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The Position of Creditors of Individual Collateral Holders In Insolvency Law

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ABSTRACT
This researcher aims to find out about the rights of creditors of individual collateral holders in the norms of Law No. 37 of 2004 on Insolvency and Delay of Debt Payment Obligations. The researcher's method uses norrmative law with a statutory problem approach and a conceptual approach. Broadly speaking, the position of individual guarantees in the norms of the Bankruptcy Law if the insurer and debtor are declared bankrupt simultaneously, then it is a concurrent creditor and all the assets of the insurer as bankruptcy property. In the process of managing and releasing bankruptcy property, that the position of concurrent creditors in the process of division of bankruptcy property is at the bottom, because in principle it can but if the creditors are many while the property is few, then potentially do not get the share or even if it can be very small percentage. So that the position of creditors of individual collateral holders who are concurrent creditors is very weak in the process and distribution of bankruptcy property. When the debtor is declared bankrupt while the insurer is not declared bankrupt, then all the assets of the insurer do not include bankruptcy property. So creditors have the right to make a default lawsuit in accordance with Article 1243 kuhper to the insurer, if the process and enactment of the debtor's bankruptcy property is insufficient creditor debt. The mechanism of fulfilling achievements to individual guarantee holder creditors, namely creditors can execute the collateral object directly without having to apply for bail and execution to the court, because after the bail object is registered with the guarantee institution, the certificate will be issued as a guarantee that has executory power.

Keywords: Insolvency, Guarantee, Guarantor

1. INTRODUCTION

Creditors who aim to provide credit certainly do not only depend on credit agreements that have been approved by creditors and debtors. Article 1131 of the Civil Code (hereinafter referred to as the Criminal Code) explains that in providing a sense of security to provide loans and to reduce the risk of loss to lenders, creditors often ask debtors to provide guarantees to creditors, against these guarantees an agreement is made which is referred to as a guarantee agreement. Under the Insolvency Act, foreclosure includes the entire property of the debtor as the interest of the creditors. The existence of insolvency aims to have the management divide the wealth owned by the debtor by the curator to all creditors on the condition that it prioritizes the interests of creditors' rights.

Insolvency is a court decision that has the effect of confiscation covering all the assets of debtors who have been declared bankrupt, including current and future assets (Wijayati, 2019). The definition of insolvency in accordance with Article 1 paragraph (1) of Law Number 37 of 2004

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concerning Insolvency and Postponement of Debt Reduction Obligations (hereinafter referred to as the Insolvency Law), is the confiscation of all assets belonging to debtors who have gone bankrupt with the process of management and settlement carried out by the curator under the supervision of the supervisory judge. The Insolvency Law and PKPU were promulgated in good faith to provide protection to the rights of creditors who have receivables with the insolvent party. In principle, the assets left by the bankrupt party are not equivalent to the amount of debt owned.

The existence of a debt is a form of obligation that must be fulfilled by the debtor, if the obligation is not fulfilled, then the creditor has a right to receive fulfillment of the proceeds of the debtor's wealth (Aprita, 2022). In accordance with Article 1132 of the Penal Code, it is explained that creditors or parties who have the right to obtain the fulfillment of an agreement, are required to request the assets owned by the debtor in a reasonable manner, the amount of which is receivable from the parties will be calculated and compared with the overall receivables against the entire assets of the debtor. Debtor insolvency is a condition in which it can be determined by the court that the debtor is no longer able to pay his debts, resulting in the deprivation of property and income for the public benefit of creditors in court supervision, because in insolvency it is included in the legal institutions used for liquidation of the assets owned by the debtor in order to make payment of debtor debts to his creditors (Shubhan, 2008).

Insolvency causes the debtor to lose the right in law to all his property, whereby all property belonging to the debtor and everything acquired during the insolvency proceedings, is in foreclosure from the date the judgment of the bankruptcy declaration has been pronounced in accordance with the Second Section of the Insolvency Act concerning the Consequences of Insolvency. In particular, bankruptcy judgments result in bail rights and privileges such as liens, liens, fiduciaries and mortgages as in Section 55 of the Insolvency Act.

Creditors in Article 1 paragraph (2) of the Insolvency Act provide an explanation that the party who has the debt is called a creditor, this is due to the existence of an agreement or law that can be sued at the green table. M. Yahya Harahap stated that, in an agreement, there will be a legal correlation so as to result in the law of wealth covering 2 (two) or more people giving a right to 1 (one) party who is obliged to the other party regarding his achievements (Suputra et al., 2020).

There are 2 (two) kinds of civil law norms of guarantees, namely covering treasury guarantees and individual guarantees (Muslimin, 2020). As in Article 1131 of the Criminal Code, it has regulated related to treasury guarantees, where all material things owned by debtors or borrowers, both immovable and movable and both future and current, the treasury is the responsibility of all individual bonds. Insurers are regulated in Article 1820 of the Penal Code quoting that "Agreements made by third parties for the purposes of creditors by means of self-

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binding as fulfillment of the agreement to the debtor, if not making the agreement that has been made are called insurers." Containing the meaning that the guarantor cannot be called a debtor, the guarantor can be interpreted as a guarantor to carry out the debtor's commitment to creditors. If the debtor neglects to perform his achievements to the creditor, then the obligation will pass to the guarantor. Therefore, it brings about a change in the status of the insurer to turn into a debtor (Dayu & Albani, 2022). The guarantor cannot be held liable in excess of the amount owed or on condition that it is greater than the debtor. If the insurer holds more than the amount of the debt or the terms, then the agreement is not at all voidable. Instead, the agreement is valid according to the statement in the principal agreement that has been agreed. Individual agreements have certain legal consequences, including:

1. The indemnity agreement is based on the principal agreement;
2. In the event of an invalid indemnity agreement, the principal agreement is invalid;
3. If the indemnity contract is terminated, the main contract is also terminated;
4. If the agreement/agreement is attached to the principal agreement, it will switch to following the transfer of the principal agreement.

An insurer agreement is a follow-up agreement that can be referred to as an accessoir agreement, in accordance with Article 1821 of the Criminal Code, which is as follows:
"A personal guarantee cannot be issued in the absence of a valid principal agreement". From the above rules, conclusions can be drawn if there is no principal agreement, there is no insurer agreement, because the nature attached to the insurer agreement is accessoir. Therefore, the insurer's agreement depends on the other agreement. An agreement born from an insurer agreement can be deleted due to the same consequences, which can result in the expiration of another agreement as article 1845 of the Criminal Code and the abolition of the agreement is regulated in Article 1381 of the Criminal Code (Ishak, 2010). With the existence of general confiscation, it can avoid foreclosures and excesses by creditors in their own way (Hermawan et al., 2020).

Such conditions to fulfill the rights of creditors so as not to cause many disputes, the Government of Indonesia issued the Insolvency Law. In the agreement there are receivable debts related to property as individual collateral, if the debtor does not fulfill his obligations to the creditors, this causes the debtor and the insurer to be declared bankrupt at the same time. Thus causing a legal problem where the creditor has to wait for the insolvency process to end, then when the creditor is unable to fulfill the debtor's achievements in the bankruptcy estate, thus the creditor is allowed to sue the insurer for the fulfillment of the achievements of the debtor and the creditor cannot immediately exit the insolvency scheme by directly requesting the fulfillment of the debtor's achievements to the insurer.

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2. RESEARCH METHODS

The research method is carried out to collect materials and can process in order to obtain answers to a problem contained in this study. The research that has been made uses a normative type of legal research, which is a process that finds the rule of law, legal principles, and legal doctrines to answer legal issues. Researchers also use normative legal research, as it aims to find applicable legal norms. Using a statute approach and a conceptual approach.

Results of Research and Discussion

Based on the provisions of Article 1 paragraph (1) of Law Number 37 of 2004 concerning Insolvency and Postponement of Debt Payment Obligations, insolvency is a general confiscation of all assets of bankrupt debtors whose management and settlement are carried out by the curator under the supervision of the Supervisory Judge. A creditor is also referred to as a party who lends debts, under the Insolvency Law Article 1 paragraph (2) explains that a creditor is someone who has receivables caused by an agreement or law that can be collected in court. The existence of insolvency aims to be the division of property owned by the debtor and carried out by the curator to the creditors with their respective rights. The Insolvency Act is intended to protect the interests of creditors who have receivables on the insolvent party, because the entire property left or left by the insolvent party does not exceed the amount of debt owned. Creditors according to H.M.A Savelberg give a statement that the creditor has a basis in each agreement, so that a person has the right to give a claim from someone as collateral, thus causing someone to give something from another person in order to obtain what has been given before(Graafland et al., 2006).

Creditors can borrow to individuals or legal entities such as Pawnshops, Financial Institutions, Banks, or other Guarantee Institutions. Creditors are also entitled and obliged to pledge to the debtor in the form of capital for business or for the purposes that the debtor uses on the money that has been borrowed. On the contrary, the creditor is obliged to keep valuables or objects that have been pledged by the debtor as a guarantor of the creditor to pay off his debts. It can be interpreted that credit is carried out based on trust, risk and economic exchange in the future. As in the provisions of Article 1 paragraph (1) of the Insolvency Act, creditors in insolvency are classified into 3 (three) namely as follows:

1. Separatist Creditors

   A separatist creditor can be interpreted as a creditor who holds a treasury guarantee or can be called a creditor with a "privilege" this is regulated in Article 1133 of the Criminal Code. A separatist creditor is a right that regulates an authority to execute/trade collateralized objects, without going through a judgment from the court. These rights include:

   a. Pawn

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The debtor or lien must give possession of the pledged object to the credior or the beneficiary of the collateral. Based on Articles 1150 to 1160 of the Criminal Code that apply to movable objects.

b. Mortgage

Based on Article 1162 of the Criminal Code, mortgage is meant the right to immovable objects as compensation or repayment of an agreement or debt.

c. Dependent Rights

Dependent rights can be interpreted as dependent rights on objects and land related to land, so that collateral can be interpreted as collateral for the treasury attached to the land. Dependent Rights are contained in Law No. 4 of 1996.

d. Fiduciary Guarantee

Fiduciary rights are regulated in Law No.42 of 1999 which contains fiduciary guarantees. Fiduciary Guarantees in the form of dependent rights, liens and mortgages.

2. Special Creditors

Special Creditors or Preferred Creditors are statutory rights granted to creditors therefore the level is higher than other creditors, this is regulated by the nature of receivables. Special preferred creditors that have been regulated in Article 1139 of the Criminal Code and Article 1140 of the Criminal Code which discusses general preferred creditors.

3. Concurrent Creditors

Concurrent creditors can be defined as creditors who receive repayments simultaneously calculated on the basis of individual receivables rather than the receivables entirely compared to all assets belonging to the debtor. Therefore, concurrent creditors have a common position in resolving debts belonging to debtors without any precedence as in Article 1132 of the Penal Code. The size of the claim is held by preferred creditors and separatist creditors affects the settlement of claims by concurrent creditors. If the claims held by preferred creditors and separatist creditors are getting smaller, then concurrent creditors can allow for the fulfillment of larger bills. However, if the claims held by preferred creditors and separatist creditors are large, then the chances that concurrent creditors have in obtaining a fulfillment of receivables are getting smaller. According to the Insolvency Law, the parties involved in the insolvency process are the bankruptcy applicant, the bankruptcy debtor, the commercial judge, the supervisory judge, the creditor committee, and the curator.

Based on Article 1 paragraph (5) of the Insolvency Act, the curator is a person who is appointed by the court and given the task of tidying up and managing the property of the bankrupt debtor under the supervision of the Supervisory Judge. In Section 16 of the Insolvency Act, the

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curator has the authority to carry out the settlement or management of the bankruptcy property from the date the bankruptcy judgment is mentioned even if the judgment has been filed for review or cassation. The provisions of Article 69 paragraph (1) of the Insolvency Act, the curator has an obligation in managing and/or settling bankruptcy assets. Where management has an administrative nature and management is subtantive. Administrative management such as:

1. Announcing insolvency

The maximum deadline is 5 (five) days from the date of receipt of the bankruptcy determination decision announced by the curator and the Supervisory Judge. The announcement will be announced in the State Gazette of the Republic of Indonesia conducted by the curator and at least in 2 (two) daily newspapers that have been determined by the Supervisory Judge.

2. Sealing of insolvent property

The curator may apply for security of the debtor's property to the supervising judge in charge of the commercial court. Furthermore, security will be carried out by the bailiff at the place where the property is located, and witnessed by 2 (two) witnesses, one of whom is a representative of the local government under Section 99 of the Insolvency Act. "Representative of the local government" can be interpreted as the village head or village head as explained in Article 99 paragraph (2) of the Insolvency Act.

3. Registration of bankruptcy property / Recording

Bankruptcy assets must have a recording carried out by the curator with a maximum period of 2 (two) days after receiving a decree of appointment as curator. The recording must be with the approval of the Supervising Judge even if it can be done under the hands of the curator, under Section 100 of the Insolvency Act. The presence of debtors can help facilitate the implementation of wealth registration. This is because the debtor is more aware of all his assets so that the curator is obliged to call the bankrupt debtor as the giver of instructions and information in the registration of the property. When the bankruptcy property has been registered, the curator must include a list that states the amount of receivables, the nature and assets of the bankruptcy as well as the name and domicile of the creditor with the amount of each receivable owned by the creditor. The recording and registration are then submitted to the clerk of the court to be witnessed by all persons under Section 102 and Section 103 of the Insolvency Act.

4. Continuing the debtor's business

Seek the permission of the interim committee of creditors despite the existence of an appeal or review to continue the business of the insolvent debtor. However, if there is no temporary creditor committee, it is necessary to obtain permission from the Supervising Judge under Section 104 of the Insolvency Act.

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5. Opening telegram letters of insolvent debtors

The curator has the authority to view telegrams and letters addressed to the insolvent debtor. Telegrams and letters that have no connection with the bankruptcy property must be given immediately to debtors who are declared bankrupt by Pegadilan. Companies that send telegrams and mandatory letters to the curator, then must be addressed to the bankrupt debtor. All letters of objection and complaint relating to insolvent property must be presented to the curator in accordance with Section 105 of the Insolvency Act. Under Article 24 and Section 69 of the Insolvency Act, since the bankruptcy judgment is announced, any debtor's authority to manage and control the bankruptcy property including also the collection of evidence relating to records, books, as well as bank accounts and deposits of the debtor from the bank concerned will change hands with the curator under Section 105 of the Insolvency Act.

6. Diverting bankruptcy property

Transfer of insolvent property is done for as long as necessary to cover all insolvency costs if incarceration may cause losses in the insolvent property despite filing and review.

7. Storage of bankruptcy property

Debts, securities, jewellery, and other securities are required to keep, another exception where there is a determination by the Supervising Judge. Cash is required to be deposited in a bank under Section 108 of the Insolvency Act. The quote referred to as "kept by the curator himself" is by not minimizing the possibility of such securities or securities deposited by the Bank. However, a liability remains on behalf of the insolvent debtor. Explanation of Section 108 of the Insolvency Act.

8. Make atonement to ensure the running or prevent a matter from arising. [1]

To close ongoing cases and avoid arising cases under Section 109 of the Insolvency Act. The citation referred to as "peace" in this Article is a case that is proceeding in court.

Meanwhile, the management of bankruptcy assets is subtantive, including:

1. First Meeting of Creditors

The first meeting of creditors makes a summons to the creditor which is intended to include proof of the bill against the curator. The Supervising Judge determines the final limits on tax verification, filing of bills, dates, days and times and places of creditors' meetings as receivables matching. The summons may be made through a public newspaper under Section 15 subsection (4) of the Insolvency Act. The final deadline for filing a receivables matching

[1]Rahayu Hartini, *Op.Cit.*, h.124.

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meeting is required to have a difference within a period of at least 14 (fourteen) days as in accordance with Section 113 and Section 114 of the Insolvency Act.

2. Billing Claim Submission Limit

The agreed bills are placed on a list referred to as the "List of temporarily recognized receivables", while the receivables in dispute against the curator are placed on a separate list along with the particulars. In the list of receivables is also given a description of whether the inclusion of receivables pledged by collateral, fiduciary and dependent rights, mortgages, collateral rights or privileged over other treasury or the right to withhold the relevant bill can be carried out.

The results of the list of receivables that have been compiled by the curator are posted on the information board within a period of 7 (seven) days so that they can be witnessed by those who have interests or anyone who wants to see them, the laying of the list of bills will be announced by the curator to the known creditors and to attend the bill matching meeting and also to announce if the debtor has any peace plan input to the curator (Article 116, Article 117, Article 118, and Article 119 of the Insolvency Act).

3. Meeting Verification

A verification meeting occurs only once in the insolvency proceedings of the subject of law. All matters related to the bill will be discussed in the verification meeting which has been investigated by the curator regarding its certainty. Verifiable receivables are only those bills that are aimed at fulfilling obligations addressed to the insolvent property belonging to the debtor. The debts of the bankruptcy estate were not verified. Based on Article 113 of the Insolvency Act, within a period of no later than 14 (fourteen) days after the bankruptcy declaration decision is determined.

4. Peace efforts

Peace efforts are held to resolve ongoing disputes and minimize the occurrence of a case (Section 109 of the Insolvency Act). The quote referred to as "peace" in this Article is an ongoing dispute in court.

5. Insolvency Determination

Insolvency may occur if the matching of receivables in the meeting cannot be offered in the peace plan, If there is peace between the parties who have been declared bankrupt, but not agreed upon by the creditors in a verification meeting and when the settlement has been completed and the creditors agreed in the verification meeting, but there is no determination by the bankruptcy judgment judge. Based on Article 2 paragraph (1) of the Insolvency Act, a

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debtor is declared bankrupt if the debtor cannot pay one creditor on condition that the debtor concerned has two or more creditors.

After the curator has dealt with the bankruptcy property and after the bankrupt debtor has been declared in the insolvency period, the curator is aware of the provisions of Article 185 paragraphs (1) and (2) of the Insolvency Act, will carry out the settlement of the bankruptcy property, namely carrying out the sale of the bankruptcy property. Whether it is a sale held at auction under Section 185 subsection (1) of the Insolvency Act, or a sale carried out on a hand-held basis pursuant to Section 185 subsection (2) of the Insolvency Act.

Then after the curator has made the settlement of the bankruptcy property, it is aware of the provisions of Section 188 of the Insolvency Act: "Where the Supervising Judge submits that there is sufficient cash, the curator obtains an order to make a distribution to the creditors whose receivables have been matched". Under Section 189 of the Insolvency Act, the creation of an analysis table contains the amount of money to be received and to be issued, including the presence of curatorial rewards, the names of creditors and the number of bills that have been passed, repayments to be made against receivables or the share that must be given to creditors made by the curator. Payments to creditors based on the provisions of Article 189 paragraph (4) of the Insolvency Act are:

a. Have rights in the form of privileges, including in denied privileges; and
b. A person entitled to a guarantee of dependent, fiduciary, lien, mortgage, or other collateral rights. As long as it is not paid under the provisions of Section 55 of the Insolvency Act, it can be done from the sale of privileged goods or granted as collateral.

As written in Article 189 paragraph (5) of the Insolvency Act, that in the proceeds from the sale of objects in accordance with paragraph (4) that if it is not sufficient to pay all the receivables of creditors that are prioritized, then The shortfall would be to be a concurrent creditor. Thus, where the debtor has been recognized as bankrupt by the Commercial Court, the payment procedure for preferred creditors is the same as that of concurrent creditors, namely submitting the bills held to the curator for verification and ratification in the verification meeting (Kartini & Widjaja, 2003).

From the process of handling and acquiring the bankruptcy property, it appears that the position of the concurrent creditor in the process of dividing the bankruptcy property is at the bottom, in principle it can be but if the creditors are many while the assets are few, potentially not getting the share or even if it can be processed very small. So that the position of creditors holding individual guarantees who are concurrent creditors is weak in the process of managing and dividing bankruptcy assets. Based on the Insolvency Law Article 1 paragraph (2) that a creditor is

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a party who has debts due to an agreement or law that applies to both parties and can collect before the court. Lilik Mulyadi stated that creditors are parties who have debts due to an agreement on an agreement that can be collected in advance of the court, where creditors can be individuals or legal entities (Mulyadi, 2010). Creditors have claims against other parties, namely, debtors who have debts that have been agreed in advance to creditors and debtors when creditors provide credit or lend to debtors. Debt is a commitment in the form of an asset obligation that is obliged to be paid by each debtor and if it is not implemented then the creditors have the right to demand all the assets of the debtor (Mulyadi & SH, 2010).

The existence of a credit agreement is a debtor's consensuil agreement with creditors which gives birth to a receivables relationship and the debtor has the obligation to repay the loan that has been given by the creditor as in Book III of the Criminal Code. The contract in the credit agreement itself is an agreement in the form of a loan and loan between the creditor and the debtor who is obliged to pay it off within a certain period of time. Therefore, an agreement can be agreed and signed if the credit has met the legal conditions according to the applicable rules, then the agreement will be binding on the parties. In an agreement, it has valid conditions in accordance with Article 1320 of the Criminal Code specifying that an agreement can be said to be valid when it meets the subjective element and the objective element. Violation of a subjective element means that, in an agreement, it can be annulled when suing in the District Court. Whereas violation of an element of obejktif means, in an agreement it will be null and void by itself and the agreement has no binding legal force. The litigation of a lawsuit in civil law is the same as a lawsuit in bankruptcy (Sihotang et al., 2020). So that insolvency comes from a civil law relationship between creditors and debtors, even though it has been specifically regulated in the Insolvency Law.

Basically, not all pledged goods are allowed to be used as collateral at banking institutions or non-bank financial institutions. However, objects that can be used as collateral are objects that have met certain requirements. If the pledged goods are void due to legal reasons or are destroyed, then the credit agreement can be used as a non-void principal agreement and the debtor is obliged to repay the debt owned.

An individual guarantee is a guarantee that occurs because of a legal relationship that causes having an obligation to make payments to one of the parties. Based on Article 1821 of the Criminal Code which explains that insurers cannot be carried out if the agreement is invalid. Therefore, an individual guarantee can be said to exist if it has been carried out in a valid agreement. The existence of an individual guarantee agreement between the guarantor and creditors. An individual agreement is a relative right or can be called a special retained right of a person who is bound by the agreement (Uitto et al., n.d.).

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Individual guarantees have their own characteristics, namely agreements that have an accesoir nature where the agreement to participate in the principal agreement is the agreement of one of the parties that is burdened by obligations, such as in making debt payments in the credit agreement. In an agreement will give birth to rights to individual guarantee agreements that have a contractual nature instead of treasury rights. As well as in Article 1131 of the Criminal Code, it is explained that the existence of the guarantor's property will be within the responsibility of the guarantor and has rights and obligations in the event of a default committed by the debtor to the creditor in accordance with the principal contract. In the event of a default, then the obligation to be collected or sued to the court is first the debtor .

The role of an individual guarantor arises only when the debtor fails to properly execute the principal agreement that has been concluded. The position of an individual guarantor who has a substitute nature should be fulfilled by the main debtor. If the debtor is unable to pay part or all of the debt, so that there is a person who can guarantee and repay the debt Repayment of the debtor's debt is carried out in part or in full depending on the amount of debt that has not been paid by the main debtor. Therefore, the guarantee of the company is subsidaire in the nature of the guarantor who is present when the debtor defaults (Satria, 2021). The release of privileges with the guarantor then, in accordance with Article 1832 of the Penal Code, collection can be directly made by the creditor to the guarantor if the debtor defaults. However, if the creditor collects on the individual guarantor, the individual guarantor can sue the creditor to confiscate and sell the property and property owned by the debtor first and is required to show the property of the debtor's property to the creditor.

The guarantor is obliged to show the creditor the property belonging to the debtor in accordance with Article 1834 of the Criminal Code and is obliged to make payments in advance regarding the costs required for the confiscation and sale of the property belonging to the debtor. The guarantor is not allowed to show the goods that are in dispute before the court or the goods have become the responsibility of the mortgage related to the debt in question and are no longer in the hands of the debtor or the goods are outside the territory of Indonesia.

Zainal Asikin explained that the result of a bankruptcy decision has its main factor, namely, the determination of a bankruptcy judgment in which the debtor will lose the right to do all management and control of his property, because the property will turn to the curator or the heritage property hall (Aprita, 2022). Under Section 24 of the Insolvency Act. If the debtor has been decided to become a bankrupt debtor by the Commercial Court, it will get the consequence that the entire property of the bankrupt debtor is no longer a right in the management and management of the debtor. Meanwhile, for creditors who experience uncertainty related to the

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existing legal relationship between the bankrupt debtor and the creditor, they can apply for legal protection for the application for a bankruptcy statement to the commercial court (Aprita et al., 2019).

A guarantor responsibility is born when the debtor has broken a promise. The guarantor is obliged to pay off the debtor's debts in accordance with the individual guarantee agreement. The guarantor will waive his rights, then the position between the debtor and the guarantor becomes the same if the main debtor breaks the promise and can occur if the guarantor does not have his rights as a guarantor. Therefore, after the guarantor waives his privileges, then the position of the right and the obligations of the guarantor are the same as those of the debtor thereafter the creditor may file a tort suit in the District Court.

The first step must be taken by prospective plaintiffs, namely by filing a civil lawsuit by registering a lawsuit with the court. Under Article 118 subsection (1) of the HIR registration of a suit may be filed with the District Court on the basis of its relative competence. The jurisdiction in question is that it can determine which District Court has the authority to try civil cases that have been filed. In a manner consistent with the domicile of the defendant or the legal domicile that has been established in an agreement. The existence of a lawsuit should be filed in writing, then signed with the plaintiff or his attorney and addressed to the Chief Justice of the District Court.

The second step is to make payment of the cost of the case. Furthermore, registering a lawsuit received by the local District Court clerk's office, the plaintiff is required to make payment of temporary and final case costs which will be taken into account after the court's decision. After a court decision is issued, generally the party who has been declared defeated (between the plaintiff and the defendant) is the party who will be obliged to bear the costs of the case. The costs of the case in question are included in the costs incurred by the court. During the examination process, namely, there are clerkship fees, stamped, calling witnesses, conducting local examinations, giving notice, executing, and other costs necessary in the examination process and trial. If the amount of the costs of the court is lower, then the Plaintiff must add it, if the amount is high, then the rest is obliged to return to the Plaintiff.

With the exception of the Plaintiff and/or Defendant who is unable to pay the costs of the case, therefore in the Civil Procedure Code it is permissible to dispute without any fees (prodeo/free of charge). In dispute without charge, the Plaintiff is allowed to apply for a permit to dispute without charge by attaching it in a lawsuit letter or a separate letter. In addition, Plaintiff and Defendant may also file it themselves. This requirement can also be accompanied by a certificate of inability to work issued by the sub-district head or village head with a domicile according to the phak that has been submitted.

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The third step is to register a case, by registering the case in the case register in order to obtain a lawsuit number for further processing immediately which is done after paying the cost of the case. The fourth step is the submission of the case documents to the Chief Justice of the District Court, then after obtaining the case number according to the sequence number in the Case Register Book, the case is transferred to the Chief Justice of the District Court. The transfer must be done quickly so as not to violate the principles of simple, fast, and low-cost file processing, with a maximum of 7 (seven) days from the date of registration.

The fifth step is the determination of the panel of Judges by the chairman of the District Court, then after examining the file that has been submitted to the Chief Justice of the District Court will appoint a Panel of Judges who will later consider and issue a judgment on the case no later than 7 (seven) days from the date of filing the case. The panel of judges consists of at least 3 (three) judges, including the Chief Judge and 2 (two) Member Judges. The sixth step is to set the date of the trial, then the Panel of Judges will conduct an examination and try the case and set the time for the hearing. The determination is announced in the determination letter no later than 7 (seven) days after the Panel of Judges has received the case file. Thereafter the Panel of Judges shall make summonses against the parties (Plaintiff and Defendant) who will attend on the appointed day of the hearing. After that the trial begins according to the rules in the applicable Code of Civil Procedure.

Thus, from the above analysis, it can be obtained that against debtors who are declared bankrupt, while the insurer is not declared bankrupt, the entire insurer's property does not include bankruptcy property. So the creditor has the right to file a tort suit in accordance with Article 1243 of the Penal Code to the insurer, if in the process of resolving the debtor's bankruptcy debt, the debtor does not meet the creditor's debt.

An individual guarantor is a third party positioned solely as an addition to giving creditors confidence to fulfill a credit application. Regarding insolvency, guarantors are allowed to be insolved. If the guarantor is unable to fulfill the achievements in an individual guarantee agreement with the creditors. The guarantor may be sued for the obligations held if the debtor defaults. The guarantor is also a debtor who has an obligation to guarantee payments made by the main debtor. As it is explained that claims for obligations that the guarantor has had can be made when the debtor has been deemed to be in default. If the guarantor has waived his privileges but the privileges are still attached to the guarantor, then the guarantor may sue the creditor to conduct the confiscation and auction of the debtor's property first. In addition, the guarantor is also allowed to take advantage of other rights he has as long as it is possible. The guarantor may be requested as a bankruptcy petitioner who may be sued to the principal debtor or individually. Guarantor is a

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person or legal entity that requires credit facilities by providing collateral goods to the recipient of the collateral goods.

Individual guarantees are subsidairy. The role of an individual guarantor is born when the debtor defaults. Default is the condition of a debtor who cannot fulfill his promises or does not fulfill as per the agreement that has been agreed and all can be blamed on the debtor. A form of default that can be a late debtor achieves. The elements of default are not doing according to what has been agreed to be done, doing something that has been agreed but not in accordance with the specified time, or doing something that in the agreement should not be done.

Achievement can be defined as the fulfillment of the implementation of obligations born with the existence of a relationship in the agreement. An obligation in question is a contractual obligation, which can be obtained in a rule, contract, or agreement that has been agreed upon by the parties regarding the suitability and capacity possessed by the parties (Khairandy, 2013). Achievement is the object of the existence of a treaty. In the absence of achievement a legal relationship can be carried out on the basis of legal actions that have no meaning whatsoever in the engagement. Under Article 1234 of the Penal Code, the promised achievement is by giving up something, doing something, or not doing something at all. The debtor has an obligation to submit achievements to creditors. Thus a debtor is obliged to pay off the debt and the debtor has an obligation in terms of giving the property that the creditor has taken as much as the debtor's debt. In the case of repayment of the debt, if the debtor cannot fulfill the obligation in making the payment of the debt.

A party who has been harmed as a result of default on an agreement can essentially terminate an agreement in question. However, if the termination of the agreement is carried out with the intention that the aggrieved party gets back the achievements that have been given to the party who committed the default. The party who is harmed by default is obliged to compensate for losses, especially the party who has been harmed has the obligation to return the benefits of achievements that have been done by the party who has committed acts in the form of default. Creditors get legal protection which is grouped into 2 (two) forms, namely, the first is legal protection by preventive means where in general it has been explained that in such protection seeks to protect creditors before the occurrence of events or actions taken by debtors to realize their achievements.

Legal protection preventively arises when the creditor of the dependent rights holder has been born to the object of dependent rights that has been pledged by the debtor who gives the dependent rights. The second form of legal protection is legal protection in a repressive way which only arises if the mortgage-giving debtor fails to pay the debt or breaks his promise because he

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does not perform his performance according to the credit agreement that has been promised. Basically the subjects in the agreement consist of the creditor and debtor parties. The creditors have the right to the fulfillment of achievements, while the debtors have obligations by fulfilling the demands of merit on the creditors. The party who is entitled to the performance of the creditor, of course, the other party has an obligation to fulfill the debtor's achievements, if the achievements are not fulfilled, then the debtor must be declared in default in order to fulfill the achievements. Thus, creditors can apply for fulfilment of achievements either by asking the court or executing the collateral provided by the debtor because of the insolvency of the executory title under Section 55 subsection (1) of the Insolvency Act.

Sudikno Mertokusumo argues that the ease with which creditors can get repayment of their billing rights is due to the accommodating of the execution parate institution by law with the title of executor (Isnawati & Maolana, 2023). Hoogerechtschof van Nederlands Indie (HGH) states as a right to take repayment without a court ruling, so it seems as if in terms of execution it is always ready in the hands of creditors. Looking at the opinions of the experts above, it appears that the executory title provides a position to protect the creditor from having a better position in repaying his collection rights and in the special collateral rights he has, as if the debtor set aside all or part of the property owned for the repayment of his debt in the event of a future default.

So that any deviation from the implementation in the agreement of all the terms that have been mutually agreed upon will result in legal consequences that can be referred to as legal liability. The legal consequence that occurs between the debtor and the insurer is the emergence of the right and obligation to inform the debtor that, the insurer has made payment of the debtor's debt and made details of the entire amount of the debt paid. Providing this information is intended to avoid the possibility that the debtor has made a payment or the debtor is demanding the cancellation of the debt agreement. If the debtor has made payment of his debt to the creditor or canceled the debt agreement without the insurer's knowledge, it is legal that the insurer cannot demand repayment to the debtor.

From the described description, it can be concluded that in principle the concept of default is a deviation of the parties to an agreement with non-coercive conditions compared to the agreement that has been agreed in the main agreement. Where it can result in losses to creditors in an agreement. There can be a default if the implementation process after the agreement is validly agreed upon. An agreement is a legal fact and a legal act that gives rise to a legal relationship. Creditors can execute collateral objects directly without having to apply for confiscation and execution to the court, because after the collateral objects are registered with the collateral

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institution, the certificate is issued as collateral that has executory power or what is often referred to as execution bares

4. CONCLUSION

Based on the discussion above, a conclusion can be drawn where the rights of creditors holding individual guarantees in the norms of Law Number 37 of 2004 concerning Insolvency if the debtor and insurer are declared bankrupt, then the position of the creditor of the individual guarantee holder is a concurrent creditor and all the insurer's assets as bankruptcy assets. So the curator will divide and tidy up the insurer's property in accordance with the Insolvency Act, if there is a treasury guarantee, it is given first.

The right of creditors to individual guarantees if the debtor is bankrupt, while the individual guarantor is not declared bankrupt, then the entire assets of the individual guarantor do not include bankruptcy assets. So creditors have the right to file a lawsuit in the form of default to individual guarantors in accordance with the provisions of Article 1243 of the Criminal Code, if in the process of settling bankruptcy assets the debtor is insufficient to settle the debt against the creditor.

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