



POSITION OF THE PROPERTY COLLATERAL OBJECT WITH OWNERSHIP IN THE NAME OF A THIRD PARTY IN THE BANKRUPTCY PROCESS (DECISION CASE NUMBER 08/ PDT.SUS-GLL/ 2019/ PN. NIAGA. JKT. PST)

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Bankruptcy Assets, Bankruptc,, Third Parties. The provision of material collateral by a third party can give rise to a struggle between the curator and creditors in executing the collateral object in the event of bankruptcy, as is the case in Decision Number 08/Pdt.Sus-GLL/2019/ PN.Niaga.Jkt.Pst. This research brings several problem formulations, namely how the position of material collateral objects in the name of third parties and how to analyze the ratio decidendi of the panel of judges in Decision Number 08/Pdt.Sus-GLL/2019/PN.Niaga.Jkt.Pst which includes material collateral objects for names of third parties into the bankruptcy estate. This research is normative juridical research with a statutory approach and a case approach. The data obtained came from secondary data and tertiary data in the form of interviews collected using library research for qualitative descriptive analysis. The results of the research show that if we refer to Article 1 number 1 in conjunction with Article 21 of the Bankruptcy Law, the position of the object of collateral with ownership in the name of a third party is not included in bankruptcy assets even though material collateral has been imposed on these assets so that the ratio of the decision of the panel of judges in deciding lawsuit Number 08/Pdt.Sus-GLL/2019/PN.Niaga.Jkt.Pst is wrong.

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A. Introduction

Economic development in the business world is closely related to capital turnover, most of which is loans from various sources such as banks, capital investment, bonds, or other means that can cause receivables problems (Sagala, 2015). One solution that can be taken by legal subjects when experiencing receivables problems is through bankruptcy proceedings which can be filed as a form of joint venture between debtors and creditors so that they can make payments to all their creditors (Yuhelson, 2019). Bankruptcy can happen to anyone, whether individuals or legal entities, as stated by

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Charles J. Tabb that "bankruptcy has become a central feature in our society, touching the lives of almost everyone" (J.Tabb, 1995). Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, hereinafter referred to as the Bankruptcy Law, exists as an umbrella for bankruptcy law which was formed to meet the interests of the business world in order to resolve all debt and receivable problems fairly, quickly, openly and effective (Gunardi Lie, 2019). Mochtar Kusumaatmaja is of the opinion that law is a means of reform and development for society, so that the presence of the Bankruptcy Law is expected to be able to play a maximum role in renewing society in an effort to resolve its debt and receivable problems (Kusumaatmaja, 2002).

Debtors' limitations in providing collateral for credit agreements can be overcome by providing collateral by third parties in the form of individual guarantees or material guarantees. Providing material collateral in the name of a third party can cause problems if the debtor is declared bankrupt, namely a struggle between the curator and separatist creditors in executing the object of the material collateral. One example of a problem that occurs is in Decision Number 08/Pdt.Sus-GLL/2019/PN.Niaga.Jkt.Pst. The plaintiff as the Curator Team from PT Sinarlestari Ultrindo filed a lawsuit against PT Bank HSBC Indonesia as the creditor and Halim Wijaya as the third party providing material collateral in the form of Mortgage Rights. Referring to Article 1 number 1 of the Bankruptcy Law, it is regulated that bankruptcy is a general confiscation of all assets of the bankrupt Debtor, so that later the management and settlement will be carried out by the Curator.

The position of the collateral object with ownership in the name of a third party needs to be studied more deeply to find out whether the object is included in the bankruptcy estate or vice versa. Based on the matters described above, the author is interested in discussing and studying more deeply the research in the form of a thesis with the title "The Position of Material Collateral Objects with Ownership in the Name of Third Parties in the Bankruptcy Process (Decision Study Number 08/Pdt.Sus-GLL/2019/PN.Niaga.Jkt.Pst)".

B. Method

The type of research carried out is normative juridical research, using a statutory approach by reviewing statutory regulations relating to bankruptcy. Apart from that, a case approach is used which aims to study the application of legal norms or rules carried out in legal practice. The data sources that will be used in this research are secondary data consisting of primary legal materials in the form of several regulations and laws, secondary legal materials in the form of books and scientific works, as well as tertiary legal materials which can be obtained from the Big Indonesian Dictionary, Law Dictionary, Encyclopedias, magazines, newspapers, and so on. This research also obtained tertiary data through interviews conducted with sources, namely Mandela Ignasius Sinaga, S.H., M.H. as Curator of Surya Mandela & Partners. Secondary data

collection techniques in this research were carried out using library research, and then analyzed descriptively qualitatively.

C. Result & Discussion

1. Position of the Object of Material Collateral in the Name of a Third Party Pledged for the Interests of the Debtor in the Bankruptcy Process

Referring to the case of PT Sinarlesari Ultrindo, another problem that arises if the collateral object belongs to a third party is when the debtor has been declared bankrupt with all the legal consequences based on the Commercial Court decision. Providing material collateral objects in the form of mortgage rights granted by third parties creates problems between curators and creditors in the bankruptcy process regarding the position of third party assets, such as in the a quo case. The bankruptcy process is often undertaken as an effort to resolve the debt problem of debtors who are no longer able to pay off their debts to their creditors. Paragraph 9 of the General Explanation of the Bankruptcy Law states that a decision to declare bankruptcy changes a person's legal status to become incompetent to carry out legal actions, control and manage their assets from the time the decision to declare bankruptcy is pronounced.

The bankruptcy decision has several legal consequences for the debtor, one of which is that the debtor's authority to enter bankruptcy becomes very limited. Bankruptcy debtors can only carry out actions that are profitable and actions that can increase the amount of assets which are then used as bankruptcy assets. In Article 1 number 1 of the Bankruptcy Law, bankruptcy is a general confiscation (beslaag) of all assets belonging to the bankrupt debtor, the management and settlement of which will be carried out by the Curator with supervision from the Supervisory Judge. Referring to Article 21 of the Bankruptcy Law, bankruptcy includes all of the debtor's assets at the time the decision to declare bankruptcy is pronounced as well as everything obtained during the bankruptcy. If linked to Article 1131 of the Civil Code (Civil Code), the phrase "the debtor's entire assets" in the Bankruptcy Law means all of the debtor's property, both movable and immovable, both existing and new ones that will be in existence. later. The debtor's assets can be included as bankruptcy assets if they meet the elements of Article 1131 of the Civil Code.

Based on these provisions, it can be interpreted that bankruptcy assets consist of all assets belonging to the bankruptcy debtor which will subsequently be in a state of general confiscation after the bankruptcy decision is pronounced. Ownership of the debtor's assets must be proven based on legally valid documents. This results in the assets of third parties which are pledged as collateral to repay the debtor's debts and are not included in the bankruptcy assets. Third parties still have civil rights to manage assets even though material collateral is imposed on the assets to pay off debts of debtors who have been declared bankrupt.

2. Analysis of the Ratio Decidendi of the Panel of Judges in Decision Number 08/Pdt.Sus-GLL/2019/PN.Niaga.Jkt.Pst

The Panel of Judges of the Commercial Court at the Central Jakarta District Court through Decision Number 08/Pdt.Sus-GLL/2019/PN.Niaga.Jkt.Pst declared the List (Testification) of Bankruptcy Assets of PT Sinarwisata Ultrindo (in bankruptcy) valid, and declared the assets in the form of land and buildings as per SHM No. 195/Gesik Village, located in West Cirebon District, Kab. Cirebon, West Java Province, in the name of Halim Wijaya is part of the bankruptcy estate. The description of the ratio decidendi of the Panel of Judges in the decision is:

- a. The object of the lawsuit which is bound by material collateral is contained in the Bankruptcy Assets List (Complaint) of PT Sinarwisata Ultrindo

Observing the considerations of the Tribunal, that on April 16 2018 the Plaintiff had made a List (Complaint) of Bankruptcy Debtors' Assets which contained the object of the lawsuit in the name of a third party. The List of Bankruptcy Debtor's Bankruptcy Assets has been approved by the Supervisory Judge and has been placed and made available at the Registrar's Office of the Commercial Court so that it can be seen by creditors. The Bankrupt Debtor and Defendant II have also handed over the object of the lawsuit voluntarily to the Plaintiff so that from that time and until the time the lawsuit is filed, the object of the lawsuit is under the management and control of the Plaintiff.

According to Article 100 paragraph (1) and paragraph (2) of the Bankruptcy Law, one of the curator's administrative duties is to record bankruptcy assets, including the process of recording all assets belonging to the bankruptcy debtor completely and then placing them in the Registrar's Office of the Court. The curator can also register bankruptcy privately with the approval of the Supervisory Judge. In fact, the curator does have the authority to make records of bankruptcy assets, however, if he is only guided by Article 100 paragraph (1) and paragraph (2) of the Bankruptcy Law, this will give rise to unlimited authority for the Curator in determining what assets are included in the bankruptcy assets. The curator must pay attention to the position of the object of the lawsuit in accordance with the provisions of Article 1 paragraph (1) jo. Article 21 Bankruptcy Law jo. Article 1131 of the Civil Code, as has been explained, states that the list of bankruptcy assets includes all of the Debtor's assets at the time the decision to declare bankruptcy is pronounced as well as everything obtained during the bankruptcy. So, when recording, the bankruptcy assets that can be compiled and created are only limited to assets registered with ownership in the name of the bankruptcy debtor, or in this case, PT Sinarlestari Ultrindo.

In lawsuit Number 08/Pdt.Sus-GLL/2019/PN.Niaga.Jkt.Pst., the Plaintiff as curator has made a Bankruptcy Property List (Complaint) of PT Sinarwisata Ultrindo dated April 16 2018 which has received approval from the Supervisory Judge. The plaintiff gave the reason for including the mortgage object in the name of a third party in the List of Bankruptcy Assets because the object of the lawsuit was company property, but in the Certificate of Ownership it was still recorded

in the name of Halim Wijaya based on PT Sinarwisata Ultrindo's list of assets. Article 32 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) states that a certificate is proof of a right in the form of a letter which acts as a strong means of proof. Based on Article 37 paragraph (1) of the Republic of Indonesia Government Regulation Number 24 of 1997 concerning Land Registration, the transfer of land rights through sale and purchase, grant, exchange, even entry into a company or other transfer of rights can only be registered if there is evidence in the form of a deed made. by the authorized PPAT. As for this lawsuit, the Plaintiff did not provide evidence regarding land registration, either a Certificate of Ownership or a PPAT deed, so it can be concluded that the object of the lawsuit was never transferred in any form to the name of PT Sinarlestari Ultrindo or the bankrupt debtor. The original documents regarding the object of the lawsuit and the documents for the imposition of the mortgage rights are still in the control of the Defendant as the holder of the Mortgage Rights guarantee. If there is a voluntary transfer of rights without any deletion on the original documents under the control of Defendant I, this cannot necessarily be used as evidence that the ownership of the object of collateral has been transferred to another party.

The curator has no right and no authority to record bankruptcy assets, manage and/or settle assets or properties with ownership in the name of a third party. The curator can only enter the object of the lawsuit into the Bankruptcy Assets List (Claim) if there has been a transfer of land rights from a third party to the debtor in accordance with the applicable statutory procedures so that they have binding legal force. The plaintiff as curator should remove and write off the object of the lawsuit in the form of a plot of land and the building located on it, as recorded in the Certificate of Ownership in the name of Halim Wijaya, No. 195/Gesik Village located on Jl Ki Ageng Tapa, RT 01/RW 03, Gesik Village, West Cirebon District, Cirebon Regency, which has been bound by a Rank I (First) Mortgage Guarantee with a guarantee value of IDR 4,010,667,000, 00 (four billion ten million six hundred and sixty seven thousand rupiah) from the Bankruptcy Assets List (Pertelaan) of PT Sinarlestari Ultrindo.

- b. The third party is the Director and Shareholder of PT Sinarlestari Ultrindo.

Based on decision Number 08/Pdt.Sus-GLL/2019/PN.Niaga.Jkt.Pst. It has been explained that the parties involved are PT Sinarlestari Ultrindo as the debtor, PT Bank HSBC Indonesia as the creditor, and Halim Wijaya as the third party owner of the material collateral object as well as the Director and shareholder of PT Sinarlestari Ultrindo. The panel of judges stated that the third party providing a guarantee as Director and Shareholder of PT Sinarlestari Ultrindo is an inseparable unit from the Principal Credit Agreement so that all assets are in the name of PT Sinarlestari Ultrindo (in bankruptcy) or in the name

of Halim Wijaya as the third party which guarantees repayment The bankruptcy debtor's debt is part of the bankruptcy estate.

Regarding company organs such as directors, commissioners and shareholders, there is the principle of limited liability. This means that shareholders have responsibility limited to the number of shares they own so that they are not responsible for company losses exceeding the value of the shares they own and are not personally responsible for agreements made on behalf of the company as well as with other company organs. This separation of assets is related to the existence of "limited liability" regulated in Article 3 paragraph (1) of the Company Law so that in principle the Company's debts cannot be borne by shareholders either individually or jointly. In his book, M. Yahya Harahap wrote that (harahap, 2009):

- 1) Shareholders are not responsible for the company's debts, and vice versa. The Company is not responsible for shareholder debts (not liable of its shareholders);
- 2) Shareholders only bear losses limited to the share price they invest (their loss is limited to their investment);
- 3) Shareholders can be held personally responsible if they have bad faith by using the company for personal gain.

Immunity for company organs regarding limited liability does not always apply absolutely and can become unlimited liability up to personal wealth. In certain circumstances limited liability can be pierced and can be eliminated so that the court will impose responsibility on the company's organs (Dewi, 2017). The principle of piercing the corporate veil is a doctrine that transfers responsibility from the company to the company's organs to protect creditors and third parties from actions that are not in accordance with the stated objectives. This principle is contained in Article 3 paragraph (2) and Article 97 paragraph (3) Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as UUPT).

If the company and the company's organs are jointly declared bankrupt, then all assets belonging to the company and the company's organs are bankruptcy assets which must be managed and settled by the curator. In the a quo case, only PT Sinarwisata Ultrindo was declared bankrupt, so it can be interpreted that the assets property of directors and shareholders is not included in bankruptcy assets. The execution of these assets is carried out directly by the creditor holding the mortgage material collateral, in this case the bank, namely PT HSBC Indonesia.

Based on the description above, the ratio decidendi of the Panel of Judges was wrong in stating that the third party providing collateral as the Shareholder and Director of PT Sinarlestari Ultrindo is an inseparable unit from the Principal Credit Agreement so that all assets are in the name of PT Sinarlestari Ultrindo (in

bankruptcy) or in the name of the third party who guarantees the repayment of the debt of the bankruptcy debtor is part of the bankruptcy estate.

- c. There is a Decision of the Supreme Court of the Republic of Indonesia regarding a Similar Case

One of the considerations of the Panel of Judges was including assets in the name of third parties as part of the bankruptcy estate because there were several previous decisions which decided that assets belonging to third parties which serve as material collateral for the bankruptcy debtor's debts are bankruptcy assets which must be handed over to the curator for processing and settlement. Furthermore.

In practice, there are also several decisions of the Supreme Court of the Republic of Indonesia regarding lawsuits regarding collateral objects with ownership in the name of a third party. One of the decisions with a similar case chronology is in the Republic of Indonesia Supreme Court Decision No. 569 K/Pdt.Sus/2012 dated 22 November 2012 between PT BNI Regional & Recovery Banjarmasin and the Curator of PT Bangkit Pangan Indonesia (In Bankruptcy) has provided legal considerations that although Arie Pranoto Achmad admitted that the lands belonged to PT. Bangkit Pangan Indonesia (bankrupt debtor), this recognition cannot be legally justified because formally the SHM lands are the personal property of the Director and Shareholders of PT. Bangkit Pangan Indonesia on behalf of Arie Pranoto Achmad, and PT. Bangkit Pangan Indonesia cannot prove that the lands which have been secured by mortgage rights have been handed over by Arie Pranoto Achmad to PT Bangkit Pangan Indonesia. This made the panel of judges in its decision declare null and void the list (dispute) of PT's bankruptcy assets. Bangkit Pangan Indonesia (in bankruptcy) made by the Respondent concerns immovable property belonging to and in the personal names of Arie Pranoto Achmad and Jefry Setia wan Pranoto which have been guaranteed in the form of mortgage rights and declared unregistered assets in the name of PT. Bangkit Pangan Indonesia (in bankruptcy) is not a bankruptcy asset of PT. Indonesian Food Rise.

D. Conclusion

If we refer to Article 1 point 1 in conjunction with Article 21 of the Bankruptcy Law, bankruptcy only covers all of the Debtor's assets at the time the bankruptcy declaration was pronounced as well as everything obtained during the bankruptcy. If linked to Article 1131 of the Civil Code, the phrase "the debtor's entire assets" means all of the debtor's assets, both movable and immovable, both those that already exist and those that will exist in the future. Based on this explanation, the position of collateral objects with ownership in the name of a third party is not included in bankruptcy assets even though material collateral has been imposed on these assets to pay off debts of debtors who have been declared bankrupt.

In lawsuit No. 08/Pdt.Sus-GLL/2019/PN.Niaga.Jkt.Pst., the Panel of Judges granted the Plaintiff's lawsuit and stated that the object of the lawsuit with the imposition of mortgage rights in the name of a third party is part of the bankruptcy estate. The Panel's decision was that the object of the lawsuit was in the Bankruptcy Assets List (Complaint) of PT Sinarwisata Ultrindo and the third party had handed over the object of the lawsuit voluntarily. The author considers this to be wrong because the Plaintiff as Curator does have the duty and function to record bankruptcy assets as regulated in Article 100 paragraph (1) of the Bankruptcy Law, but if it is related to the position of the collateral object as in the previous discussion, the management and /or settlement of assets or property with ownership in the name of a third party so that the list of bankruptcy assets is limited to assets registered with ownership in the name of PT Sinarwisata Ultrindo. The Panel also considers that the third party is the Director and Shareholder of PT Sinarlestari Ultrindo, so the Researcher considers this to be wrong because the company is a legal entity that can carry out legal actions and there is a separation of assets related to the existence of "limited liability" as in Article 3 paragraph (1) of the Company Law, although it does not always apply absolutely, is because in certain circumstances, limited liability can be pierced so that the court will impose responsibility on the company's organs. Ratio decidendi The final panel stated that there were several decisions on similar cases which decided that third party assets were part of the bankruptcy estate. If we refer again to Article 1 paragraph (1) Jo. Article 21 of the Bankruptcy Law, the Panel of Judges should state that assets belonging to third parties are not part of the bankruptcy estate because PT Sinarlestari Ultrindo and Halim Wijaya are two different legal subjects and have separate assets. So the object of the lawsuit should be removed from the List of Bankruptcy Assets of PT Sinarwisata Ultrindo.

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