank Indonesia, the Capital Market Supervisory Agency, or the Minister of Finance.<sup>11</sup>

Seizure of collateral in case bankruptcy requested before bankrupt decided. As for the purpose from he did confiscation guarantee in bankruptcy proceedings is an effort preventive to prevent debtor commits dishonest acts or practices cheating on purpose divert treasure the thing so that can harm creditors in frame settlement his debt.<sup>12</sup>

In Article 21 UUK explains that bankruptcy covering all over riches debtor at the time of the decision statement bankrupt spoken as well as all something that is obtained during bankruptcy. There are several property that is firmly excluded in bankruptcy namely: 1) Equipment sleep and clothes everyday; 2) Equipment service; 3) Equipment Work; 4) Food supplies for approximately 1 (one) month; 5) Salary, wages, pension, money services and honorarium; 6) Rights create; 7) An amount of money determined by the supervising judge for his (debtor's) maintenance; 8) Amount of money received from income his children

Due to this, the consequences decision bankrupt is nature as well as immediately (*immediately*) *ij voraad*) even though the stated debtor bankrupt make efforts law against the decision the bankrupt. So that treasure debtor is at in confiscated status general and curator take transfer authority management and settlement treasure bankrupt. In matter taker diversion authority management and settlement treasure bankruptcy, court Commerce lift curator (team) curator) who can originate from Hall Treasure Heritage (BHP) or curator private<sup>13</sup>

### **Position And Responsibility of Personal Guarantee**

Guarantee individual is guarantee that gives rise to direct relationship to individuals certain, which only can retained against the debtor certain.<sup>14</sup> In other words, the guarantee individual can also interpreted as guarantee a party the third who acts to guarantee fulfilled obligations from debtor. In other words, the guarantee individual is a agreement between a owe (creditor) to a person party third, which

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<sup>11</sup>Article 2 of the Bankruptcy Law

<sup>12</sup> Luthvi Febryka Nola, Kedudukan Sita Umum terhadap Sita Lainnya dalam Proses Kepailitan, Pusat Penelitian Badan Keahlian DPR RI, 2018, p. 223.

<sup>13</sup> Ricardo Simanjuntak, Undang-Undang Kepailitan dan PKPU Indonesia Teori dan Praktik, Jakarta: Kontan Publishing, 2023, p. 328.

<sup>14</sup> R. Tjiptoadinugroho, Perbankan Masalah Perkreditan Penghayatan, Analisis dan Penuntutan, Jakarta: Pradya Paramita, 1971.,, p. 66.

guarantees fulfilled obligation obligation debtor .<sup>15</sup> In guarantee individual is always intended for fulfillment obligations debtor , which is guaranteed fulfillment all or until a part certain . Property riches guarantor can confiscated and auctioned based on decision court .<sup>16</sup>

Guarantor can help debtors who have ability as well as ability to pay off credit or debt , but need guarantee additional requirements required by the bank or creditor . the third that binds oneself to fulfill engagement from the debtor is in law civil called guarantor based on agreement liability . According to Article 1820 of the Civil Code, what is meant by liability is " a agreement Where a party third use interest cyber debt to tie up oneself to fulfill debt cyber debt while " This cyber debt is in default ." If examined , actually objective main from agreement liability is to guarantee implementation engagement debtor to existing creditors in a agreement principal . Thus , causation agreement liability is to strengthen agreement the main thing is .

Agreement guarantee individual is a agreement accessory from agreement basically , that is agreement debt receivables ( credit ) . This can seen in provisions of Article 1821 BW, which states that " there is no liability if there is none a engagement legal principal ” . Provision of Personal *Guarantee* must to mention agreement principal ( agreement) credit ) borne by the giver the guarantee (guarantor). The nature of *the accessory* from giving guarantee result in creditors in position weak . Because based on In these provisions , the guarantor or underwriter is not obliged to pay to creditors , except debtor negligent pay . If so , item owned by debtor must confiscated and sold moreover first to pay off his debt .

Party the third one who carries out the responsibility debt or guarantee can carried out by individuals who are bound the guarantee in form of Personal *Guarantee* or carried out by a legal entity whose binding is in form *Corporate Guarantee* . Obligations main a guarantor or surety is pay off debt debtor when debtor is unable carry out the obligation . This means also applies to a guarantee in a way general , that all treasure riches guarantor become guarantee on settlement debt debtor . Mention all treasure riches guarantor Because the settlement is not specified from what wealth . When guarantor has pay off the debt , then the guarantor can request payment return accompanied by as form the cost ( rights) regress ).<sup>17</sup>

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<sup>15</sup> Hermansyah, *Hukum Perbankan Nasional Indonesia*, Edisi Kedua, Jakarta, Prenada Media Group, 2014, p . 74.

<sup>16</sup> Ibid.

<sup>17</sup> Lenny Nadriana, *Ahli Waris Pemegang Personal Garansi Dapat Pailit*, (Jakarta: Lembaga Studi Hukum Indonesia, 2019), p . 13

Guarantee individual ( borgtocht / Personal Guarantee) is guarantee in the form of statement ability given by a person party third use ensure fulfillment obligations the debtor concerned to creditor , if the debtor injury promise . Guarantee this kind of thing is basically is regulated debt coverage in Article 1820-111850 of the Civil Code . In its development , the guarantee Individuals are also practiced by companies that guarantee corporate debts other .<sup>18</sup>

In relation to the responsibility of personal guarantee, after the debtor is declared bankrupt, then all of his assets are sold by the curator to pay his debts. If the proceeds of the sale are not sufficient to pay off his debts, then the curator can sell the guarantor's assets to cover the shortfall. So, the new guarantor appears to fulfill his obligations if the debtor (main) has run out of assets to pay his debts.<sup>19</sup>

Personal Guarantor can have consequence the law is far away if the Personal Guarantor does not implement it his obligations . The consequences is that warranty can stated bankrupt . Referring to Article 24 of the Law Bankruptcy and Suspension Obligation Debt Payment , with statement bankrupt , debtor bankrupt by law lost right to control his wealth that was put into in treasure bankrupt counted since day statement bankrupt decided . Thus , one the stated guarantor bankrupt by the court is no longer able to conduct business for and on behalf of Name his personal .

On guarantee individual If happen bankruptcy , creditors have right demand fulfillment his receivables besides to the main debtor also to guarantor or can demand fulfillment to debtor others . Guarantee individual thus can happen If creditors have a guarantor ( borg ) or if There is party the third that binds self in a way not quite enough bear in debtor . This happens If There is agreement surety ( borgtocht ) or in the agreement half-hearted in a way passive . Except Because existence an intentional agreement held , party third also can to tie up self in a way individual to creditors for fulfillment debt based on provision legislation .<sup>20</sup>

If the debtor stated bankruptcy where the debt is guaranteed by collateral individual or guarantor myself who becomes guarantee then applies provisions of Article 1131 and Article 1132 of the Civil Code that is all treasure riches guarantor either in the form of object move and object fixed ( immovable object ) whether it is already There is or the new one will be there is later day become guarantee or collateral for agreement made with creditors so that treasure the guarantor also enters in treasure

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<sup>18</sup> Niken Prasetyawati, Tony Hanoraga, Jaminan Kebendaan dan Jaminan Perorangan Sebagai Upaya Perlindungan Hukum Bagi Pemilik Piutang, *Jurnal Sosial Humaniora*, Vol 8, 2015, p . 127

<sup>19</sup> Syamsudin M. Sinaga, *Hukum Kepailitan Indonesia*, (Jakarta: Tatanusa, 2012), p . 85

<sup>20</sup> Issac Davids Panjaitan, Asnati, Fahmi, Pertanggungjawaban Penjamin/Guarantor (Personal/ Corporate Guarante) Dalam Perkara Kepailitan, *Jurnal Hukum POSITUM* Vol.5, No.2, Des 2020, p . 54

bankrupt because if not then an agreement is made between there are no creditors and guarantors It means The same very .<sup>21</sup>

A sas parity creditorium Where payment or settlement of debt is carried out in a way balanced accordingly in bankruptcy debtors then creditors holder right guarantee individual only will domiciled as creditors concurrent only , which competes in fulfillment his receivables , because in guarantee individual does not exist object certain as object guarantee .<sup>22</sup>

In carry out his obligations under the Personal Guarantee Act are given rights certain things that are of a protective nature for the guarantor . Rights the guarantor according to provision Constitution in the form of :<sup>23</sup>

- a. The right to sue first ( *voorrecht van uitwinning* );
- b. The right to share debt ;
- c. Right to apply parry lawsuit ;
- d. Right to be dismissed from liability Because prevented from carrying out subrogation consequence act / mistake creditors .

If the guarantor to let go or put aside rights the special thing is that creditors can submit application statement bankrupt to guarantor directly because after state rights special has if it is released then delete it rights special privileges granted by law to protect himself .

This is based on Article 1832 paragraph 1 of the Civil Code . that is the guarantor cannot demand that things the debtor sold or confiscated moreover first to pay off the debt if the guarantor has to let go or put aside rights special .

Release rights special guarantor must stated in a way firm in agreement giving warranty / guarantee , with release right said special by the guarantor in agreement guarantee by creditor with guarantor means creditor can directly request, demand or sue guarantor to fulfill immediately obligation debtor , if the debtor has injury promise or default .<sup>24</sup>

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<sup>21</sup>Christina Erna Widiastuti, Tesis Kajian Hukum Terhadap Pelaksanaan Perjanjian Jaminan Perorangan (Borgtocht) dalam Kepailitan Debitur, (Semarang: Magister Kenotariatan Program PascaSarjana Undip, 2002), p . 72-77

<sup>22</sup> Isaac David Panjaitan , Asnati , Fahmi, Op. Cit, p . 55

<sup>23</sup> Sri Soedewi Masjchoen Sofwan, Hukum Jaminan Di Indonesia Pokok-Pokok Hukum Jaminan Dan Jaminan Perorangan, (Yogyakarta: Liberty Of Fset, 1980), p . 92.

<sup>24</sup> Lenny Nadriana dan Isis Ikhwansyah, "Implementasi Hukum Personal Guarantee dalam Praktik Pagaruyuang Law Journal, No.2, Vol.1, terdapat dalam <http://joernal.umsb.ac.id/index.php/pagaruyuang/index>, terakhir diakses tanggal 23 April 2025, pukul 09.26 WIB.

Personal Guarantee settings on the system civil procedure law must become guarantee mark certainty law , according to theory morning If The arrangement ensures mark certainty law then it will can accommodate interests of the stakeholders seeker justice ( *justiabelen* ), if The arrangement ensures mark certainty law then it will can accommodate interests of the parties in case bankruptcy . By accommodating these interests will then be can realize mark justice Because certainty law is component from justice itself .<sup>25</sup>

Civil Code Part 2 regarding Consequences Guarantee between creditors and guarantors Article 1831 states that " The guarantor is not obliged to pay to creditors except debtor negligent pay his debt , in that thing is also a thing belonging debtor must be confiscated and sold moreover first to pay off his debt ". The statement was reinforced Based on Article 1832 of the Civil Code , the rights the privileges that the guarantor is as the following :<sup>26</sup>

- a. Right the guarantor to claim the assets riches debtor confiscated and executed moreover first to pay off his debt . And if the results execution is insufficient to pay off his debt , then his assets the the guarantor who then will be executed his property ;
- b. Right the guarantor not to bind self together with the debtor in a way not quite enough bear . This right exists possibility guarantor has to tie up self together debtor in a agreement in a way guarantee guarantee . Guarantor who has to tie up himself together debtor in a deed agreement can sued by the creditors to be liable bear together their respective debtors for the entire debt;

If the guarantor individuals are also unable to pay / injured promise for the debt owned , the debtor (Personal Guarantee) can stated bankruptcy , if the conditions required in Article 2 paragraph (1) of the PKPU Law it has been fulfilled . Of course. in the fall decision bankruptcy against the guarantor individual who is domiciled as debtors must also fulfill condition the fall decision bankruptcy as stated in Article 2 paragraph (1) of the PKPU Law. Decision statement bankrupt bring consequence law against debtors . Article 21 of the UUK-PKPU has determine that bankruptcy covering all over riches debtor at the time of the decision statement bankrupt spoken as well as all something that is obtained during bankruptcy .<sup>27</sup>

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<sup>25</sup> Oktaviani F Tambunan, Penyitaan Benda Dalam Kepailitan Yang Dilakukan Oleh Kurator Dan Penyitaan Benda Oleh Kepolisian Dalam Perkara Pidana (Studi Kasus Putusan Mahkamah Agung Nomor 156 K / PDT.SUS/ PAILIT/ 2015, Jurnal., p . 169.

<sup>26</sup>Ibid.

<sup>27</sup> Putri Avi Afifah, Analisis Yuridid Penggunaan Aset Personal Guarantee Dalam Melunasi Utang Pailit, Jurnal Fakultas Hukum, Universitas Atmajaya, p.146.

In bankruptcy, use Personal Guarantee assets are things that can be done in pay off bankruptcy debts if assets owned by debtor main can't fulfil in its settlement, in bankruptcy shared into 3 types creditors that is creditors preferential, separatist and concurrent, third the creditor is creditors who have their respective rights and positions, such as creditors preference that has right priority to be paid off his debt, then creditors separatists who have goods guarantee in payment his debts, and creditors separatists who do not have right guarantee or the right to be prioritized.

In debtor's debt payment to creditors sometimes not enough after already auctioned assets – assets owned by debtor main, therefore responsibility answer of Personal Guarantee is to provide his assets in debt settlement from debtor Main. Personal Guarantee assets are guarantee that can be used in settlement his debt, because if the assets owned by debtor main can't enough to pay the entire total debt, Personal Guarantee which will responsible answer in settlement, assets Personal Guarantee can be done directly auction, payment of bankrupt debts will calculated using the “*Pro Rata Pari Passu Parte*” method. Personal Guarantee which guarantees his wealth to creditors can also be bankrupted if the debtor main unable to pay off his debt.

In carry out his obligations by law the guarantor given rights certain things that are of a protective nature for the guarantor. These rights include:<sup>28</sup>

- a. The right of creditors demand moreover formerly (*Forestry of the past*) *uitwining prior= exhaustian or remedial against the debtor*);
- b. The right to request debt division (*benefit of division of debt*)
- c. The right to be released from guarantee when Because the mistake creditors.

**Case Decision Number : 6 / Rev. Sus-Others/2019/ PN.Niaga . Mdn Jo. Number : 2 / Rev. Sus. Bankruptcy /2018/PN. Commerce . Mdn**

Problems with Personal Guarantees are often encountered because they are regulated by law. In the above case it can be seen that Company Limited (PT) Pro Mechanics Indonesia as debtor amounting to Rp. 1,000,000,000,- ( one billion ) with PT. Bank Mandiri (Persero) Tbk, Region I Sumatera I SME Region I in 2018 which was burdened Right Liability, with Matiur Iriani The Bunch as personal has sign Act Giving Guarantee Personal made by a notary and binding himself as guarantor personal related Agreement Business Capital Credit. Which PT Pro Mekanika Indonesia requested bankrupt by PT. Trimurti Perkasa as Applicant Bankruptcy I and Hotmaulin Simare -Mare as Applicant bankruptcy II as Decision No. 2/ Pdt.Sus-Bankrupt /2018/

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<sup>28</sup> Sunarmi, Hukum Kepailitan, (Jakarta: PT Softmedia, 2010), p . 196

PN.Niaga . Mdn . Based on Decision Bankruptcy No. 2/ Pdt.Sus-Bankruptcy /2018/ PN.Niaga . Mdn , which appoints and appoints Hall Treasure Heritage (BHP) Medan as Curator , then The curator carries out a seizure common to all Personal Guarantee assets together with property Principal Debtor , while Personal Guarantee only provides collateral / security amounting to 1 ( one ) billion and a Personal Guarantee was not requested or stated bankrupt , so that confiscation common to all Personal Guarantee Assets without existence application bankrupt cannot carried out , because General Seizure was not carried out as should be , so that cause absence certainty law and injustice towards assets owned by Personal Guarantee carried out confiscation without moreover formerly stated bankrupt .

That The Opponents submit resistance on action Against which arises loss to the Contestants , the Personal Guarantee is in this is expert his heirs filed a lawsuit against him in court as Case Number : 6 / Rev. Sus-Others/2019/PN. Commerce . Mdn Jo. Number : 2 / Rev. Sus. Bankruptcy /2018/PN. Commerce , will but rejected by the Panel of Judges.

**Analysis Decision Number : 6 / Rev. Sus-Others/2019/ PN.Niaga . Mdn Jo. Number : 2 / Rev. Sus. Bankruptcy /2018/PN. Commerce . Mdn**

This means that the decision Number: 6/Pdt. Sus-Other/2019/PN. Niaga. Mdn Jo. Number: 2/Pdt. Sus. Bankrupt/2018/PN. Niaga , dated October 14 , 2019 above , makes seeker justice in this Personal Guarantee does not apply certainty and justice , in base other Personal Guarantee lawsuits which are represented in this case expert his heir state that the General Seizure of Personal Guarantee assets is action oppose law because of confiscation general done after the Personal Guarantee dies so that asset not meant boedel bankrupt will but the slug inheritance , which should be Other lawsuits Personal Guarantee states that General Seizure of Personal Guarantee assets is action oppose law because of the Personal Guarantee never stated bankrupt , not a party in bankruptcy and Personal Guarantee do not release Right special as well as holder right non- party liability in application bankrupt as well as Personal Guarantee only mortgage amounting to 1 ( one ) billion so that confiscation general for auction in a way overall is action oppose law as regulated in Articles 1831-1834 of the Civil Code

Article 1820 of the Civil Code regulates about liability state that liability is a agreement with which a person party third use interest the in debt to tie up oneself to fulfill engagement the owe when this person himself does not fulfill it . From this understanding it can be concluded that liability is agreement with the existence of party third party agrees for the benefit the owe to tie up oneself to fulfill engagement the owe , when the time is right the owe alone does not work fulfil his obligations .

Based on Article 1820 it can be seen that that Personal Guarantee or guarantor only can requested responsibility answer if the debtor or debtor main ca n't fulfil his obligations , but If referring to Article 1832 of the Civil Code in point 2 there is exceptions to guarantors or underwriters that can be submitted directly application statement bankrupt If guarantor has to tie up himself together The same the debtor or debtor in a way not quite enough jointly .

In this matter , regarding the exception may be seen from deed guarantee or borgtocht , Guarantor just give guarantee amounting to 1 ( one ) billion . Application Bankruptcy against Personal Guarantor must after effort law against debtors in default because of based on Article 1831 of the Civil Code , a person guarantor or underwriter cannot stated bankrupt without previously state debtor bankrupt . Rights creditors are liable to sue guarantor or guarantor only if from results liquidation of assets riches debtor Still there is remaining debt that has not been paid paid off .

Based on fact on researcher conclude that The position of Personal Guarantee is in Bankruptcy Principal Debtor as Guarantor you're welcome as debtor , so that can stated bankrupt to pay off remainder debts left behind and Personal Guarantee Assets cannot be confiscated in bankruptcy debtor main because personal guarantee assets are not included in the slug bankrupt , because personal guarantee was not stated bankrupt , but Personal Guarantee assets can be seized in Bankruptcy in Personal Guarantee matters have been release Special rights so that can choose bankrupt Principal Debtor or Personal Guarantee.

Then confiscate general against Personal Guarantee assets without existence statement bankrupt and outside of what was promised is action oppose law , because the new role of Personal Guarantee emerges after debtor main does not meet obligation his/her commitment as should be , fulfillment as a Personal Guarantee as replacement what the debtor left behind main not met .

Therefore based on the description can be concluded that The decision does not provide certainty law for Personal Guarantee, the consequences of which deviate from objective law conventional as stated by Gustav Radbruch himself .

In addition , the panel of judges should not only look at other lawsuits are just as argument Opponent will but on the point problem namely confiscation general against Personal Guarantee assets as action oppose law , thing as obligation in Article 27 paragraph (1) of the Law Number 14 of 1970 as amended by law Number 35 of 1999, now in Article 28 paragraph (1) of the Law Number 4 of 2004 orders judges in his position as enforcer law and justice , mandatory dig , follow , and understand values the law that lives in public .

Consideration the panel of judges did not have consideration proper law , it can seen through theory action as tool help analysis of elements to regulate and/or determine winner Auction , act is every act subject the law that gives rise to rights and obligations that are marked by the existence of statement will , in This is Against as Curator from Hall Treasure Heritage (BHP) Medan which carried out the confiscation general in a way as a whole and has conducted an Auction Personal Guarantee assets so cause the rights and obligations of the Opponents , then this is considered has fulfil element to regulate and or determine winner Auction .

So that Decision Number : 6/ Rev. Sus-Other/2019/PN. Niaga . Mdn Jo. Number : 2/ Rev. Sus. Bankruptcy /2018/PN. Niaga , dated October 14 , 2019 which has been decided by the panel of judges did not provide justice for Personal Guarantees that are not stated bankrupt besides only to mortgage part . This can be seen through theory Aristotelian justice which is essentially want equality and giving something that is rightfully his , referring to the theory is a consideration the panel of judges is not right because it does not reflect justice .

Because of The panel of judges rejected other lawsuits stating when giving the collateral is Matiur Iriani The Bunch The Simanjuntak still alive then right inheritance Still closed to his children , so that in giving as no guarantee required get agreement from children Death Iriani The Bunch as expert the heirs who are still closed .

General seizure for the auction is carried out for the entire Personal Guarantee Assets , not related law inheritance will but because personal guarantee never requested and stated bankrupt , besides that based on in fact Personal Guarantee only to mortgage some or only amounting to 1 ( one ) billion , and the Personal Guarantee is not a party in bankruptcy and never stated bankrupt as well as Personal Guarantee assets are carried out confiscation general along with assets Principal Debtor . So that by doing confiscation common to do auction Personal Asset Guarantee the whole thing that in reality the Personal Guarantee never stated bankrupt and only to mortgage amounting to 1 ( one ) billion at the time the Personal Guarantee has been died is A action oppose law as description action oppose law on .

## **CONCLUSION**

In general, asset seizure is not something new for law enforcement, both civil and bankruptcy. Civil seizure has the same meaning, namely the act of forcibly placing the defendant's assets in a state of official custody based on a court or judge's order. The Bankruptcy Law does not define what is meant by seizure or confiscation, but this law regulates two forms of seizure, namely collateral seizure and general seizure.

According to Article 10 of the Bankruptcy Law, collateral seizure is a seizure carried out on part or all of the debtor's assets in order to protect the interests of creditors. An application for collateral seizure can be submitted to the court by each creditor, the prosecutor's office, Bank Indonesia, the Capital Market Supervisory Agency, or the Minister of Finance.

The position or existence of personal guarantee in law has a clear basis. Even personal guarantee can be held accountable if a company is declared bankrupt. Personal guarantee (*borgtocht*/Personal Guarantee) is a guarantee in the form of a statement of commitment given by a third party to guarantee the fulfillment of the debtor's obligations to the creditor, if the debtor defaults. This type of guarantee is basically a debt guarantee regulated in articles 1820-111850 of the Civil Code. In its development, personal guarantees are also practiced by companies that guarantee the debts of other companies. So that personal guarantees can be applied not only in civil aspects, but also in bankruptcy cases.

Based on Decision Number : 6/ Rev. Sus-Other/2019/PN. Niaga . Mdn Jo. Number : 2/ Rev. Sus. Bankruptcy /2018/PN. Niaga , dated October 14 , 2019 which has been decided by the panel of judges, considerations law the panel of judges is not appropriate or does not reflect justice , therefore as studied with theory Aristotle Cumulative and Distributive Justice that is justice that demands of each party get what is becoming his rights in a way proportional and obedience will law is justice . So the consideration the panel of judges did not provide justice for Personal Guarantee because The panel of judges confirmed confiscation general against Personal Guarantee assets without existence application or statement bankrupt against Personal Guarantee. It should be The panel of judges granted other lawsuits Opponent , therefore Personal Guarantee assets are not included Boedel Bankrupt because the Personal Guarantee was not declared bankrupt . So the panel of judges decided Aquo's case does not provide justice for Personal Guarantee, in this is in a way oppose law has justify confiscation general against Personal Guarantee Assets outside of Law and Agreement Guarantee as collateral / guarantee.

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