

# LEGAL PROTECTION OF CORPORATE GUARANTEES AGAINST APPLICATIONS FOR POSTPONEMENT OF DEBT PAYMENT OBLIGATIONS (PKPU) IN INDONESIAN CIVIL PROCEDURAL LAW

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## LEGAL PROTECTION OF CORPORATE GUARANTEES AGAINST APPLICATIONS FOR POSTPONEMENT OF DEBT PAYMENT OBLIGATIONS (PKPU) IN INDONESIAN CIVIL PROCEDURAL LAW

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### ABSTRACT

Companies often face financial difficulties that require them to apply for postponement of debt payment obligations (PKPU). Corporate guarantee plays an important role in providing collateral for the company's debt. This research aims to analyze the legal protection given to corporate guarantee in PKPU application. This research uses a normative legal research approach. The data collection technique in this research is by literature study. This approach involves analyzing laws and regulations, court decisions, related documents, and relevant legal literature. The data is analyzed descriptively by identifying the rules relating to the legal protection of corporate guarantee in PKPU. The results showed that the legal protection of the corporate guarantee is regulated in article 1824 of the Civil Code, the corporate guarantee as an insurer is not presumed, but must be held with an express statement, it is not allowed to expand the coverage to exceed the provisions that become conditions when holding it. In addition, the corporate guarantee has privileges regulated in Article 1831 of the Civil Code. The guarantee's liability is limited to the deficiency that cannot be repaid by the debtor. In other words, the corporate guarantee is only responsible for the part of the debt that cannot be fulfilled by the debtor. Article 1837 of the Civil Code gives the corporate guarantee the right to request debt settlement. If the corporate guarantee has paid a certain amount of the guaranteed debt, they have the right to request that the debt be divided equally among all guarantees. Lastly, Article 1847 gives the right to use all of the exceptions or defenses owned by the debtor (*declinatoire exeptie* or *dilatoire exeptie*).

**Keywords:** Legal Protection, Corporate Guarantee, PKPU, Civil

### INTRODUCTION

Companies often face financial difficulties that may make it difficult for them to fulfill their debt payment obligations to their creditors. In this situation, companies may seek for a delay in debt payment requirements (PKPU) in an effort to obtain legal protection and an opportunity to revitalize their finances. PKPU is a legal process regulated in Indonesian civil procedure law, which provides protection to companies experiencing financial difficulties in order to better carry out their business activities and fulfill debt payment obligations more regularly (Retnaningsih, 2018). The goal of PKPU is to give debtors a chance to consolidate their debts, either in whole or in part, to concurrent creditors (Sjahdaeni, 2010).

Certain conditions must be met before the PKPU process may be carried out. As prescribed by Law No. 37 of 2004 on Bankruptcy and Postponement of Debt Payment Obligations (UUKPKPU) (Silalahi & Tanjung, 2021). A company or legal entity provides a guarantee or warranty to creditors as a form of responsibility in debt repayment. This guarantee is generally regulated in Article 1131 of the Civil Code (KUHPdata), which states that all of a person's property, both movable and immovable, which already exists or will exist in the future, can be used as collateral for all individual obligations (Susanti, 2019). However, this general guarantee is still considered inadequate by creditors, so creditors often ask for special guarantees, one of which is a corporate guarantee.

A corporate guarantee is a promise or declaration of ability issued by the insurer to pay the debtor's obligations when the debtor himself defaults (Sardjono et al, 2023). Corporate guarantee plays an important role in providing collateral for the debt owned by the company.

Corporate guarantees can only be held liable if the debtor is unable to complete its obligations, besides that corporate guarantees that are not in good faith can also take refuge behind the

obligation to collect from the debtor. The legal protection of corporate guarantee<sup>18</sup> needs to be examined regarding the responsibility of the guarantor or insurer, in connection with the provisions of Article 165 of the Bankruptcy Law, according to Article 168, even though there has been peace, the creditors still have rights against the insurers (Sari et al, 2021).

In previous research conducted by (Rusli, 2021) the research focused on legal protection for parties given corporate guarantees. Meanwhile, in research (Sari et al, 2021) legal protection is focused on corporate guarantees but in bank financing case studies. The novelty of the<sup>20</sup> research is that the research focuses on legal protection from the corporate guarantee side of the application for postponement of debt payment obligations that have never been studied before. This research aims to analyze the legal protection given to corporate guarantees in PKPU applications.

#### METHOD

A normative legal research approach is used in this study. According to Johnny Ibrahim, normative legal research is a scientific research method that seeks truth from the normative side using scientific logic. The normative side of this inquiry involves not just laws and regulations, but also the concept of law as a rule. The doctrinal-nomological method is employed in normative legal research, and it focuses on evaluating the rules of instruction that regulate behavior (Prahassacitta, 2019).

The data collection technique in this research is a literature study, namely by collecting and analyzing various legal sources such as laws and regulations, court decisions, scientific journals, reference books, and other related documents relevant to the research topic sourced from Google Scholar. This approach involves analyzing laws and regulations, court decisions, related documents, and relevant legal literature. The data is analyzed descriptively by identifying the rules relating to the legal protection of corporate guarantees in PKPU.

#### DISCUSSION

PKPU is a relief that gives debtors a delay in paying their debts, debtors hope that they will be able to pay off all of their debts in a reasonably short period<sup>5</sup> of time (Simaremare, 2021). The purpose of PKPU, as stated in the Bankruptcy and PKPU Law, is to provide an opportunity for the debtor to avoid bankruptcy through the submission of a peace plan, with later offers in the form of full or partial debt payments, also known as debt restructuring<sup>14</sup> (Sofia, 2020).

Certain conditions must be met before the PKPU process may be carried out. According to Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUKPKPU), debtors who can apply for PKPU are those who have more than one creditor and do not expect to be able to continue paying their debts that are due and collectible, so a peace plan that includes an offer to pay part or all of the debt to creditors is required. Creditors may also file a PKPU if they feel the debtor<sup>13</sup> would be unable to pay his past-due and recoverable obligations, in which case they must submit a peace plan with an offer to pay a portion or all of the debt to his creditors (Silalahi & Tanjung, 2021).

A company or legal entity provides<sup>4</sup> a guarantee or guarantee to the creditor in the repayment of its debt. Guarantees in general are regulated in Article 1131 of the Civil Code (KUHPerdata), namely all a person's property, both mobile and immovable, existing and future, becomes collateral for all individual liabilities. This general guarantee is still considered inadequate by creditors so that creditors often ask for special guarantees (Susanti, 2019).

Corporate guarantee is a guarantee given by a legal entity. The guarantee is expected to guarantee the bank's trust in the debtor when the debtor does not keep his promise (default) (Rianto, 2020). Guarantees determined by law are guarantees that are appointed by law without an agreement from the parties, for example, the provisions of the law which determine that all the debtor's property, both movable and fixed objects, both existing and future objects, become collateral for all his debts (Abhimantara, 2019).

Corporate guarantees are solely accountable if the primary debtor fails to meet his obligations. This will certainly take a long time and is not in line with the spirit of speedy justice promoted by the Commercial Court. In addition, corporate guarantees that are not in good faith can also take refuge

behind the obligation to collect from the main debtor (Handayani, 2016). According to Sulastra, (2019) a guarantor can be bankrupted, if in the event that it has waived its privileges as a guarantor, and the applicant creditor can prove in the trial at the Commercial Court with the following steps:

1. The principal debtor has been held accountable, but the principal debtor has no assets at all or after seizure and auction of the principal debtor's assets, but the assets are not sufficient or the debtor is completely bankrupt;
2. It must be proven that the guarantor (as required by Article 2 of UUK) has more than one creditor;
3. One of the debts has matured.

If the three things mentioned above are fulfilled, then the bankruptcy petition against the guarantor must be granted by the judge. Meanwhile, if the guarantor has waived its privilege, let alone declaring that it is jointly and severally liable with the main debtor, then the creditor can directly file a bankruptcy petition against the guarantor. The next step that must be taken by the creditor in the trial must prove:

1. Show the credit agreement between the debtor and the creditor accompanied by a letter of guarantee agreement containing a waiver of privilege and a statement of joint and several liability with the main debtor;
2. Guarantor has debt to other creditors;
3. One of the debts has matured and has been collected but the guarantor as a jointly responsible party with the main debtor still does not want to pay.

Legal protection against corporate guarantees is regulated in Article 1824 of the Civil Code, which reads:

*"The guarantee of debt is not presumed, but must be made with an express statement; it is not permissible to expand the guarantee to exceed the provisions that become conditions when making it".*

According to Article 1824 of the Civil Code<sup>1</sup> corporate guarantee as an insurer is not presumed, but must be held with an express statement, it is not allowed to expand the coverage to exceed the provisions that become conditions when holding<sup>2</sup> it. Meanwhile, corporate guarantees have special rights as a form<sup>3</sup> legal protection. According to Article 1831 of the Civil Code, the insurer has the right to<sup>4</sup> demand that the debtor's property be seized and sold in order to pay off the obligation; if the sale of the debtor's property is inadequate to pay off the debt, the insurer's property will pay it off. When the insurer in making the insuring agreement promises to maintain its privilege, the creditor will execute the insurer's property later after the debtor's property has been sold. After the sale process has fulfilled the debtor's debt, the insurer no longer plays a role and the coverage agreement ends when the credit agreement is completed and the debtor's debt is paid off (Dewi & Putra, 2020). According to Panjaitan (2018), these include: The first<sup>5</sup> privilege is the most important right is the right to demand first (vorrecht van uitwinning) so that the debtor's assets are confiscated and auctioned<sup>6</sup> first before being asked to carry out his obligations as a guarantor in the event of default. This is regulated in Article 1831 of the Civil Code which reads:

*"the insurer is not obliged to pay to the debtor, other than if the debtor is negligent, while the debtor's property must first be seized and sold to settle the debt".*

The second privilege is the right to request a pro-rata distribution of obligations among the guarantors if there is more than one guarantor. Basically, each guarantor is<sup>7</sup> bound to fulfill the entire amount of the obligation they have guaranteed together. This principle is regulated in Article 1837 of the Civil Code which reads:

*"However, each of them, if he does not waive his privilege not to ask for the division of his debt, at the first time he is sued before the judge, can demand that the debtor first divide his debt, and reduce it to the share of each legally bound debt insurer".*

The third privilege is the right to use all of the exceptions or defenses owned by the debtor (declinatoire exceptie or dilatoire exceptie), except those related to the debtor's personal circumstances when entering into the main agreement. This is regulated in Article 1847 which reads:



"The debt insurer can use against the debtor all the stipulations that can be used by the main debtor and regarding the debt that is covered itself. However, it is not permissible to submit challenges that are solely about the person of the debtor".

Thus, PKPU is a relief given to debtors in paying their debts. PKPU needs to be carried out under certain conditions in accordance with Law Number 37 of 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUKPKPU). The protection of corporate guarantees as guarantors in the postponement of debt payments is contained in the Civil Code (KUHPerdata). The corporate guarantee has the right to demand that the debtor's assets be seized and sold to pay off the debt before the guarantor is liable. The corporate guarantee also has the right to demand that its obligations be divided among other guarantors if there are several guarantors. The corporate guarantee has the right to use all defenses or objections available to the debtor, except those related to the personal circumstances of the debtor when making the underlying agreement.

### CONCLUSION

Corporate guarantee as an insurer is not assumed automatically, but must be done with a clear and unequivocal statement. It is not allowed to expand the guarantee responsibility beyond the provisions that have been agreed upon when conducting the guarantee agreement. In addition, corporate guarantees have privileges regulated in Article 1831 of the Civil Code. The guarantor's liability is limited to the deficiency that cannot be repaid by the debtor. In other words, the corporate guarantee is only responsible for the part of the debt that cannot be fulfilled by the debtor. Article 1837 of the Civil Code gives the corporate guarantee the right to request debt settlement. If the corporate guarantee has paid a certain amount of the guaranteed debt, they have the right to request that the debt be divided equally among all guarantors. Lastly, Article 1847 gives the right to use all of the exceptions or defenses owned by the debtor (*declinatoire exeptie* or *dilatoire exeptie*).

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