

Kedudukan personal guarantor yang telah melepaskan hak istimewanya dalam proses kepailitan (studi kasus: putusan mahkamah agung nomor 868/k/pdt/sus/2010) = The position of personal guarantor who has discharged the privileges in the process of bankruptcy (case study: supreme court decision no. 868/k/pdt/sus/2010) / Claudia Anjani Zain

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Abstrak

Dalam pemberian kredit, Bank biasanya mensyaratkan suatu jaminan atau guarantee, salah satunya dalam bentuk personal guarantee yang mana garantor diberikan hak istimewa oleh Undang-Undang guna melindungi kedudukannya sebagai penjamin. Apabila suatu debitur dalam keadaan tidak mampu membayar kepada kreditur utama maka seharusnya debitur itulah yang seharusnya melakukan pembayaran atas kewajibannya. Seorang personal guarantor dapat memiliki konsekuensi hukum yang jauh, dimana apabila syarat kepailitan telah terpenuhi, maka kreditur dapat mengajukan permohonan pernyataan pailit terhadap personal guarantor di Pengadilan Niaga. Namun, dalam perjanjian garansi seringkali diatur mengenai pelepasan hak istimewa garantor untuk menuntut lebih dahulu harta benda debitur untuk disita dan dijual demi melunasi utang-utangnya. Hal ini kerap kali menjadi dasar kreditur untuk mengajukan permohonan pailit terhadap garantor. Personal guarantor dapat menjadi pihak yang dirugikan dikarenakan pelepasan hak istimewanya.

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In order to grant a credit, banks usually require a guarantee. It can be a form of personal guarantee. Personal guarantor are given special privileges by law in order to protect his position as guarantor. If a debtor in a state where he can't afford to pay to the creditor, the personal guarantor is supposed to be the party who should fulfil the payments. A personal guarantor could have big legal consequences, where if requirements of bankruptcy are met, it follows that the creditor may file for a petition to declare bankruptcy of the personal guarantor on the Commercial Court. However, a guarantee agreement often arrange the discharge of guarantor's privilege to go after and prosecute property of a debtor first in order to pay debtor's debts. This frequently become the reason for creditor to file for a petition to declare against guarantor. Personal guarantor can have an inflicted loss because his privelege relinquishment. This thesis examine the position of the guarantor who has discharge his priveleges and the timing for filing the petition to declare against personal guarantor.