

Kedudukan personal guarantor sebagai pihak penjamin debitur utama dalam proses kepailitan : studi kasus putusan Mahkamah Agung No.868 K/Pdt.Sus/2010 = A role of personal guarantor as the main guarantor of debitur in bankruptcy process : case study judgment of the Supreme Court No.868 K/Pdt.Sus/2010

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Abstrak

Tesis ini membahas kedudukan Personal Guarantor dalam proses kepailitan dimana debitur yang melakukan wanprestasi. Dalam perjanjian penanggungan (borgtoct) dikenal istilah penjamin pribadi atau Personal Guarantor yaitu orang ketiga yang menjamin debitur manakala debitur wanprestasi, dalam hukum kepailitan peran seorang Personal Guarantor dalam sangat penting, walaupun sebagai pihak ketiga Personal Guarantor sebagai penjamin dapat diposisikan sebagai debitur pada saat Personal Guarantor melepas hak istimewanya. Pada Kasus Putusan Mahkamah Agung No.868 K/Pdt.Sus/2010 Standard Chartered Bank menuntut Termohon Pailit I Tundjung Rachmanto dan Termohon Pailit II Rudy Syahputra (selaku pemegang saham dan pemberi jaminan) karena PT. HPS. (Handalan Putra Sejahtera) tidak membayar hutangnya yang telah jatuh tempo kepada Standard Chartered Bank. Standard Chartered Bank mengajukan kasasi karena dinilai putusan pengadilan negeri tidak tepat dengan alasan, Tundjung Rachmanto dan Rudy Syahputra memiliki dua atau lebih Kreditor dan tidak membayar lunas sedikitnya satu utang yang telah jatuh waktu dan dapat ditagih. Mahkamah Agung mengabulkan permohonan Standard Chartered Bank (pemohon kasasi) sesuai dalil dengan bukti-bukti yang diberikan oleh Standard Chartered Bank (pemohon kasasi).

.....This thesis has contended the role of a Personal Guarantor in bankruptcy process where the Debitur is a party who performs a default. In a encumbrance agreement the term of Personal Guarantor is known, which is a third party (third person) who guarantees the Debtor when the Debtor performs a default. In a law of Bankruptcy, the role of a personal Guarantor is important although as the third party, the standing of such Personal Guarantor as the guarantor may be positioned as a debtor when the Personal Guarantor releases its privilege. In the Case of the Judgment of the Supreme Court No.868 K/Pdt.Sus/2010, Standard Chartered Bank demands the Bankruptcy Respondent I Tundjung Rachmanto and the Bankruptcy Respondent II Rudy Syahputra (as the shareholders and the guarantors) because PT. HPS. (Handalan Putra Sejahtera) did not pay its debt due to Standard Chartered Bank. Standard Chartered Bank filed a petition for cassation as it was considered that the court's judgment was inappropriate on the ground that Tundjung Rachmanto and Rudy Syahputra had two or more creditors and they did not settle at least the debt that was due and payable. The Supreme Court acceded Standard Chartered Bank's petition (the Requester for cassation) pursuant to an argument by the evidences given by Standard Chartered Bank (the Requester for cassation).