

ABSTRACT

THE ANALYSIS ON SEPARATE CREDITORS AS THE HOLDERS OF GUARANTY RIGHT IN BANKRUPTCY

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Basically the legal positions of creditors are equal, so that they will have equal rights on the execution properties of bankruptcy according to amount of their respective collectibles. However, in bankruptcy law, has exceptions for creditors who hold property guaranty rights (one of them is guaranty right). The Article 21 of Act number 4 in 1996 about guaranty right, whenever debtors are bankrupt, to obtain collectibles of debts, the separate creditors as the holders of guaranty rights have the rights to sell by themselves and directly the properties being guaranties in guaranty rights. However, the rights of the holders of guaranty rights become weak when bankruptcy occurs because Article 56 Clause 1 of Act number 37 in 2004 states that the bankruptcy will delay the rights for 90 (ninety) days. Based on this, the problems in this research were how did the authorities of separate creditors in executing guaranty rights dealing with bankruptcy and how did the legal consequences of bankruptcy to creditors as holders of guaranty rights in executing guaranty rights of debtors.

This was a descriptive and normative law research. Data were collected from primary, secondary, and tertiary law materials. Data were analyzed and discussed to draw conclusions qualitatively to answer the research problems.

The results showed that the causes why separate creditors had exclusive authorities upon bankruptcy was that to provide legal security upon guaranty to return credits had been granted to debtors, because without legal security on the credits, there would be no institutions (both individual or legal entity) willing to provide credits to debtors. Creditor rights as holders of guaranty rights were in form of parate eksekusi and execution based on execution power to the Certificate of Guaranty rights which was limited by Act of bankruptcy.

Keywords: separate creditors, guaranty right, bankruptcy.