

**STATUS OF COLLATERAL BELONGING TO A THIRD PARTY IN
BANKRUPTCY**

(Study Verdict Number: 15/Pdt.Sus-Gugatan Lain-Lain/2019/PN. Niaga.Jkt.Pst.
Jo. Verdict Number: 878 K/Pdt.Sus-Pailit/2019 jo. Verdict Number: 52 PK/Pdt.Sus-
Pailit/2020)

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ABSTRACT

This study discusses the status of collateral objects belonging to third parties in bankruptcy. This study aims to find out whether the collateral belonging to the party that is used as collateral debtor debt that is declared bankrupt is included in the bankruptcy boedel or not. The research method used is normative juridical law research. The results showed that in practice this is often a debate between curators and separatist creditors whether the assets of third parties that are used as collateral debts of debtors declared bankrupt or not and include collateral belonging to third parties that are used as collateral debt Debtor Bankruptcy into boedel (property) bankruptcy has violated the provisions of Article 21 of the Bankruptcy Act and PKPU which states that Bankruptcy covers all the wealth of debtors at the time the verdict of the bankruptcy statement is pronounced and everything obtained during Bankruptcy. Furthermore, as a result of the third party collateral that is used as collateral for insolvency debtor debt into boedel (property) bankruptcy, then it violates the provisions of Article 6 of the Law on The Right of Dependents because the rest of the sale of the object of dependent rights does not return to the third party as the bearer of dependent rights, but becomes boedel (property) bankruptcy.

Keywords: *Third Party, Bankruptcy, Creditors.*

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INTRODUCTION

Business actors in carrying out their business activities, either in the form of individuals, firms or limited liability companies certainly have basic needs that are funds that must be met. But unfortunately not all businesses have enough funds to carry out their business activities or to be more superior in competing with other businesses. In overcoming these problems, businesses usually borrow funds to other parties, either through individuals or financial institutions, such as banks.

Normative moments: components of legal mind, values, constitutions, principles, norms and legal structure. Juridically this is the moment that becomes central to the law's legal objectives, namely justice, law and benefit. Therefore, the normative moment will be the legal work experts to legal principles as *ratio legis* or nutrition law. Normative moments are both the cornerstones of the juridical enforceability of the rule of law.¹

Important parties in borrowing / *utang* receivables, namely there are parties who owe as debtors and parties who have receivables or parties who provide debt as creditors. In the case of debtors are incorporated businesses, namely limited liability companies and creditors are banks, it is often found that the creditors do not immediately give loans to anyone. Generally in the framework of lending creditors demand debtors to provide guarantees. Warranties are affirmations of the debtor to carry out the obligation to perform (positive actions) or not to perform (negative actions) that have been specified in the agreement.²

The definition of guarantee in the Civil Code (KUHPerdata) was not formulated expressly, the Civil Code only provides a general formulation of guarantees stipulated in Article 1131, namely all materials of a person both moving and immobile, both existing and new will be dependent on all individual

agreements. But this general guarantee is still felt inadequate by creditors so often creditors ask to be given a special guarantee. Special guarantees can be in the form of material guarantees and individual guarantees (*borgtocht*).

According to Subekti, the provision of material guarantees is always a part of a person's wealth, the guarantor and provide it for the fulfillment (payment) of obligations (debts) of a debtor. Furthermore, it is also said that the wealth can be in the form of the debtor's own wealth or the wealth of a third party. The sealing or provision is specifically intended for the benefit of a certain creditor who has requested it, because if there is no specific deposit or provision, part of the wealth as well as the entire wealth of the debtor is used as collateral for the payment of all debts of the debtor. Thus, the provision of material guarantees to a creditor gives a special position³(*privelege*) to other creditors, in taking repayment of the proceeds from the sale of the material collateral object.⁴

While in this individual guarantee or *borgtocht* guarantee given 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 against the creditor, that the debtor can be trusted to carry out the obligations promised; provided that if the debtor does not carry out his obligations then the third party is willing to carry out the obligations of the debtor.⁵

¹ Sihombing, Eka N.A.M., Muhammad Yusrizal Adi Syaputra, Implementasi Penggunaan Kecerdasan Buatan Dalam Pembentukan Peraturan Daerah (*The Implementation of Artificial Intelligence Usage in Local Legislation Forming*), *Jurnal Ilmiah Kebijakan Hukum*, Vol. 14, No. 3, November 2020.

² Sutarno, *Aspek-Aspek Hukum Perkreditan pada Bank*, (Bandung: Alfabeta, 2003), p. 122.

³ R. Subekti, *Jaminan-Jaminan Untuk Pemberian Kredit Menurut Hukum Indonesia*, (Bandung: Alumni, 1993), p. 27.

⁴ *Ibid.*

⁵ M. Yahya Harahap, *Segi-Segi Hukum Perjanjian*, (Bandung: Alumni, 1982), p. 315

In banking practice it is common for a limited liability company as a debtor to use a moving object belonging to its director or commissioner, in this case referred to as a third party to be used as a material guarantee in the form of dependent rights to be a guarantee of the implementation of the achievements of the debtor and the third party also signed an individual guarantee agreement (*personal guarantee*). Problems arise when the limited liability company is affiliated.

Bankruptcy according to Article 1 number 1 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (hereinafter referred to as "Bankruptcy Law and PKPU") is declared as a general confiscation of all the wealth of insolvency debtors whose management and eradication is carried out by the curator under the supervision of a Supervisory Judge as stipulated in the Law, while the Explanation of Article 57 paragraph (1) of the UuK-PKPU states that insolvency is a state of insolvency. If the bankrupt debtor does not offer a peace plan or there is a peace offer but is rejected by the Creditor, then for the sake of the law the bankrupt asset is unable to pay (*insolvency*). Starting from insolvency, the process of managing and dismantling insolvency assets begins. Based on the provisions of Article 16 UUK-PKPU, the Curator is authorized to carry out the duties of management and / or eradication of bankrupt assets from the date the palit verdict is pronounced even if the verdict is filed legal action, either cassation or review.

In the management and/ or eradication of bankrupt assets, there is often a debate between separatist creditors

about whether the immovable objects of third parties that are used as collateral debts of debtors declared bankrupt are included in the bankruptcy boedel or not. The debate can be seen in The Verdict Number: 15/Pdt.Sus-Gugatan Lain-Lain/2019/PN. Niaga.Jkt.Pst Jo. Verdict Number: 878 K/Pdt.Sus-Pailit/2019 jo. Verdict Number: 52 PK/Pdt.Sus-Pailit/2020.

In the verdicts found the fact that PT. Sinar Lestari Ultrindo has been declared Bankrupt with all legal consequences based on the Decision of the Commercial Court at the Central Jakarta District Court Number: 153/Pdt.Sus-PKPU/2017/ PN. Niaga.Jkt.Pst, dated January 22, 2018 and on the basis of the Award, the Curatorial Team of PT. Sinarlestari Ultrindo (In Bankruptcy) into the list (*pertelaan*) of bankrupt assets i.e. immovable objects belonging to Third Parties that are used as material guarantees in the form of Dependent Rights to guarantee the repayment of all credit facility debt of PT Sinarlestari Ultrindo (In Bankruptcy) to PT. Bank Maybank Indonesia, Tbk.

Kariangan in Hadita (2020) Associated with the use of moral responsibility in the office, Roscoe Pound pointed out that in a society which people may assume that people who are on around him are people who civilized, as a result, in the event of an act that deviates would hold accountable the parties.⁶

Furthermore, within 2 (two) months after the start of insolvency, PT.

⁶ Cynthia Hadita, Regional Autonomy Political Politics Of Regional Liability Reports To Regional Representatives In The Implementation Of Local Government, *Nomoi Law Review*, Volume 1, Issue 1, May 2020, p. 94.

Bank Maybank Indonesia, Tbk., has not yet executed a guarantee on the Object of Dependent Rights. Therefore, the Curatorial Team must demand the submission of the collateral object, as stipulated in Article 59 paragraph (2) of the Bankruptcy Law and PKPU.

That the Curatorial Team has requested to PT. Bank Maybank Indonesia, Tbk., to submit the Object of Dependent Rights by letter concerning; Notice of List (Pertelaan) of Bankrupt Assets of PT Sinarlestari Ultrindo (In Bankruptcy) & Request for Submission and Letter of Request for 2nd Submission, but PT. Bank Maybank Indonesia Tbk., does not provide the Object of Dependent Rights on the grounds that the Object of Dependent Rights is not a property (boedel).

Based on the above background, then through this paper, the author will answer the subject matter of whether the collateral belonging to a third party is included in the property (boedel) bankruptcy or not (Study Verdict Number: 15/Pdt.Sus-Gugatan Lain-Lain/2019/PN. Niaga.Jkt.Pst).

METHOD

In this paper, the authors conducted a juridical-normative study to analyze problems regarding the status of third-party collateral in bankruptcy. Marzuki in Eka NAM Sihombing (2019) states that the normative juridical legal research method is a method that uses an approach that is based on the main legal material by examining theories, concepts of legal principles, norms, rules of legislation, court decision, agreement. The nature of the research used in this paper is prescriptive, adhering to the characteristics of legal science as an applied science, the

prescriptions given in legal research activities must be able and possible to be applied. Therefore what is produced by legal research, even if it is not a new legal principle or a new theory, is at least a new argument. In accordance with the nature of the selected type of research, in obtaining data, the author conducts literature studies by collecting and studying primary and secondary legal materials in the form of books, articles, research results, and laws and regulations relevant to the object of research. The selected library materials are then used as a basis for thinking from the analysis made. Data analysis was conducted descriptively qualitatively to answer the problem formulation in this study.⁷

DISCUSSION

In 2009 PT. Sinarlestari Ultrindo applied for credit/debt facility to PT. Bank Maybank Indonesia Tbk., which is then stated in the Credit Agreement Deed.

That on the Credit Agreement, has been given additional agreements (*accessoir*), including the Agreement granting guarantees both in the form of Personal Guarantee (*personal guarantee*) and Material Guarantee (Fiduciary and Dependent Rights). This is to guarantee the payment/repayment of pt Sinarlestari Ultrindo's debt (In Bankruptcy) to PT. Bank Maybank Indonesia, Tbk, as follows:

1. *Personal Guarantee*

That in the Credit Agreement, a personal guarantee agreement has been made to guarantee the credit

⁷ Eka N.A.M Sihombing, Eksistensi Paralegal dalam Pemberian Bantuan Hukum bagi Masyarakat Miskin (The Existence of Paralegals in Providing Legal Aid to the Poor), *Jurnal Ilmiah Penegakan Hukum*, Vol. 6, No. 1, June (2019).

facilities provided by PT. Bank Maybank Indonesia Tbk., to PT Sinarlestari Ultrindo (In Bankruptcy), namely Halim Wijaya (Director of PT Sinarlestari Ultrindo/ Third Party);

2. Material Guarantee of Dependent Rights (HT)

Halim Wijaya (Director of PT Sinarlestari Ultrindo / Third Party), gave his immovable object to be used as collateral material in the form of dependent rights to be a guarantee of the implementation of achievements from PT. Sinarlestari Ultrindo.

In its development PT. Sinarlestari Ultrindo has been declared bankrupt with all legal consequences based on the Decision of the Commercial Court at the Central Jakarta District Court Number: 153/Pdt.Sus-PKPU/2017/ PN. Niaga.Jkt.Pst, dated January 22, 2018. That upon the verdict, the CuratorIal Team of PT. Sinarlestari Ultrindo (In Bankruptcy) made a list of bankrupt assets dated April 16, 2018 which obtained the approval of the Supervisory Judge. It is in accordance with the order of Article 100 paragraph (2) of the Bankruptcy Law and PKPU which states that the recording of bankrupt assets can be done under the hands of the Curator with the approval of the Supervisory Judge.

The curator in this case included a motionless object belonging to Halim Wijaya (director of PT. Sinarlestari Ultrindo / Third Party) that has been guaranteed for the repayment of PT Debt. Sinarlestari Ultrindo is listed as bankrupt.

Furthermore, if referring to Article 55 Paragraph (1) Jo. Article 56 Paragraph (1) Bankruptcy Law & PKPU then PT.

Bank Maybank Indonesia, Tbk., as the Holder of The Guarantee of Dependent Rights is granted the exclusive right to conduct an auction in advance of the object of dependent rights within a period of 90 (Ninety) days, since the Bankrupt debtor is declared bankrupt. But the fact is PT. Bank Maybank Indonesia Tbk., does not conduct auctions on The Object of Dependent Rights because according to PT. Bank Maybank Indonesia The Object of Dependent Rights owned by a Third Party is not a bankrupt boedel (property), so the period of auction of the object of dependent rights according to the Bankruptcy Law and the PKPU does not apply to the Object of Dependent Rights belonging to the Third Party.

Yudhi Bimantara, S.H., M.H., who is one of the Curators of PT. Sinarlestari Ultrindo (In Bankruptcy) explained that because of PT. Bank Maybank Indonesia Tbk., within 90 days after PT. Sinarlestari Ultrindo is bankrupt or within 2 (two) months since PT. Sinarlestari Ultrindo (In Bankruptcy) does not conduct an auction of the object of dependent rights belonging to the Third Party, the Curator immediately sent a letter to the Office of State Wealth Services & Auctions (KPKNL Bandung) which states that the object of dependent rights belonging to third parties has passed the execution period. Yudhi Bimantara, S.H., M.H., added that it is one of the Curator's ways to secure the object of liability of the third party, which according to the Curator is a bankrupt boedel (property), it is in accordance with the order of Article 98 of the Bankruptcy Law and PKPU which states that since the start of his

appointment, the ⁸Curator must carry out all efforts to secure the bankrupt property and keep all letters, documents, money, jewelry, securities, and other securities by providing receipts.⁹

On May 31, 2018, PT. Bank Maybank Indonesia Tbk., requested the auction of execution of the Third Party's Dependent Rights Object to KPKNL Bandung. Then on the application for the auction KPKNL Bandung can not set the Auction Application on behalf of. Pt. Sinar Lestari Ultrindo on the grounds that the auction object submitted by PT. Bank Maybank Indonesia Tbk., listed in the List (Pertelaan) of Bankrupt Assets of PT. Sinarlestari Ultrindo and The List of Bankrupt Assets of PT Distribusi Indonesia Jaya (In Bankruptcy) which has been approved by the Supervisory Judge on April 16, 2018.

That next Pt. Curator Team. Sinarlestari Ultrindo (In Bankruptcy) has requested pt. Bank Maybank Indonesia, Tbk., to submit the Third Party's Liability Object. However PT. Bank Maybank Indonesia Tbk., does not want to hand over the Third Party's Dependent Rights Object to the Curatorial Team.

For the difference between the pendapaat, the Curatorial Team of PT. Sinarlestari Ultrindo (In Bankruptcy) filed another lawsuit with PT. Bank Maybank Indonesia Tbk., through the Commercial Court at the Central Jakarta District Court.

Curator team PT. Sinarlestari Ultrindo (In Bankruptcy) as the Plaintiff argues that at the time of recording the bankrupt property plaintiff found the fact

that the Object of Dependent Rights that became the Object of Dispute is the property of the bankrupt debtor company (PT Sinarlestari Ultrindo) which is still recorded / used on behalf of third parties. Object of Dependent Rights / Dispute is used as collateral / guarantee for the repayment of credit facility debt PT Sinarlestari Ultrindo (In Bankruptcy) to PT. Bank Maybank Indonesia Tbk. Furthermore based on Credit Agreement and other derivative agreements between PT. Bank Maybank Indonesia, Tbk., with PT Sinarlestari Ultrindo (In Bankruptcy) has placed a guarantee of Dependent Rights on Land and/or buildings on behalf of third parties, which is known to the Third Party is the Director and Shareholder of PT Sinarlestari Ultrindo (In Bankruptcy). Credit Agreement between PT. Bank Maybank Indonesia, Tbk., as Creditor with PT Sinarlestari Ultrindo (In Bankruptcy) as Debtor, as well as Derivative Agreement in the form of guarantee of Dependent Rights that include the Object of Dependent Rights is an integral part of the Principal Credit Agreement. So that all assets on behalf of these third parties are part of the bankrupt assets (budel) of PT Sinarlestari Ultrindo (In Bankruptcy).

While PT. Bank Maybank Indonesia, Tbk as Defendant argues that bankrupt property is a bankrupt debtor's property that is decided based on the court's decision as Article 1 paragraph 1 jo Article 21 of the Bankruptcy and PKPU and Bankruptcy Laws, the curator is only entitled to take care of the property of the bankrupt debtor. Furthermore PT. Bank Maybank Indonesia Tbk., also explained that in the event that a company is declared bankrupt, because the declared company is

⁸ Yudhi Bimantara, Interview with curator PT. Sinarlestari Ultrindo, Kantor Hukum Bimantara & Co, Jakarta 6 March 2021.

⁹ *Ibid.*

bankrupt and the directors and shareholders are different legal subjects, the assets belonging to the board of directors and shareholders cannot be included as insolvent assets of the company.

On the difference of opinion between the Curator and the Separatist Creditors, the Panel of Judges in Puutsuan Number: 15/Pdt.Sus-Gugatan Lain-Lain/2019/PN. Niaga.Jkt.Pst. argues as follows:

- a. That the collateral that has been tied with the material guarantee in the form of Dependent Rights to guarantee the repayment of all credit facility debt of PT Sinarlestari Ultrindo (In Bankruptcy) to PT. Bank Maybank Indonesia, Tbk., the Panel of Judges holds that all assets on behalf of PT Sinarlestari Ultrindo (In Bankruptcy) or on behalf of third parties that guarantee the repayment of insolvency debtor debt are part of the bankrupt assets of PT SINARLESTARI ULTRINDO (In Bankruptcy);
- b. That is in line with the opinion of experts PROF. DR. SULISTIOWATI, S.H., M.HUM., in a trial that basically states the property on behalf of a third party that guarantees the repayment of debt DEBTOR BANKRUPTCY is part of the property (boedel) Bankruptcy whose management and eradication is carried out by the Curator. It occurs due to a relative right arising from the Agreement on Material Rights of Dependents in which the object guarantees the repayment of debt debtor Pailit.
- c. That furthermore because of the Personal *Guarantee* Agreement provide

d by the Third Party (which is also the Guarantor of Dependent Rights) to guarantee the repayment of all debts of PT. Sinarlestari Ultrindo (In Bankruptcy) to PT. Bank Maybank Indonesia Tbk. Where in the Agreement, the Party has waived its privileges by waiving the provisions of Article 1831 of the Civil Code so that the provisions as referred to in the number 1 of Article 1832 of the Civil Code shall be

- d. By basing on the above provisions, it is reasoned to argue that the Insurer's property can also be done without having to sell the debtor's property first, because at this time the Debtor is in bankruptcy. Which is in line with the opinion of the experts in the trial submitted by Plaintiff PROF. DR. SULISTIOWATI, S.H., M.HUM., who said that the Property of the Insurer can be executed without having to be carried out the sale of objects belonging to the Debtor first as long as the Insurer has ruled out Article 1831 of the Civil Code or Debtor is in a state of bankruptcy as stipulated in Article 1832 of the Civil Code number 1 and number 4.
- e. That therefore also reasoned to argue because proven Guarantee on behalf of Third Parties (Halim Wijaya) is a bankrupt property of PT. Sinarlestari Ultrindo, it must be handed over to PLAINTIFF as the only authority to conduct Management and Eradication of insolvency debtor assets as intended in Law No. 37 of 20024 concerning Bankruptcy and PKPU

Court Decision Number: 15/Pdt.Sus-Gugatan Lain-Lain/2019/PN. Niaga.Jkt.Pst is PT. Bank Maybank

Indonesia Tbk, submitted the Cassation to the Supreme Court, and through the Decision Number: 878 K/Pdt.Sus-Pailit/2019, the Supreme Court of Indonesia rejected the application for the Cassation of PT Bank Maybank Indonesia, Tbk, the last and last PT. Bank Maybank Indonesia Tbk, submitted a review application, but the application for review was rejected through the Decision No. 52 PK /Pdt.Sus-Pailit/2020.

Either the Curator who argues that the collateral belonging to a third party is a bankrupt boedel (property) or the Bank as a Separatist Creditor who argues that the collateral belonging to a third party is not a boedel (property) bankruptcy equally has a strong legal argument.

Differences of opinion regarding the status of collateral belonging to third parties whether to enter boedel (property) bankruptcy is also seen from several court rulings as follows:

The award that states the third party's collateral is a bankrupt property, as follows:

- a. The Supreme Court of The Republic of Indonesia through The Decision Number: 689 K/Pdt.Sus./2012 dated February 25, 2013, declared the property belonging to a third party that becomes a material guarantee of the debt of the bankrupt debtor is a bankrupt property.

"Assets belonging to third parties that are collateral for the material debt of the bankrupt debtor are insolvency assets that must be handed over to the curator for further management and eradication"

- b. Supreme Court of Indonesia through Decision Number: 769 K/Pdt.Sus.Pailit/2016, dated September 21, 2016 Jo. Commercial Court Decision at the Central Jakarta District Court Number: 02/Pdt.Sus-GLL/2016/PN. Niaga.Jkt.Pst, dated March 17, 2016, confirms that assets belonging to third parties that are collateral for material debt of bankrupt debtors are insolvency assets that must be handed over to the Curatorial Team for management and eradication.

The award stating that the third party's collateral is not a bankrupt property, as follows:

- a. The Supreme Court of Indonesia through Decision No. 429 K/Pdt.Sus/2010 dated June 29, 2010, stated that the personal property of the board of directors and the personal property of shareholders are not insolvent even though the property has become a guarantee of debtor's debt, where the guaranteed debtor falls into bankruptcy.
- b. The Supreme Court of Indonesia through Decision No. 569 K/Pdt.Sus/2012 dated November 22, 2012 confirms that even third party assets that guarantee debtor debt that has been in bankruptcy, are not bankrupt assets.

Based on the description above, it can be concluded that in practice this is often a debate between curators and separatist creditors whether third-party assets that are used as collateral for debtor debts declared bankrupt are included in the bankruptcy boedel or not. Alfin Sulaiman

argues that it is often found that the assets of third parties guaranteed to guarantee the debtor's debt are insolvent debtors, but it has not been recorded legally. Against such circumstances in the provisions of Article 6 number 4 letter a 4th Regulation of the Director General of State Assets No. 2/KN/2017 concerning Technical Guidelines for The Implementation of Auctions ("Perdirjen KN 2/2017") one of the conditions of auction execution of bankrupt assets is to attach the original and/or photocopy of proof of transfer of rights or other evidence/documents stating the asset belongs to the hardest, in the event that the asset is still written to a third party, unless the auction object belongs to another party guaranteed with the material right to bear the debt.¹⁰

Alfin Sulaiman added that in the provision it can be seen that the assets of third parties that have not been made changes to the record and but in fact the assets of the bankrupt Debtor is a bankrupt boedel (property) as long as it can be proven the existence of documents on the matter. However, it is excluded if the third party asset is an auction object secured with material rights (e.g. dependent rights) to bear the debt. This provision may be interpreted as interpreted as having a third party asset guaranteed with a material right to pay off a bankrupt Debtor's debt is a bankrupt asset as no transitional supporting documents are required. However, the third party asset is still not a bankrupt boedel and however if the

Curator conducts the sale of third party assets that are used as collateral to pay off the debt of the bankrupt Debtor it is the discretion of the Separatist Creditor of the material collateral holder to be sold through the Curator.¹¹

As long as it is not proven in the court that the property belonging to a third party guaranteed for the debt of the bankrupt debtor is the property of the bankrupt debtor, then the collateral cannot be put into a bankrupt beodel (property). Even if the third party is a director or shareholder in a bankrupt debtor. This is because the company as a group or group, where the activities and activities of the group is "recognized as *separate law recognition*" from the activities and activities of individual groups involved in the company.¹²

On Verdict Number: 15/Pdt.Sus-Gugatan Lain-Lain/2019/PN. Niaga.Jkt.Pst. Jo. Verdict Number: 878 K/Pdt.Sus-Pailit/2019 jo. Verdict No. 52 PK/Pdt.Sus-Pailit/2020 is not proven that the collateral belonging to a third party that is used as collateral for insolvency debtor debt is the property of the bankrupt debtor. Thus, the inclusion of collateral belonging to third parties that are used as collateral for insolvency debtor debt in boedel (property) bankruptcy has violated the provisions of Article 21 of the Bankruptcy Law and PKPU which states that bankruptcy covers the entire wealth of the Debtor at the time the verdict of the

¹⁰ Alfin Sulaiman, *Status of Assets of Directors and Commissioners as Debt Guarantee of the Company*, accessed from <https://www.hukumonline.com/klinik/detail/ulasan/lt597c69248f2cc/status-harta-direksi-dan-komisaris-sebagai-jaminan-utang-perusahaan/>, on March 2, 2021, at 14.00 WIB

¹¹ Alfin Sulaiman, *Status of Assets of Directors and Commissioners as Debt Guarantee of the Company*, accessed from <https://www.hukumonline.com/klinik/detail/ulasan/lt597c69248f2cc/status-harta-direksi-dan-komisaris-sebagai-jaminan-utang-perusahaan/>, on March 2, 2021, at 14.00 WIB

¹² M. Yahya Harahap, *Limited Liability Company Law*, Sinar Grafika, Jakarta, 2011, p.55.

bankruptcy statement is pronounced and everything obtained during bankruptcy.

Article 6 of Law No. 4 of 1996 concerning The Right of Dependents on Land and Objects Related to Land ("Law on The Rights of Dependents") states that If the debtor is injured, the holder of the first Dependent Rights has the right to sell the object of Dependent Rights of his own power through a public auction and take the repayment of his receivables from the proceeds of the sale. Then the explanation of Article 6 states that the remaining proceeds of the sale remain the right of the bearer of rights.

Therefore, as a result of the third party collateral that is used as collateral debt of Bankrupt Debtors into boedel (property) bankruptcy, it violates the provisions of Article 6 of the Law on The Rights of Dependents because the rest of the sale of the object of dependent rights does not return to the third party as the bearer, but becomes boedel (property) bankruptcy.

It is based on the provisions of Article 1131 of the Civil Code which states that thegala of moving and immovable goods belonging to the debtor, both existing and existing, becomes a guarantee for the individual agreements of the debtor. Then Article 1132of theCivil Code which states that bcharcoal-goods become a mutual guarantee for all creditors against it the proceeds of the sale of the goods are divided according to the comparison of each receivable unless among the creditors there are legitimate reasons to take precedence. Based on these provisions, all assets belonging to the Debtor become a joint guarantee for all Creditors.

CONCLUSION

This practice is often a debate between curators and separatist creditorswhether objects belonging to third parties that are used as collateral debtor debts declared bankrupt are included in the bankrupt boedel ornot. On Verdict Number: 15/Pdt.Sus-Gugatan Lain-Lain/2019/PN. Niaga.Jkt.Pst. *Jo.* Verdict Number: 878 K/Pdt.Sus-Pailit/2019 *jo.* Verdict No. 52 PK/Pdt.Sus-Pailit/2020 is not proven that the collateral belonging to a third party that is used as collateral for insolvency debtor debt is the property of the bankrupt debtor. Thus, the inclusion of collateral belonging to third parties that are used as collateral for insolvency debtor debt in boedel (property) bankruptcy has violated the provisions of Article 21 of the Bankruptcy Law and PKPU which states that bankruptcy covers the entire wealth of the Debtor at the time the verdict of the bankruptcy statement is pronounced and everything obtained during bankruptcy,

The implication from the third party collateral that is used as collateral debt of Bankrupt Debtors entered into boedel (property) bankruptcy, then it violates the provisions of Article 6 of the Law on The Rights of Dependents because the rest of the sale of the object of dependent rights does not return to the third party as the bearer of dependent rights, but becomes boedel (property) bankruptcy.

In order to provide legal certainty on the status of collateral belonging to third parties that are used as collateral for bankrupt debtor debt, it takes a judge's decision that does not vary in whether the property belonging to a third party that is used as collateral for debtor debt declared bankrupt or not. And to separatist creditors

must immediately carry out the execution of collateral objects within a period of 2 (two) months since the bankrupt debtor is declared in a state of Insolvency, as provided for article 59 paragraph (1) of the Bankruptcy Law and PKPU. The execution is certainly in order to reduce the potential losses for Separatist Creditors or Third Parties.

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- Putusan Nomor: 52 PK/Pdt.Sus-Pailit/2020
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