

TANGGUNG GUGAT PENJAMIN PRIBADI ATAS UTANG-UTANG DEBITUR WANPRESTASI YANG DIPUTUS PAILIT

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ABSTRAK

Di dalam praktek perjanjian pemberian kredit, seringkali ditemukan kreditur sebagai pihak yang berpiutang selain meminta jaminan kebendaan dari yang berutang atau debitur, juga meminta jaminan tambahan berupa jaminan non kebendaan atau *immaterial* atau *personal guarantee* atau *borgtocht*. Jaminan perorangan atau *borgtocht* adalah jaminan yang diberikan oleh pihak ketiga dimana apabila debitur tidak melaksanakan kewajibannya kepada kreditur maka pihak ketiga tersebut bersedia untuk melaksanakan kewajiban debitur. Merujuk pada hal tersebut di atas, yang menjadikan ketertarikan adalah apakah kreditur dapat melakukan sita atas harta benda penjamin pribadi guna memenuhi kewajiban debitur yang wanprestasi dan apa tanggung gugat penjamin pribadi apabila debitur wanprestasi dan diputus pailit.

Berdasarkan hasil penelitian diperoleh suatu kesimpulan bahwa pemberi jaminan pribadi (*borgtocht*) dapat dimintai pertanggungjawaban secara langsung untuk memenuhi kewajiban debitur kepada kreditur tanpa harus menyita harta benda debitur terlebih dahulu, apabila dalam perjanjian penjaminan pihak *borgtocht* telah melepaskan hak istimewanya yang terdapat di dalam B.W. Pasal 1832. Perjanjian *personal guarantee* tidak dapat dilakukan sita umum meski debitur dinyatakan pailit oleh Pengadilan Niaga, sehingga *borgtocht* tetap mempunyai kewajiban kepada kreditur, yaitu tanggung gugat ganti kerugian atas dasar wanprestasi berupa penggantian biaya, rugi, dan bunga sebagaimana dimaksud dalam Pasal 1243 B.W.

Kata Kunci: Jaminan perorangan, wanprestasi, tanggung gugat.

**PERSONAL GUARANTEE'S LIABILITY FOR DEFAULTED DEBTOR
DEBTOR'S DECIDED TO BANKRUPTCY**

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ABSTRACT

In the practice of lending agreement, creditors are often found as a party to the debts in addition to asking for material guarantees from the debtor, also asking for additional guarantees in the form of non-material or immaterial guarantees or personal guarantees or borgtocht. An individual guarantee or borgtocht is a guarantee given by a third party whereby if the debtor does not carry out his obligations to the creditor then the third party is willing to carry out the debtor's obligations. Referring to the above, what makes the interest is whether the creditor can confiscate personal guarantor's assets to meet the obligations of the defaulting debtor and what is the personal liability of the guarantor if the debtor is defaulted and terminated bankrupt.

Based on the results of the study, it was concluded that the personal guarantor (borgtocht) can be held directly accountable for fulfilling debtor obligations to the creditor without having to confiscate the debtor's property first, if in the guarantee agreement the borgtocht has waived his special rights contained in B.W. article 1832. Personal guarantee agreements cannot be made publicly confiscated even though the debtor is declared bankrupt by the Commercial Court, so that the borgtocht continues to have obligations to the creditor, namely the liability for compensation on the basis of default in the form of cost, loss, and interest as referred to in Article 1243 B.W.

Keywords: Personal Guarantee, default, liability.