

Pembatalan pailit ahli waris personal guarantor. Studi kasus: para ahli waris alm. Andi Susanto dan ahli waris alm. Gunawan Susanto = The bankruptcy cancellation of personal guarantors heirs. Case study the heirs of Andi Susanto and Gunawan Susanto

Indri Utari Putri, author

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Abstrak

Dalam pemberian kredit, Bank biasanya mensyaratkan adanya suatu jaminan untuk menghindari risiko gagal bayar dari debitur. Salah satu bentuk jaminan tersebut adalah jaminan perorangan, dimana pihak ketiga menjamin pelaksanaan kewajiban debitur kepada kreditur. Tanggung jawab seorang penanggung sangat besar hingga dapat dipailitkan. Meskipun penanggung bukanlah seorang debitur, namun apabila debitur utama wanprestasi maka ia berkedudukan sebagai seorang debitur dan jika memenuhi persyaratan pailit, maka dapat diajukan permohonan pailit terhadap dirinya. Suatu permasalahan timbul ketika seorang penanggung meninggal dunia, sesuai Pasal 1826 KUH Perdata maka perikatan penanggung beralih kepada ahli warisnya. Hal ini menimbulkan akibat ahli waris sebagai pihak yang tidak terlibat dalam perjanjian kredit dan perjanjian penanggungan dapat dimohonkan pailit oleh kreditur. Dalam skripsi ini, penulis melakukan tinjauan mengenai kepailitan ahli waris personal guarantor beserta tanggung jawabnya, serta melakukan analisis terhadap putusan pembatalan pailit ahli waris personal guarantor.

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In order to grant a credit, the existance of guarantee is something bank usually requires to avoid the risk of default by the debtor. One form of such guarantee is personal guarantee, whereby the third party guarantees the implementation of debtor rsquo s liability to the creditor. The obligations of personal guarantor is so great until they can be bankrupted. Albeit the guarantor is not particularly a debtor, she he has the equal position as the debtor in the situation where primary debtor defaults, and if the condition fulfills the requirements of bankruptcy, a bankruptcy request can be made upon her him. A problem arises when a guarantor deceases, according to Article 1826 of Civil Code therefore the guarantor obligations switches to the heirs. This resulted an access for the creditor to fill a bankruptcy request to the heirs, in which the heirs themselves are not the parties involved in the credit and guarantee agreement. In this thesis, the author will be reviewing the bankruptcy of personal guarantor rsquo s heirs along with their responsibilities, whilst conducting an analysis on the verdict of bankruptcy cancellation upon personal guarantor rsquo s heirs.