

Legal Protection of Third Parties as Fiduciary Guarantee Holders against Assets Designated as Bankruptcy Boedel by the Curator (Case Study Decision No.2/Pdt.Sus-Other-Lain/2019/PN.Niaga Medan jo. No.7/Pdt.Sus- PKPU/2018/PN.Niaga Medan)

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Abstract

This study is an analytical descriptive study of normative juridical law. Constitutional, conceptual and cases based approach is used for this research. The data comes from secondary data resources. The location of this research is on Medan District Court Class I A, particularly by interviewing commercial judge and the curator. The data collection techniques and tools are library research, field research, document studies and interview. The data qualitatively analyzed. The results of the study indicate that the third party's lawsuit against the property that is designated as boedel bankrupt by the curator in the decision number: 2/Pdt.Sus-Another-Lawsuit/2019/PN.Niaga jo. Verdict Number: 7/Pdt.Sus-PKPU/2018/PN. Niaga Mdn is not the asset of the bankrupt debtor. To determine the status of third party collateral objects in bankruptcy, it refers to the provisions of Article 21 of Law Number 37 of 2004. The phrase in this law is associated with Article 1131 of the Civil Code means all the debtor's property, both movable and immovable, both existing and new in the future. The decision of the Panel of Judges in deciding this case, has provided legal protection to third parties as holders of fiduciary guarantees in bankruptcy in a preventive manner, namely the curator in carrying out his duties must apply the precautionary principle before determining the existence of assets by taking into account the basis of the rights used as collateral so that it can provide legal certainty. Meanwhile, repressively, by filing another lawsuit against the curator's actions that include fiduciary guarantees in the bankruptcy filing.

Keywords

insolvency; third parties; fiduciary



I. Introduction

Borrowing and borrowing money has been carried out for a long time in people's lives who have known money as a means of payment. It can be seen that almost all people have made money lending activities a necessity to support the development of their economic activities and to improve their standard of living. The lender who has excess money is willing to lend money to those who need it. On the other hand, the borrower based on a specific need or purpose borrows the money. Usually people borrow money to finance their daily needs or to meet the needs of funds, in order to finance their business activities.

An important party in borrowing/debts receivable is that there are parties who owe as debtors and parties who have receivables or parties who provide debt as creditors. In the event that the debtor is a business actor with a legal entity, namely a limited liability company and the creditor is a bank, it is often found that the creditor does not immediately

give a loan to anyone. Generally, in the context of providing loans, creditors require the debtor to provide guarantees. Warranties are an affirmation from the debtor to carry out the obligation to do or not to do what has been specified in the agreement.

The definition of guarantees in the Civil Code (KUH Perdata) is apparently not formulated explicitly, the Civil Code only provides the formulation of general guarantees regulated in Article 1131 that, "all property of the lucky person, both movable and immovable, whether existing or not will later become dependents for all individual engagements."

The meaning of Article 1131 of the Civil Code is related to the general guarantee from the debtor regarding the settlement of the agreement in which all assets owned by the debtor will be used to pay off his debts. Debtor assets are assets that are actually and legally owned by the debtor. Here it must be proven that the property is actually owned and legally obtained. However, general guarantees are often felt to be insufficient and less secure due to the possibility that the debtor's wealth will run out at one time, so that creditors often ask to be given special guarantees. Special guarantees can be in the form of material guarantees and personal guarantees (*borgtoch*).

Fiduciary guarantees will also give birth to a material legal relationship *jura in re aliena*, which is legally also given various kinds of material properties, one of which is a right that always follows the object in the hands of whoever the object is. This also applies when the debtor is declared bankrupt, then the material guarantee will not be included in the distributed bankruptcy register and remain in the power of the guarantee holder.

Bankruptcy according to Article 1 point 1 of Law Number 37 of 2004 is "a general confiscation of all assets of a bankrupt debtor whose management and settlement is carried out by the curator under the supervision of the Supervisory Judge as regulated in this Law", insolvency according to the Bankruptcy Act means bankrupt assets in a state of insolvency (insolvency) As of the insolvency, the process of managing and settling the bankruptcy estate begins."

When a debtor is declared bankrupt, the authority to manage all assets of the bankrupt debtor is transferred to the authorized curator. As stated by Imran Nating, that:

The broad authority granted by UUK to the Curator becomes a burden for the Curator to be careful and responsible in carrying out his duties, because the parties who are harmed by the Curator's actions in carrying out their duties can file a claim against the Curator for the losses they have suffered.

In the practice of cooperation agreements, it is common for business actors who carry out cooperation (Joint Operations) to use movable objects belonging to investors, in this case third parties, to be used as material guarantees in the form of fiduciary guarantees to guarantee the performance of debtors. Debts guaranteed by this fiduciary are debts that arise from payments made by creditors for the benefit of the debtor in the context of implementing bank guarantees. Problems arise when one of the joint operation limited companies is declared bankrupt with all the legal consequences.

This other lawsuit was filed due to the legal relationship between the Indonesian Export Financing Agency/Indonesia Eximbank as the Plaintiff and PT High Speed Shipyard as Co-Defendant I based on the Shipbuilding Contract Agreement No. 004/F30000/2013-S0 and all amendments and derivatives thereof between PT Pertamina (Persero) as the buyer and PT Anggrek Hitam (in bankruptcy) as the builder and Co-Defendant I as partners. The duties of Co-Defendant I as the party who financed the entire construction of the MT Ship. Pattimura

AH 037 and the Issuance of a Refund Guarantee as required in the Shipbuilding Contract with Pertamina will be carried out by PT High Speed Shipyard.

Economic actors, basically have very important functions. Because it has two functions at once, namely as a supplier of all the needs of the community, primary, secondary and tertiary. At the same time, they also function as absorbers of community labor, which can economically increase purchasing power. (Ansari, T. 2019)

As one of the business steps in carrying out and realizing the ship construction as specified in the Ship Contract, PT High Speed Shipyard submits a guarantee in the form of Fiduciary for the inventory of goods related to the Tanker Ship construction project with hull number AH 037 and hull number AH 038 along with all rights, interests and all the benefits. LPEI/Indonesia Eximbank has also held a Fiduciary Guarantee Certificate as a guarantee of debt repayment as stated in the Fiduciary Agreement Deed. However, PT Anggrek Hitam was unable to complete the construction of the Pattimura Ship No. AH 037 the. So that PT Pertamina (Persero) disbursed the Refund Guarantee from LPEI/Indonesia Eximbank. Then PT High Speed Shipyard filed a PKPU application against PT Anggrek Hitam.

Due to the Curator's actions, LPEI/Indonesia Eximbank filed a Miscellaneous Lawsuit, namely the third party's resistance to the confiscation of the curator of PT Anggrek Hitam as stated in Article 3 paragraph 1 of the Bankruptcy Law and PKPU.

Based on this description, on this occasion I am interested in analyzing and reviewing the juridical review of one of the decisions of the Medan Commercial Court. This juridical review is carried out to examine the application of other claims relating to the legal protection of third parties as Fiduciary Guarantee Holders regarding the status of the object of the fiduciary guarantee in bankruptcy and to analyze legal considerations and judges' decisions, then to examine and examine the existence of material guarantees, especially fiduciaries which are very important. to guarantee the return of funds that have been lent by creditors to debtors in the event of a default. The title of this thesis is: "Legal Protection of Third Parties as Holders of Fiduciary Guarantees against Property Designated as Boedel Bankrupt by the Curator (Case Study Decision Number: 2/Pdt. Sus-Others/2019/PN. Commerce Medan Jo. Number 7/Pdt.Sus- PKPU/2018/PN. Medan Commerce)."

II. Review of Literature

2.1. Theoretical framework

The theoretical framework is a thought or points of opinion, theory, thesis, regarding something or a case or problem (problem) that can be used as comparison material, theoretical views, which he may or may not agree with and this is an external input for the reader. According to Bintaro Tjokro Amidjoyo and Mustofa Adijoyo, stated that:

"Theory is an expression of a logical causal relationship between changes (variables) in a particular field, so that it can be used as a frame of thinking in understanding and dealing with all problems that arise in that field"

a. Deal Theory

The word "agree" is closely related to an agreement, as contained in Article 1313 of the Civil Code, an agreement is "an act by which one or more people bind themselves to one or more other people." Because the agreement or agreement is a form or an element of an agreement (overeenkomst) which aims to create a situation where the parties who enter into an agreement reach an agreement or achieve a will.

Van Dunne as the originator of the new theory defines an agreement as "a relationship between two or more parties based on an agreement to cause legal consequences." The new Theory does not only look at the agreement alone, but also has to look at the previous or precedent actions.

According to Riduan Syahrani that:

The agreement of those who bind themselves means that the parties who make the agreement have agreed or there is an agreement of will or agree to the will of each party which is carried out by the parties without coercion, error and fraud.

b. Legal Certainty Theory

Certainty is a matter (condition) that is certain, legal provisions or provisions must essentially be certain and fair. It must be a code of conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and carried out with certainty the law can carry out its functions. Legal certainty is a question that can only be answered normatively, not sociologically.

According to Utrech, legal certainty contains two meanings, namely:

- 1) The existence of general rules makes individuals know what actions can or cannot be done.
- 2) in the form of legal security for individuals from government arbitrariness because with the existence of general rules, individuals can know what the state may charge or do to individuals.

c. Legal Protection Theory

Fitzgerald explains Salmond's theory of legal protection that:

"The law aims to integrate and coordinate as interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand."

The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection is born from a legal provision and all legal regulations provided by the community which are basically an agreement by the community to regulate behavioral relations between community members and between individuals and the government which are considered to represent the interests of the community.

III. Research Method

The type of research used is normative juridical. Normative juridical research refers to legal norms contained in legislation and court decisions as well as legal norms that exist in society. Ronald Dworkin calls it doctrinal research, namely "a study that analyzes both law as law as it is written in the book, and law as law as it is decided by the judge through the judicial process."

IV. Result and Discussion

4.1. Position Case

This other lawsuit was filed due to the legal relationship between the Indonesian Export Financing Agency/Indonesia Eximbank as the Plaintiff and PT High Speed Shipyard as Co-Defendant I based on the Shipbuilding Contract Agreement No. 004/F30000/2013-S0 and all amendments and derivatives thereof between PT Pertamina (Persero) as the buyer and PT Anggrek Hitam (in bankruptcy) as the builder and Co-Defendant I as partners. The duties of Co-Defendant I as the party who financed the entire construction of the MT Ship. Pattimura AH 037 and Issuance of a Refund Guarantee as required in the Shipbuilding Contract with Pertamina.

Sas a party that has full authority to issue a Repayment Guarantee(Refund Guarantee) PT Pertamina, PT High Speed Shipyard (Co-Defendant I) appointed the Indonesian Export Financing Agency/Indonesia Eximbank (Plaintiff) as the bank that would guarantee repayment to PT Pertamina in the event that the implementation of the shipbuilding contract could not be completed by PT Anggrek Hitam.

To guarantee the Indonesian Export Financing Agency/Indonesia Eximbank as the appointed party in carrying out repayments (Refund Guarantee) to PT Pertamina, then PT High Speed Shipyard submitted a guarantee in the form of Fiduciary as debt repayment to LPEI/Indonesia Eximbank (Plaintiff) in the form of all inventories related to the Tanker Ship construction project with hull number AH 037 and hull number AH 038 along with all rights, interests and all benefits. The Plaintiff has also held a Fiduciary Guarantee Certificate No. W15.00263758.AH.05.01 Year 2015 as collateral for debt repayment as described in the Deed of Loan Facility with a fiduciary object as stated in the Deed of Fiduciary Agreement.

However, PT Pertamina has terminated the construction contract for the MT Pattimura Hul AH 037 ship because the Black Orchid failed to complete the construction of the ship based on letter No. 061/R00000/2018-S0 Subject: Termination of the contract for the construction of the MT Pattimura Hull Ship No. AH 037 dated August 03, 2018 until the deadline of July 31, 2018. The failure of PT Anggrek Hitam to complete the shipbuilding, PT Pertamina disbursed the Repayment(Refund Guarantee) from LPEI/Indonesia Eximbank (Plaintiff) amounting to +/- USD 22,654,767.31 (twenty two million six hundred fifty four seven hundred sixty seven point three one US dollar). Then, PT High Speed Shipyard filed a PKPU application against PT Anggrek Hitam.

The reason for the curator (Defendant) to include Ship MT Pattimura Hull No. AH 037 In the bankruptcy code, one of them is the curator (Defendant) who thinks that the Pattimura Tanker No. AH 037 is the bankrupt property of PT Anggrek Hitam which has been registered in PanamaMaritime Authority, dated 18 May 2018 published by the Directorate General of Merchant Marine International Service with PT Anggrek Hitam (in bankruptcy) as the builder.

4.2. Judge's Consideration

After the Panel of Judges considered other claims filed by a third party, namely the Indonesian Export Financing Agency (Plaintiff) against the confiscation of bankrupt boedel by the curator, the considerations taken by the Panel of Judges of the Medan Commercial Court at the Medan District Court were:

- a. It is necessary to really know the background of the emergence of 1 (one) unit of the MT Pattimura Hull Tanker which is still in the form of Inventory of Ship Goods with Hull Number AH-037 (MT Pattimura) or not.

- 1) Based on the evidence in the form of Memorandum of Understanding Number 115/HSS/MOU/2012 dated November 30, 2012, which has been acknowledged as true by the parties in the trial by the presentation of the evidence, it is proven that the existence of the agreement between PT Anggrek Hitam (in bankruptcy) and PT High Speed Shipyard (in casu Co-Defendant I) which in essence is an agreement to design and build a ship to be sold to PT Pertamina (Persero).
- 2) It has been agreed with the signing of a contract with PT Pertamina (Persero), namely the Shipbuilding Contract No. 004/F30000/2013-S0 dated June 7, 2013 between PT Pertamina (Persero) as the Buyer and PT Anggrek Hitam as the Builder and PT High Speed Shipyard as the Partner, which in essence PT Pertamina (Persero) will buy the Vessel with Hull Number AH037 as stipulated in Article 2.2 Shipbuilding Contract No. 004/F30000/2013-S0 dated 7 June 2013 with the terms and conditions as referred to in the Shipbuilding Contract No. 004/F30000/2013-S0 dated 7 June 2013.
- 3) In the trial, authentic evidence has also been submitted in the form of: Deed of Cooperation Agreement No. 1 dated February 2, 2015 made before Notary Anita Anggawidjaja, SH, Notary Surabaya City, who reaffirmed the agreement and agreement which contains an agreement between PT Anggrek Hitam (in bankruptcy) and Co-Defendant I to design and build a ship with the expertise and experience of Co-Defendant I as a provider of purchasing services and financial support during the shipbuilding process, which is consistent with the statements of Laila Priastuti and Witness Yohanes Pratondo which stated that it was Co-Defendant I who funded the shipbuilding project (in casu MT Pattimura Ship Number Lambung AH037).

With the proof that 1 (one) unit of Ship Hull Number AH 037 (MT Pattimura) is still in the form of Ship Goods Stock, Hull Number AH 037 (MT Pattimura), then what must be proven by the Plaintiff is whether the assets/assets of Inventory Ship Goods Number AH 037 have to be proven. (MT Pattimura) was actually included in the bankruptcy estate of PT Anggrek Hitam (in bankruptcy).

- 1) The Plaintiff has submitted evidence in the form of a Temporary Statement (List) of Bankrupt Assets Owned by PT Anggrek Hitam (In Bankruptcy) Case No. 7/Pdt.Sus-PKPU/2018/PN.Niaga.Mdn. Dated September 03 2018, which is in line with authentic evidence that was also submitted by the Defendant in the form of a Temporary Statement (List) of Bankrupt Assets Owned by PT Anggrek Hitam (In Bankruptcy) Case Number: 7/Pdt.Sus-PKPU/2018/PN. Niaga.Mdn. January 10, 2019.
- 2) What is categorized as movable property is still in the form of Ship's Goods Inventory Number AH-037 (MT Pattimura) which has been proven to be included in the bankruptcy property list (budel) of PT Anggrek Hitam (in bankruptcy), thus the Panel of Judges is of the opinion that 1 (one) ship Hull Number AH037 (MT Pattimura) which is still in the form of Ship's Goods Stock Hull Number AH-037 (MT Pattimura) was actually entered by the Defendant into the bankruptcy register of PT Anggrek Hitam (in bankruptcy).
- 3) Furthermore, what needs to be proven is who is the owner of 1 (one) unit of Ship Hull Number AH037 (MT Pattimura) which is still in the form of Ship Goods Supplies Hull Number AH-037 (MT Pattimura) in the aquo case.

4.3. Judge's Decision

The judge's decision on other claims by third parties against assets designated as bankrupt by the curator submitted by the Indonesian Export Financing Agency/Indonesia Eximbank are:

- a. Granted the Plaintiff's claim in part.

- b. Stating that the movable property in the form of 1 (one) unit of Ship Hull Number AH 037 (MT Pattimura) is a fiduciary object belonging to PT High Speed Shipyard (Co-Respondent I) which is pledged to the Petitioner as collateral for the settlement of all debts of Co-Defendant I and is not a boedel property Bankruptcy of PT Anggrek Hitam (in bankruptcy).
- c. Ordered the Defendant as the Curator Team of PT Anggrek Hitam to cross out and remove from the List of Bankrupt Assets PT Anggrek Hitam (in bankruptcy), namely movable property in the form of 1 (one) unit of Ship Hull Number AH 037 (MT Pattimura) which is still in stock goods Ship Hull Number AH 037 (MT Pattimura).
- d. Ordered the Defendant as the Curator Team of PT Anggrek Hitam to legally hand over both physically and juridically to Co-Defendant I in good condition as fiduciary security to the Plaintiff immediately after this verdict was read out.
- e. Declaring that this decision can be executed first (uitverbaar bij voorraad) even though there are legal remedies.
- f. Reject the other Plaintiff's claims and the rest.
- g. Sentencing the Defendant to pay court fees in the amount of Rp. 1.361,000.00 (one million three hundred and sixty one thousand rupiah).

4.4. Decision Analysis

The decision of the Panel of Judges in this case, granted other claims related to the third party's resistance to the bankruptcy estate filed by the Indonesian Export Financing Agency in part. The Panel of Judges is of the opinion that 1 (one) unit of the MT Pattimura Vessel with Hull Number AH 037 which is still in the form of a ship's inventory is proven to be legally owned by Co-Defendant I which is being pledged as collateral to the Plaintiff, thus the Defendant as the Curator Team of PT Anggrek Hitam has no right to include a ship that is still in the form of inventory of the ship's goods into the bankrupt boedel of PT Anggrek Hitam.

However, against the previous decisions there are differences of opinion regarding the status of the collateral belonging to a third party against the bankrupt boedel. The Supreme Court of the Republic of Indonesia through its Decision Number: 689 K/Pdt.Sus/2012 dated February 25, 2013, stated that collateral belonging to a third party is not a bankrupt certificate. the owner of the collateral has agreed to serve as collateral for the debt.” The decision stating that the collateral belonging to a third party is bankrupt is the Supreme Court of the Republic of Indonesia through Decision Number: 569 K/Pdt.Sus/2012 dated November 22, 2012, stating that “the assets of the debtor of the Bankrupt Company are separated from the personal assets of the Director of the Company. ,

If analyzed based on the Civil Code, Law Number 37 of 2004 concerning Bankruptcy, Law Number 42 of 1992 concerning Fiduciary Guarantees and the theory used, the decision is appropriate. Therefore, agree with the decision given by the Medan Commercial Court Panel of Judges, with the following reasons:

Based on Article 21 of the Bankruptcy Law, it is stated that "bankruptcy includes all the assets of the debtor at the time the bankruptcy declaration decision is pronounced along with everything obtained during the bankruptcy. The phrase "debtor's wealth" means that all goods that become wealth and are under the control and management of the debtor. This means that all goods that are outside the control or management of the debtor are not the assets of the debtor.

In this other lawsuit, it can be seen that the Defendant as the curator team in the bankruptcy case of PT Anggrek Hitam did not carry out the verification stage properly and without good reason the defendant had claimed or placed the existence of the MT Pattimura

AH 037 ship as bankruptcy property of PT Anggrek Hitam as stated in the provisional description (list) of the bankrupt assets owned by PT Anggrek Hitam, with information on further verification.

According to the statement of the bankruptcy expert, Prof. Sunarmi that:

The list of descriptions that are temporary in nature cannot be submitted for auction. Due to its temporary nature, changes can occur to the bankruptcy estate. So this shows that verification has not ended, an execution auction of bankrupt assets can only be carried out after verification ends.

So that the curator should not be able to conduct an execution auction for the MT Pattimura AH 037 ship because its status is still in a provisional list. This does not reflect the curator profession of the defendant who applies the precautionary principle before determining the existence of assets while still considering the plaintiff as the holder of the fiduciary object. As stated by Imran Nating, that "the parties who feel aggrieved by the curator's actions in carrying out their duties can file a claim for the losses they have suffered to the curator."

As stated in Article 26 of the KPKPU Law, it is stated that "The claim regarding the rights and obligations relating to bankruptcy assets by or against the curator." So in this case, accepting the claim related to the bankruptcy estate has become the responsibility of a curator as the party who knows and makes settlement of the bankruptcy estate.

Due to the curator's arbitrary action to secure the MT Pattimura AH 037 Ship which had been pledged as collateral to the Plaintiff, the Plaintiff filed another lawsuit in this case the third party's resistance to the confiscation so that the fiduciary object was removed from the description (list) of the bankruptcy estate of PT Anggrek Hitam. .

Sudikno Mertokusumo in his theory of legal protection, divides legal protection for the people into 2 (two) things, namely:

1. Preventive legal protection, in the form of legal protection where the people are given the opportunity to file objections or opinions before the government's decision gets a definitive form.
2. Repressive legal protection, in the form of legal protection in dispute resolution.

The filing of other lawsuits in case Number 2/Pdt.Sus-Lain-Lain/2019/PN Niaga Medan is a form of legal effort to achieve repressive legal protection for the Plaintiffs to protect their rights as creditors holding fiduciary guarantees and for other reasons the Plaintiffs filed other lawsuits -Other due to having rights related to ownership of the MT Pattimura AH 037 Ship which has been used as fiduciary security by Co-Defendant I to the Plaintiff as a form of preventive legal protection.

Prof. Sunarmi in his statement as an expert in bankruptcy law stated that:

protection for other parties other than creditors, debtors, or the curator team, if in a bankruptcy case has fiduciary rights, mortgage rights, or other rights, and the curator team includes one of the assets that is not owned by the debtor into the bankruptcy estate (boedel), then, Bankruptcy assets are assets of the debtor as long as the assets are not the assets of the debtor, so it cannot be included in the assets (boedel) of the bankrupt. So it must be proven ownership.

To prove ownership of 1 unit of MT Pattimura Vessel Number Hull AH 037 which is still in the form of inventory of ship hull number AH 037, the panel of judges gave consideration in determining ownership by referring to the cooperation agreement that had

been made by PT High Speed Shipyard with PT Anggrek Hitam, namely through the funding. Based on Article 4, Article 5 of the MoU and Article 4 of the Cooperation Agreement between Co-Defendant I and PT Anggrek Hitam to build 2 (two) Tanker Vessels based on the Shipbuilding Contract that "It is co-Defendant I who finances the entire construction of the ship and who will issue a Repayment Guarantee (Refund Guarantee) to PT Pertamina (Persero) in the event of a failure in the implementation of the AH 037 and/or AH 038 Shipbuilding Contract."

Based on Article 20 of Law Number 42 of 1999 concerning Fiduciary Guarantees, it reads, "Fiduciary guarantees continue to follow objects that are objects of fiduciary security in the hands of whoever these objects are, except for the transfer of inventory objects that are objects of Fiduciary Guarantees." Thus, the initial position of PT Pertamina as the buyer and owner of 1 (one) unit of the MT Pattimura Vessel Number AH 037 which was still in the form of a ship's inventory was legally transferred to the actual owner, namely Co-Defendant I due to the cancellation of the Shipbuilding Contract No. 004/F30000/2013-S0.

Thus, the panel of judges in their decision ordered the Defendant as the Curator Team of PT Anggrek Hitam to cross out and remove from the list (description) of PT Anggrek Hitam's bankruptcy estate, namely movable property in the form of 1 (one) unit Ship MT Pattimura Hull Number which is still in the form of Ship's Goods Inventory. MT Pattimura Number Lambung AH 037. This decision has provided legal protection for the Plaintiff as a fiduciary recipient to obtain his rights, namely payment of debt from Co-Defendant I.

V. Conclusion

Based on the description and discussion of the 3 (three) problems above, the following conclusions are finally drawn:

- 1) The status of third party material guarantees in bankruptcy refers to Article 1 point 1 jo. Article 21 jo. Article 24 of Law Number 37 of 2004 can be concluded that the bankruptcy estate (boedel) is the debtor's assets legally owned since the date of the bankruptcy decision. Determining the ownership of an object needs to be proven through valid and authentic evidence in order to guarantee legal certainty. The third party is a legal subject who has a separate position from the debtor, where if the third party owns an object, it can be said that the object is the property of a third party because it is under its control or management and is not included in the assets of the debtor. Although there is a legal relationship between a third party and the debtor,
- 2) Legal protection of third parties as Fiduciary Guarantee Holders in which the material guarantees are included as bankrupt assets, legal protection for creditors as fiduciary recipients can only be obtained if legal certainty has been achieved, namely when the fiduciary giver and recipient have signed the Fiduciary Guarantee Deed made before a Notary and has been registered. The Plaintiff's lawsuit was based on authentic letter evidence in the form of the Deed of Fiduciary Guarantee of Goods Inventory No. and Fiduciary Guarantee Certificate No. W15.00263758.AH.05.01. With authentic evidence, the Plaintiff has been appointed as a fiduciary recipient and Co-Defendant I as a fiduciary giver as well as the owner of the MT Pattimura Ship's Inventory Number AH 037. Other evidence regarding the existence and existence of a Refund Guarantee search,
- 3) Analysis of legal considerations and judge's decision in decision no. 2/Pdt. Sus-Others/2019/PN. Trade jo. Number 7/Pdt.Sus-PKPU/2018/PN.Niaga.Mdn related to other claims against third party resistance to confiscation in this case bankrupt property (boedel) is the Panel of Judges granting other claims filed by LPEI/Indonesia Eximbank is appropriate in accordance with the legal provisions of the applicable laws and regulations

because the third party resistance lawsuit regarding the bankruptcy estate (boedel) must be proven by means of valid and authentic evidence to provide legal certainty in which the Plaintiff has authentic evidence in the form of a Deed of Guarantee Agreement. Fiduciary and Fiduciary Guarantee Certificate, however, the Defendant assumed that the ship belonged to PT Anggrek Hitam because it had been registered by PT Anggrek at the Panama Maritime Authority with PT Anggrek Hitam listed as the builder and registered with the International Marine Organization as a manager (ships as manager) not as the owner. Thus, the Plaintiff has no right to include the MT Pattimura AH 037 ship into the bankruptcy register of PT Anggrek Hitam, let alone conduct an execution auction which is still in advanced verification status. So that the curator's actions are not based on law as contained in Law no. 37 of 2004 concerning Bankruptcy and PKPU. Thus, the Plaintiff has no right to include the MT Pattimura AH 037 ship into the bankruptcy register of PT Anggrek Hitam, let alone conduct an execution auction which is still in advanced verification status. So that the curator's actions are not based on law as contained in Law no. 37 of 2004 concerning Bankruptcy and PKPU. Thus, the Plaintiff has no right to include the MT Pattimura AH 037 ship into the bankruptcy register of PT Anggrek Hitam, let alone conduct an execution auction which is still in advanced verification status. So that the curator's actions are not based on law as contained in Law no. 37 of 2004 concerning Bankruptcy and PKPU.

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