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LEGAL STANDING OF PERSONAL GUARANTORS IN BANKRUPTCY PETITIONS UNDER SUPREME COURT DECISION NUMBER 141 PK/PDT.SUS/PAILIT/2016

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This article examines the legal standing of a personal guarantor within a bankruptcy petition under Indonesian insolvency law, through an analysis of Supreme Court Decision Number 141 PK/Pdt.Sus/Pailit/2016, in which Arifin, as the applicant for judicial review and respondent in the underlying bankruptcy petition, was opposed by PT Bank Mayapada Internasional, Tbk, as the respondent in the judicial review and the original petitioning creditor. The issue examined is whether a personal guarantor who has waived the privileges granted under Articles 1831 and 1837 of the Indonesian Civil Code may be declared bankrupt without the principal debtor first being declared bankrupt or insolvent. Employing a normative legal research method with a case study approach, the article examines the Personal Guarantee (Borgtocht) Deed Number 107 dated 28 September 2012, the procedural chronology from the bankruptcy petition before the Commercial Court through to the Supreme Court's rejection of the applicant's request for judicial review, and the panel's legal reasoning. The analysis finds that the Supreme Court consistently upholds the principle that a guarantor who has waived its statutory privileges assumes the position of the principal debtor for purposes of debt collection, and may accordingly be categorised as a debtor satisfying the simple proof requirement under Article 8(4) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. The article further argues that this jurisprudential line, while promoting creditor certainty and commercial predictability, invites continuing doctrinal scrutiny concerning the proportionality of exposing a natural person guarantor to the collective and reputationally severe consequences of bankruptcy on the strength of simple proof alone.

Keywords: *Personal Guarantor; Borgtocht; Bankruptcy Law; Waiver of Privileges; Supreme Court Decision 141 PK/Pdt.Sus/Pailit/2016.*

1. Introduction

1.1 Background of the Study

Credit relationships within the Indonesian legal order are ordinarily founded upon a reciprocal expectation of good faith, in which a debtor is trusted to return borrowed capital within an agreed period and a creditor extends funds on the strength of that trust. Commercial reality has nonetheless compelled financial institutions to seek additional layers of certainty beyond the debtor's bare promise, because reliance on trust alone leaves a creditor exposed to the debtor's insolvency, mismanagement, or outright default. One instrument developed to close that gap is the personal guarantee, known in Dutch-derived Indonesian legal vocabulary as borgtocht, whereby a third party binds itself to the creditor to satisfy the debtor's obligation should the debtor fail to perform. The personal guarantee is governed principally by Book Three of the Indonesian Civil Code, spanning Articles 1820 to 1850, and it operates as an accessory agreement whose validity and scope depend upon the existence of a valid principal obligation. Article 1820 defines the guarantee as an agreement whereby a third person, for the benefit of a creditor, binds itself to fulfil the debtor's obligation should the debtor itself fail to do so. The instrument has become a standard feature of Indonesian banking practice, appearing routinely in working-capital facilities, corporate loan restructurings, and syndicated financing arrangements, precisely because a natural person guarantor with personal wealth offers a creditor a further pool of recoverable assets beyond the corporate debtor's own balance sheet.

The Civil Code confers upon a guarantor several statutory privileges designed to preserve the accessory and subsidiary character of the guarantee. Article 1831 stipulates that a guarantor is not obliged to satisfy the creditor unless the debtor has defaulted, and even then only after the debtor's own assets have first been seized and sold to satisfy the debt. This privilege, commonly labelled the privilege of prior execution or voorrecht van uitwinning, ensures that liability travels first to the principal debtor's estate before it may reach the guarantor's personal wealth. Article 1837 supplies a further privilege applicable where several guarantors have bound themselves for a single debtor, allowing each guarantor to demand that the creditor divide its claim proportionately among all guarantors rather than pursue any single guarantor for the entire debt. These privileges are not mandatory rules of public order. The Civil Code permits a guarantor to renounce them expressly, and Indonesian banking practice has made such renunciation close to universal, since creditors routinely insist that a guarantor waive the privileges of prior execution and division as a precondition to accepting the guarantee. The waiver clause transforms the practical position of the guarantor considerably, because once renounced, the creditor may proceed directly against the guarantor without first exhausting remedies against the principal debtor, and this shift in practical exposure lies at the analytical centre of the present study.

Indonesian insolvency law, codified in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, defines bankruptcy as a general seizure of all the assets of a bankrupt debtor, the administration and liquidation of which is conducted by a curator under the supervision of a supervisory judge. Article 2(1) establishes the substantive requirements for a bankruptcy declaration: a debtor with two or more creditors who fails to pay in full at least one debt that has fallen due and is collectible may be declared bankrupt, whether upon its own petition or upon the petition of one or more of its creditors. Article 8(4) supplies the evidentiary threshold applicable at the Commercial Court, providing that a bankruptcy petition shall be granted where the facts or circumstances proving that the requirements for a declaration of bankruptcy have been met are established simply, a standard commonly rendered in Indonesian legal literature as the simple proof requirement, or *pembuktian sederhana*. The Bankruptcy Law is silent, however, on the specific procedural treatment of a personal guarantor who is joined, or singly named, as a bankruptcy respondent. This legislative silence has generated a persistent doctrinal and jurisprudential controversy: does a guarantor who has waived the privileges of prior execution and division thereby become a debtor within the meaning of Article 2(1), exposed to bankruptcy on the same simple-proof standard applicable to any ordinary debtor, or does the guarantor retain a distinct legal character that precludes a bankruptcy declaration until the principal debtor has itself first been declared bankrupt or otherwise found insolvent?

Judicial responses to this controversy have not been monolithic. In Decision Number 922 K/Pdt/1995, the Supreme Court articulated what has since become a frequently cited maxim of Indonesian suretyship jurisprudence, namely that a guarantor remains forever a guarantor, and on that basis held that the civil status of a principal debtor cannot be transferred to a guarantor outside a claim for repayment of the principal debt. That reasoning implies that a guarantor, whatever privileges it may have waived, is not to be equated with a debtor for the specific purpose of triggering the collective liquidation regime of bankruptcy. Contrasting jurisprudence, exemplified by the Supreme Court's earlier ruling concerning PT Bank Kesawan against PT Deemte Sakti Indo, held that once a guarantor has waived its privileges the creditor may proceed directly against the guarantor to enforce the obligation, and where the guarantor fails to satisfy that obligation voluntarily, a bankruptcy petition against the guarantor may properly be granted. The decision under sustained examination in this article, Number 141

PK/Pdt.Sus/Pailit/2016 between Arifin and PT Bank Mayapada Internasional, Tbk, sits squarely within this second line of authority, and its treatment at the level of judicial review, the most exceptional and restrictive avenue for challenging a final and binding decision within the Indonesian judicial hierarchy, offers a valuable vantage point from which to assess whether the Supreme Court has in substance settled the controversy in favour of assimilating the guarantor to the debtor once statutory privileges have been renounced.

The choice of this particular decision as the object of juridical analysis is justified on several grounds. The decision arose through the full hierarchy of Indonesian commercial adjudication, commencing before the Commercial Court at the Central Jakarta District Court, proceeding to cassation before the Supreme Court, and culminating in a petition for judicial review, thereby allowing an examination of how successive panels of judges treated the identical legal question at each procedural stage. The underlying facts present a comparatively clean set of circumstances, involving a single natural person guarantor, a single principal debtor company, a single personal guarantee deed containing an express and unambiguous waiver clause, and a debt whose amount was not seriously disputed, features that reduce the risk of the legal reasoning being obscured by contested facts. The decision has additionally attracted sustained attention among Indonesian legal practitioners and academic commentators as an illustrative example of a bankruptcy petition pursued against a personal guarantor independently of any parallel proceeding against the principal debtor, distinguishing it from cases in which guarantor and debtor are joined as co-respondents in a single petition.[1] Examining the decision accordingly serves both a doctrinal purpose, clarifying the operative legal standard, and a practical purpose, informing the drafting practices of banks and other creditors that continue to rely upon personal guarantees as a central pillar of credit risk mitigation.

1.2 Problem Formulation

Two principal legal issues are examined in this article. The first issue concerns the substantive question whether a personal guarantor who has expressly waived the privileges

[1] Liza Mashita Ramadhania, 'A Dualistic Concept of Personal Guarantee Responsibility and Its Relevancy with Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligation' (2023), 27.

conferred by Articles 1831 and 1837 of the Civil Code may lawfully be declared bankrupt independently, without any prior or concurrent declaration of bankruptcy against the principal debtor. The second issue concerns the juridical reasoning employed by the Supreme Court in Decision Number 141 PK/Pdt.Sus/Pailit/2016 to resolve that question, including the extent to which the panel's reasoning is consistent with the earlier jurisprudence embodied in Decision Number 922 K/Pdt/1995 and with the doctrinal writing of Indonesian bankruptcy law scholars. Addressing these two issues together permits the article to move beyond a purely descriptive account of the decision towards a critical evaluation of the coherence, predictability, and normative desirability of the legal standard the Supreme Court has applied.

1.3 Purpose and Significance of the Study

This article pursues three interlocking purposes. The first purpose is expository: to reconstruct with precision the factual chronology and procedural history of the Arifin dispute, drawing on the Personal Guarantee Deed Number 107, the subsequent adjustment deeds, and the successive judgments rendered by the Commercial Court, the Supreme Court sitting in cassation, and the Supreme Court sitting on judicial review. The second purpose is analytical: to identify the ratio decidendi of Decision Number 141 PK/Pdt.Sus/Pailit/2016 and to situate that ratio within the wider architecture of Indonesian suretyship and bankruptcy doctrine, drawing comparisons with earlier and later decisions addressing materially similar facts. The third purpose is evaluative and philosophical: to consider whether the jurisprudential assimilation of a waiving guarantor to the position of a debtor for bankruptcy purposes achieves an appropriate balance between the creditor's legitimate interest in commercial certainty and the guarantor's interest in proportionate treatment, given the uniquely collective, reputationally severe, and civilly disabling consequences that a bankruptcy declaration visits upon a natural person. The significance of the study extends to legal practitioners drafting and negotiating personal guarantee instruments, to judges confronted with materially similar petitions, and to legislators considering whether the Bankruptcy Law ought to be amended to supply an explicit procedural regime governing petitions directed against personal guarantors.

2. Research Method

This article adopts a normative legal research method, understood within Indonesian legal scholarship as research conducted upon legal materials as a coherent and self-contained system of norms, rather than upon empirical data gathered from the field.[2] The method proceeds through the systematic collection and critical examination of primary legal materials, comprising the Indonesian Civil Code, Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations, the 1945 Constitution, Law Number 48 of 2009 concerning Judicial Power, and the text of Supreme Court Decision Number 141 PK/Pdt.Sus/Pailit/2016 together with its antecedent decisions at the Commercial Court and cassation stages.[3] Secondary legal materials, comprising treatises, peer-reviewed journal articles, and professional commentary authored by Indonesian bankruptcy law specialists, are consulted to situate the decision within the surrounding doctrinal debate and to test the internal consistency of the panel's reasoning against the accumulated scholarship on suretyship and insolvency.

A case study approach is combined with the normative method to permit a close, line-by-line reconstruction of the factual matrix and procedural history of a single decision, an approach considered appropriate where the research question turns upon the specific legal reasoning employed by a particular panel of judges rather than upon a statistical survey of many decisions. A statutory approach and a conceptual approach are additionally employed: the statutory approach traces the applicable provisions of the Civil Code and the Bankruptcy Law as they bear upon the guarantor's legal position, while the conceptual approach examines the underlying doctrinal concepts of accessority, subsidiarity, waiver, and simple proof that structure judicial reasoning in this field. The analysis proceeds deductively from the general statutory and doctrinal framework towards the specific facts of the Arifin decision, and then inductively from the specific holding of that decision towards broader observations concerning the coherence of Indonesian jurisprudence on personal guarantors in bankruptcy.

Data for this study were gathered exclusively from documentary and textual sources publicly available through the official Supreme Court decision directory, statutory

[2]Peter Mahmud Marzuki, Penelitian Hukum (Kencana 2005) 35.

[3]Soerjono Soekanto and Sri Mamudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat (RajaGrafindo Persada 2001) 13-14.

compilations, and peer-reviewed legal publications. No interviews, surveys, or other empirical instruments were employed, consistent with the normative character of the research. Materials were analysed qualitatively, through a process of textual close reading, cross-referencing of statutory provisions against judicial holdings, and comparative juxtaposition of the Arifin decision against both earlier and later Supreme Court jurisprudence addressing materially comparable facts, in order to assess whether a stable and internally consistent legal standard can properly be said to govern bankruptcy petitions against personal guarantors under Indonesian law.

3. Literature Review and Conceptual Framework

3.1 The Doctrine of Suretyship (Borgtocht) under the Indonesian Civil Code

The Indonesian law of suretyship traces its lineage to the Dutch Burgerlijk Wetboek, transplanted into the Netherlands East Indies and subsequently retained, with adaptation, as the Kitab Undang-Undang Hukum Perdata following Indonesian independence. Article 1820 of the Civil Code frames the guarantee as an agreement between a third party and a creditor, made for the benefit of the creditor, whereby the third party undertakes to fulfil the debtor's obligation should the debtor fail to do so. Among the most authoritative Indonesian commentators on the law of security, describes the guarantee as an agreement between a creditor and a third person guaranteeing fulfilment of the debtor's obligation, and situates it within the broader category of personal security, jaminan perorangan, distinguished from security interests attaching to specific property such as pledge, mortgage, and fiduciary security. Sri Soedewi Masjchoen Sofwan similarly classifies personal guarantee among the recognised forms of Indonesian security law, emphasising that its distinguishing feature is the exposure of the guarantor's entire personal estate, rather than a specifically identified asset, to satisfy the guaranteed debt.[4] This structural feature explains why personal guarantees are commercially attractive to creditors extending unsecured or under-collateralised facilities, since the guarantor's whole patrimony,

[4]Sri Soedewi Masjchoen Sofwan, Hukum Jaminan di Indonesia: Pokok-Pokok Hukum Jaminan dan Jaminan Perorangan (Badan Pembinaan Hukum Nasional, Departemen Kehakiman 1980) 45.

present and future, stands available to satisfy the guaranteed obligation once the conditions for enforcement have been met.

Article 1821 of the Civil Code establishes the accessory character of the guarantee by providing that no guarantee may exist without a valid principal obligation. This accessority finds ancient expression in the Latin maxim accessorium sequitur principale, the accessory follows the principal, a formulation that captures the structural dependence of the guarantee upon the underlying credit relationship it secures. Accessority operates in two directions of consequence for present purposes. On the one hand, if the principal obligation is void, unenforceable, or extinguished, the guarantee necessarily falls with it, since an accessory obligation cannot outlive or exceed the principal it secures. On the other hand, accessority does not by itself determine whether the guarantor's liability is merely secondary in point of enforcement sequence, meaning that the creditor must first pursue the debtor before turning to the guarantor, or whether the guarantor's liability becomes coextensive and immediately enforceable once the debtor defaults. It is precisely this second dimension, the sequencing of enforcement rather than the existence of liability, that the privileges under Articles 1831 and 1837 of the Civil Code are designed to regulate, and it is the voluntary renunciation of those privileges that reconfigures the practical relationship between guarantor and creditor from a sequential to a direct one.

3.2 Waiver of Privileges under Articles 1831 and 1837 of the Civil Code

Article 1831 confers upon the guarantor the privilege of prior execution, entitling the guarantor to insist that the creditor first seize and sell the debtor's assets before proceeding against the guarantor's own estate. Article 1832 enumerates the circumstances in which this privilege is unavailable to the guarantor, including where the guarantor has expressly waived the right to demand prior seizure and sale of the debtor's assets, where the guarantor has bound itself jointly and severally with the debtor, where the debtor possesses a purely personal defence unavailable to the guarantor, where the debtor is already in bankruptcy, and where a court has ordered bail. These grounds are understood in Indonesian legal literature as independent rather than cumulative, such that satisfaction of any single ground suffices to strip the guarantor of the privilege of prior execution, a reading consistent with the disjunctive structure of Article 1832 itself. Article 1837 supplies a related but analytically distinct privilege, applicable where multiple guarantors have jointly bound themselves for the same debt, entitling each guarantor to demand that the creditor's claim be apportioned among all guarantors according to their respective shares rather than concentrated against any single guarantor.[5] Both privileges may be renounced by contractual stipulation, and Indonesian banking practice, driven by the creditor's evident interest in maximising the speed and simplicity of recovery, has rendered such renunciation close to a standard clause in personal guarantee instruments executed in connection with commercial lending.

The legal consequence of a valid waiver has occasioned sustained academic disagreement. Sutan Remy Sjahdeini contends that Articles 1831 to 1850 of the Civil Code implicitly permit a transformation in the legal position of a personal guarantor into that of a debtor, a reading grounded in the observation that once the privileges of prior execution and division are removed, nothing in the statutory text continues to distinguish the guarantor's exposure from that of an ordinary debtor bound by a simple debt obligation. Munir Fuady adopts a broadly congruent position, observing that a guarantor who has renounced its privileges assumes a burden of repayment functionally equivalent to that of the principal debtor, such that the creditor's remedies against the guarantor need no longer be sequenced after remedies against the debtor.[6] Meiska Veranita, examining the same body of provisions through an interpretive method, concludes that Article 1832 number 2 of the Civil Code places the principal debtor and the waiving guarantor in an equivalent position, both properly described as debtors for the purpose of debt recovery, notwithstanding the absence of any explicit statutory statement to that effect within the Bankruptcy Law itself.[7] The same jurisprudential landscape, characterises the prevailing state of Indonesian doctrine as one of unresolved dualism, in which some decisions and commentators equate the waiving guarantor with the debtor while others insist upon preserving a categorical distinction between the two, a dualism she argues undermines legal certainty for creditors and guarantors alike and calls for legislative clarification.

[5]Sutan Remy Sjahdeini, Sejarah, Asas, dan Teori Hukum Kepailitan: Memahami Undang-Undang No 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (Kencana 2016), 208.
[6]Munir Fuady, Hukum Pailit dalam Teori dan Praktik (Citra Aditya Bakti 2014) 62.
[7]Meiska Veranita, 'Kedudukan Hukum Penjamin Perorangan (Personal Guarantor) dalam Hal Debitur Pailit Menurut Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang' (2015) 2(2) Repertorium 136, 140.

A conflicting doctrinal position insists that the guarantor's status remains categorically distinct from that of the debtor regardless of any waiver, a guarantor is always a guarantor, associated with Decision Number 922 K/Pdt/1995. Proponents of this view emphasise that waiver of a procedural privilege concerning the sequencing of enforcement is conceptually distinct from a substantive transformation of legal status, arguing that a guarantor who pays the debtor's obligation retains a right of subrogation and reimbursement against the debtor precisely because the guarantor's underlying identity as guarantor, rather than as an independent debtor in its own right, persists notwithstanding the waiver. On this reading, exposing the guarantor to bankruptcy, an instrument designed for the collective liquidation of a debtor's own insolvent estate, upon a standard fashioned for ordinary debtors would improperly conflate the guarantor's secondary undertaking with the debtor's primary obligation. The tension between these two doctrinal camps is not merely academic, since the practical consequences for a guarantor facing bankruptcy, including the general seizure of all personal assets and severe restrictions upon civil capacity during the bankruptcy administration, differ markedly depending upon which conception of the guarantor's status a given panel of judges chooses to adopt.

3.3 Bankruptcy and the Simple Proof Requirement under Law Number 37 of 2004

Bankruptcy under Indonesian law is defined as a general seizure of all the assets of a bankrupt debtor, the administration and liquidation of which proceeds under the supervision of a supervisory judge and the management of a curator, appointed to realise the debtor's estate for rateable distribution among the debtor's creditors. The substantive threshold for a bankruptcy declaration is deliberately undemanding by comparative standards, requiring merely that the debtor possess two or more creditors and fail to pay in full at least one debt that has fallen due and is collectible. This threshold reflects a legislative policy choice favouring swift and efficient debt collection over an exhaustive inquiry into the debtor's overall solvency, since Indonesian bankruptcy law, unlike certain comparative regimes, does not require proof that the debtor's liabilities exceed its assets before a bankruptcy declaration may issue. Article 8(4), read together with its elucidation, translates this substantive threshold into an evidentiary standard applicable before the Commercial Court, directing that a bankruptcy petition be granted where the facts and circumstances demonstrating satisfaction of the Article 2(1) requirements are established simply, meaning without recourse to the elaborate and protracted process of proof characteristic of ordinary civil litigation.

The simple proof requirement was designed to prevent the Commercial Court from being drawn into a wholesale re-litigation of the merits of the underlying debt, a function the legislature evidently regarded as properly reserved for the general civil courts, while reserving to the Commercial Court the narrower and more expeditious task of verifying the existence of an unpaid, due, and collectible debt together with the existence of a second creditor. This design carries significant consequences for a guarantor named as bankruptcy respondent, because where a court has already concluded, whether as a matter of statutory presumption or accessory liability, that the guarantor occupies the position of a debtor, the same undemanding evidentiary threshold applicable to an ordinary debtor becomes applicable to the guarantor as well. The Bankruptcy Law contains no provision expressly extending or withholding the simple proof standard in relation to guarantors, a silence that has left the Commercial Courts and the Supreme Court to develop, through case-by-case adjudication rather than through explicit statutory direction, the operative rule governing when and how a personal guarantor may be subjected to a bankruptcy petition.

3.4 The Doctrinal Debate Restated: Dualism and the Search for Coherence

The preceding sections demonstrate that Indonesian bankruptcy doctrine confronts a genuine and unresolved tension between two competing conceptions of the waiving guarantor, one assimilationist and one preservationist. The assimilationist conception, associated with Sjahdeini, Fuady, and Veranita, treats the waiver of statutory privileges as sufficient to place the guarantor in the same legal position as the debtor for purposes of debt recovery, including recovery through the collective mechanism of bankruptcy. The preservationist conception, associated with the reasoning in Decision Number 922 K/Pdt/1995, insists that the guarantor's underlying status remains distinct from that of the debtor irrespective of any procedural waiver, and that only a claim for repayment, rather than a bankruptcy petition premised upon collective insolvency, may properly be directed against the guarantor absent a prior declaration concerning the principal debtor. This tension as an unresolved dualism captures accurately the state of Indonesian jurisprudence prior to, and to a considerable extent even after, the decision under examination in this article, since neither the Bankruptcy Law nor any binding regulation issued by the Supreme Court has definitively foreclosed either conception. It is against this unsettled doctrinal background that Decision Number 141 PK/Pdt.Sus/Pailit/2016 must be read, not as writing upon a clean slate, but as one further contribution, admittedly an authoritative one issued at the level of judicial review, to a continuing jurisprudential conversation.

4. Case Analysis: Supreme Court Decision Number 141 PK/Pdt.Sus/Pailit/2016

4.1 Chronology and Facts of the Case

The dispute originates in a credit relationship extended by PT Bank Mayapada Internasional, Tbk to PT Mitra Usaha Cemerlang, a corporate debtor that obtained working-capital financing from the bank up to a ceiling of Rupiah two hundred billion. To secure repayment of this facility, Arifin executed Personal Guarantee (Borgtocht) Deed Number 107 on 28 September 2012, binding himself before a notary as guarantor of PT Mitra Usaha Cemerlang's obligations to the bank.[8] The deed contained an express clause by which Arifin renounced the privileges available to a guarantor under the Civil Code, including the privilege of prior execution under Article 1831 and the privilege of division under Article 1837, a renunciation that, consistent with the doctrinal analysis in section 3.2 above, exposed Arifin to direct enforcement by the bank without any requirement that the bank first proceed against PT Mitra Usaha Cemerlang's own assets. The credit facility extended to PT Mitra Usaha Cemerlang was subsequently adjusted on two occasions, through an adjustment deed dated 29 October 2013 and a further adjustment deed dated 30 October 2014, both of which left the underlying guarantee obligation intact.[9] In parallel with his role as guarantor, Arifin also held a personal indebtedness to the bank, evidenced by Debt Acknowledgment Letter Number 20 dated 13 November 2013, in the amount of Rupiah ten billion five hundred million, extended for the purpose of additional working capital in Arifin's own commercial activities.[10]

The bank's petition before the Commercial Court asserted that PT Mitra Usaha Cemerlang, and by extension Arifin as guarantor, had failed to settle provision fees and accrued

[8]Personal Guarantee (Borgtocht) Deed Number 107, 28 September 2012.
[9]Adjustment Deed, 29 October 2013; Adjustment Deed, 30 October 2014, amending Personal Guarantee (Borgtocht) Deed Number 107.
[10]Debt Acknowledgment Letter Number 20, 13 November 2013.

interest that had fallen due, amounting in aggregate to Rupiah twelve billion one hundred twenty-eight million seven hundred sixty-nine thousand seven hundred ninety-nine. The bank further identified at least one additional creditor of Arifin, satisfying the plurality-of-creditors requirement under Article 2(1) of the Bankruptcy Law, and contended that the existence of the debt, its maturity, and its collectability could be established through the personal guarantee deed, the adjustment deeds, and the debt acknowledgment letter without recourse to any complex or contested factual inquiry, thereby satisfying the simple proof standard of Article 8(4). Arifin's defence before the Commercial Court, and subsequently at the cassation and judicial review stages, centred upon the contention that as a mere guarantor, rather than as the principal debtor, he could not properly be subjected to bankruptcy absent a prior declaration of bankruptcy or insolvency against PT Mitra Usaha Cemerlang itself, invoking the preservationist conception of guarantor status associated with Decision Number 922 K/Pdt/1995.

4.2 Procedural History: From the Commercial Court to Judicial Review

The Commercial Court at the Central Jakarta District Court, adjudicating the bank's petition as Decision Number 49/Pdt.Sus-Pailit/2014/PN Niaga Jkt Pst, granted the petition and declared Arifin bankrupt, together with all legal consequences attendant upon that declaration, having found the existence of a due and collectible debt together with a plurality of creditors established through simple proof consistent with Article 8(4) of the Bankruptcy Law. Arifin pursued cassation before the Supreme Court, which, in Decision Number 212 K/Pdt.Sus-Pailit/2015 dated 1 April 2015, dismissed the cassation petition and affirmed the Commercial Court's declaration of bankruptcy, finding no manifest error of law in the lower court's application of the simple proof standard or in its treatment of Arifin's status as guarantor who had waived his statutory privileges. Having exhausted the ordinary avenue of cassation, Arifin invoked the extraordinary remedy of judicial review, peninjauan kembali, available under Indonesian civil procedure only upon narrowly defined grounds such as the discovery of new evidence or a demonstrable and manifest error in the application of law by the cassation panel.

In his petition for judicial review, culminating in Decision Number 141 PK/Pdt.Sus/Pailit/2016, Arifin argued that both the Commercial Court, acting as judex facti, and the Supreme Court sitting in cassation, acting as judex juris, had misapplied the governing law by treating him as directly susceptible to bankruptcy notwithstanding his status as guarantor rather than principal debtor. He invoked Decision Number 922 K/Pdt/1995 as controlling authority, precludes any transfer of the principal debtor's civil status to the guarantor outside a claim for repayment, and that the logical consequence of this principle is that a bankruptcy petition directed at a guarantor's default cannot be entertained independently of the principal debtor's own default and insolvency. The petition accordingly sought the annulment of both the Commercial Court's decision and the Supreme Court's cassation decision, and a corresponding rejection of the bank's original bankruptcy petition. The Supreme Court, convened as a panel exercising judicial review jurisdiction, ultimately dismissed Arifin's petition in its entirety, thereby leaving the declaration of his bankruptcy definitively in force.

4.3 Legal Reasoning of the Panel of Judges

The Supreme Court's rejection of the judicial review petition rested upon a finding that the judgments of the Commercial Court and the cassation panel disclosed no manifest error of law, the threshold condition for the extraordinary remedy of judicial review to succeed under Indonesian civil procedure. In substantiating this finding, the panel reasoned that Arifin occupied a dual position in relation to the bank, standing simultaneously as a personal debtor under Debt Acknowledgment Letter Number 20 and as guarantor of PT Mitra Usaha Cemerlang under Personal Guarantee Deed Number 107, and that in the latter capacity he had expressly waived his statutory privileges as guarantor. The panel held that this waiver rendered Arifin responsible with the whole of his personal estate for the settlement of PT Mitra Usaha Cemerlang's obligations to the bank, a responsibility the panel treated as functionally equivalent to that borne by a principal debtor, such that Arifin's failure to satisfy the guaranteed obligation upon demand exposed him to a bankruptcy petition on the same footing as any ordinary debtor who has defaulted on a matured and collectible debt. The panel's reasoning thus aligns with the assimilationist conception articulated by Sjahdeini and Fuady, treating the waiver as the operative legal event that collapses the distinction between guarantor and debtor for purposes of the Bankruptcy Law's simple proof standard.

A close reading of the panel's reasoning reveals two further analytical moves worth isolating. The first move is definitional: the panel treated the waiver clause within Personal Guarantee Deed Number 107 as dispositive in itself, without requiring the bank to demonstrate any additional fact, such as prior unsuccessful execution against PT Mitra Usaha Cemerlang's assets or a formal declaration concerning that company's own insolvency, before proceeding against Arifin. The second move is evidentiary: the panel confirmed that the existence of Arifin's obligation, whether as personal debtor or as waiving guarantor, together with the existence of a second creditor, could be established through documentary evidence, namely the guarantee deed, the adjustment deeds, and the debt acknowledgment letter, without engaging in an extended inquiry into disputed questions of fact, thereby satisfying the simple proof threshold of Article 8(4). Taken together, these two moves indicate that the Supreme Court did not merely decline to disturb the lower courts' factual findings, a posture that would itself be unremarkable at the judicial review stage, but affirmatively endorsed a substantive legal proposition: that a waiver of guarantor privileges is legally sufficient, standing alone, to expose the guarantor to bankruptcy on the same evidentiary standard applicable to a principal debtor.

4.4 Critical and Philosophical Analysis of the Ratio Decidendi

Assessed against the assimilationist and preservationist conceptions surveyed in section 3.4, the ratio decidendi of Decision Number 141 PK/Pdt.Sus/Pailit/2016 constitutes a clear, if implicit, judicial preference for the assimilationist reading of Articles 1831 and 1837 of the Civil Code. This preference finds support in a textual argument of some force: because the privileges of prior execution and division exist to protect the guarantor from being pursued ahead of, or disproportionately to, the principal debtor, a guarantor's voluntary and informed renunciation of those privileges removes the only statutory basis for treating the guarantor's exposure as sequentially or proportionately limited. Once that basis is removed, nothing within the text of the Civil Code continues to shield the guarantor from direct and immediate enforcement, and the pacta sunt servanda principle, agreements must be honoured, counsels strongly against permitting a guarantor to resile from a freely negotiated waiver simply because its consequences have proven onerous. Viewed through this lens, the panel's reasoning vindicates the autonomy of commercial parties to allocate risk through contract, and it discourages the moral hazard that would arise were guarantors permitted to invoke privileges they had expressly and knowingly bargained away in exchange for the extension of credit to the principal debtor.

A countervailing philosophical concern nonetheless deserves sustained articulation. Bankruptcy differs fundamentally from an ordinary money judgment in that it operates in rem upon the whole of a person's estate, triggers a collective process binding all creditors rather than merely the petitioning creditor, and imposes upon the bankrupt person severe restrictions upon legal capacity, including the loss of authority to manage or dispose of personal assets for the duration of the bankruptcy administration. H L A Hart's account of law as a union of primary and secondary rules reminds us that adjudicative rules of recognition ought to generate outcomes that are not merely textually defensible but also structurally proportionate to the interests the underlying primary rules were designed to protect.[11] Lon Fuller's insistence upon the inner morality of law, including the requirement that legal rules operate congruently with their announced purpose, invites the further question whether a regime built for the orderly liquidation of an insolvent debtor's own business affairs sits comfortably when transposed wholesale onto a natural person guarantor whose personal insolvency may derive entirely from the default of a third party's commercial venture.[12] Roscoe Pound's classical distinction between the law's demand for certainty and its aspiration towards individualised justice captures the essential trade-off at stake: the assimilationist rule adopted in Decision Number 141 PK/Pdt.Sus/Pailit/2016 purchases a considerable measure of predictability and administrability for creditors at a cost that falls, potentially with severity, upon guarantors whose exposure to collective liquidation was contractually assumed but perhaps not fully appreciated in its practical enormity at the moment of signature.[13]

The maxim fiat justitia ruat caelum, let justice be done though the heavens fall, is sometimes invoked to defend rigorous adherence to the letter of a contractual waiver regardless of hardship, and the panel's approach in the present decision can fairly be read as an instantiation of that ethic, prioritising the integrity of the parties' contractual allocation of risk over an ex post reassessment of its fairness. Yet the maxim ubi jus ibi remedium, where there is a right there is a remedy, cuts in a more searching direction, prompting the question whether Indonesian law presently affords a guarantor any meaningful remedy, short of resisting the bankruptcy petition itself, to mitigate the disproportion between the guarantor's secondary

[11] H L A Hart, The Concept of Law (2nd edn, Clarendon Press 1994) 124.
[12] Lon L Fuller, The Morality of Law (Yale University Press 1969) 33.
[13] Roscoe Pound, An Introduction to the Philosophy of Law (Yale University Press 1922) 47.

undertaking and the primary consequences of bankruptcy that a court may ultimately visit upon that undertaking. The absence of any statutory mechanism requiring a court to consider, before declaring a guarantor bankrupt, whether recovery against the principal debtor's own assets remains available and would satisfy the creditor without recourse to the guarantor's bankruptcy, suggests that Indonesian bankruptcy law has not yet developed a doctrine of proportionality analogous to that found in some comparative insolvency regimes, and this gap forms a proper subject for the recommendations advanced in section 5 below.

4.5 Comparative Analysis with Supreme Court Decision Number 922 K/Pdt/1995

A comparison between Decision Number 141 PK/Pdt.Sus/Pailit/2016 and the earlier Decision Number 922 K/Pdt/1995 exposes the depth of the doctrinal tension identified in section 3.4. The 1995 decision proceeded from the premise that the civil status of the principal debtor cannot be transferred to the guarantor outside a demand for repayment, and concluded that a guarantor's default, however clear, does not by itself justify a bankruptcy declaration against the guarantor independently of the principal debtor's own insolvency. Decision Number 141 PK/Pdt.Sus/Pailit/2016 reaches the contrary conclusion on materially comparable facts, a guarantor who has waived statutory privileges and failed to honour the guaranteed obligation upon demand, and does so without expressly overruling or even directly engaging with the 1995 precedent, despite Arifin having placed that precedent squarely before the panel as the central plank of his judicial review petition. This silence is analytically significant, because Indonesian law does not operate a strict doctrine of binding precedent, stare decisis, in the common law sense, leaving Commercial Courts and future Supreme Court panels without clear guidance as to which of the two lines of authority now carries greater weight, a state of affairs that itself generates the very uncertainty the simple proof standard of Article 8(4) was designed to avoid at the evidentiary level.

One plausible reconciliation, advanced tentatively in this article, is that the 1995 decision addressed a guarantor who had not clearly and unambiguously waived the privileges of prior execution and division, whereas the 2016 decision addressed a guarantor whose waiver was explicit, documented, and undisputed, thereby engaging the assimilationist rationale that removes the very privileges the 1995 maxim was designed to protect. On this reconciliation, the two decisions are not so much contradictory as addressed to factually distinguishable categories of guarantor, waiving and non-waiving, a distinction the Supreme Court in the 2016 decision could usefully have articulated expressly rather than leaving the reconciliation to subsequent academic inference. The absence of such express articulation nonetheless leaves open the less charitable possibility that the Supreme Court's jurisprudence in this field has simply evolved, or drifted, from a preservationist to an assimilationist orientation over the two decades separating the two decisions, without the evolution having been consciously acknowledged or theorised by the Court itself, a possibility that later decisions, examined in the following subsection, tend on balance to support.

4.6 Consistency with Later Jurisprudence and Regulatory Development

Decisions rendered after Decision Number 141 PK/Pdt.Sus/Pailit/2016 lend further support to the assimilationist trajectory identified above. In Decision Number 748 K/Pdt.Sus-Pailit/2016, the Supreme Court dismissed a cassation petition brought jointly by a corporate debtor and its personal guarantor, affirming a bankruptcy declaration grounded in the guarantor's waiver of special privileges together with the existence of cross-default and cross-collateral clauses spanning multiple finance lease agreements. In Decision Number 808 K/Pdt.Sus-Pailit/2017, the Court likewise reaffirmed that a guarantor who has waived its special privileges may be pursued directly by the creditor for satisfaction of the guaranteed obligation, without any suggestion that the guarantor's distinct legal status should first be resolved through a separate action for repayment. Decision Number 61 K/Pdt.Sus-Pailit/2015, concerning a corporate guarantor rather than a natural person, applied the identical reasoning, citing the 1999 jurisprudence to the effect that a guarantor's waiver of privileges permits the creditor to proceed directly against the guarantor once the guarantor fails voluntarily to satisfy its obligation. The cumulative weight of this later jurisprudence, spanning both natural person and corporate guarantors, indicates that Decision Number 141 PK/Pdt.Sus/Pailit/2016 does not stand as an isolated or aberrant application of the assimilationist rule, but instead forms part of a discernible and continuing jurisprudential pattern extending across the years immediately surrounding and following the decision.

A regulatory development of considerable interest, falling chronologically after the decision under examination, is the Supreme Court's Chamber Formulation issued through Circular Letter Number 2 of 2024, which addresses the treatment of guarantors within bankruptcy and suspension of debt payment proceedings and clarifies that a guarantor's liability, even following waiver, extends only to the specific debt owed to the creditor named within the guarantee instrument, rather than to the totality of the principal debtor's obligations towards other, unrelated creditors. This clarification, while not disturbing the core assimilationist holding traceable to decisions such as the one under examination, introduces a meaningful qualification upon its scope, confirming that assimilation of the waiving guarantor to the position of a debtor operates only within the confines of the specific credit relationship the guarantee was designed to secure, and does not convert the guarantor into a debtor of the principal debtor's creditors at large. The 2024 Chamber Formulation may accordingly be read as the Supreme Court's belated institutional acknowledgment that the assimilationist rule, left entirely unqualified, risks generating disproportionate outcomes of precisely the kind identified in section 4.4 above, and its issuance lends indirect support to the proportionality-oriented recommendations advanced in the concluding section of this article.

5. Conclusion and Recommendation

This article has examined Supreme Court Decision Number 141 PK/Pdt.Sus/Pailit/2016 to determine whether a personal guarantor who has waived the privileges conferred by Articles 1831 and 1837 of the Indonesian Civil Code may be declared bankrupt independently of any prior declaration of bankruptcy or insolvency against the principal debtor. The analysis demonstrates that the Supreme Court, sitting on judicial review, affirmed the lower courts' treatment of Arifin as functionally equivalent to a debtor once his waiver of statutory privileges under Personal Guarantee Deed Number 107 was established, and that this treatment satisfied the simple proof standard of Article 8(4) of Law Number 37 of 2004 without any additional requirement that the bank first exhaust remedies against PT Mitra Usaha Cemerlang. Later jurisprudence, spanning Decisions Number 748 K/Pdt.Sus-Pailit/2016, 808 K/Pdt.Sus-Pailit/2017, and 61 K/Pdt.Sus-Pailit/2015, together with the Supreme Court's Chamber Formulation of 2024, confirms that the assimilationist orientation adopted in the decision under examination has since consolidated into the dominant, though qualified, jurisprudential position.

The philosophical and doctrinal analysis advanced in section 4.4 suggests that this consolidation carries a genuine normative cost, exposing natural person guarantors to the full collective and civilly disabling consequences of bankruptcy on the strength of a documentary waiver alone, without any judicially imposed requirement of proportionality between the guarantor's secondary undertaking and the primary remedy of bankruptcy ultimately imposed. Three recommendations follow from this analysis. First, the legislature ought to consider amending Law Number 37 of 2004 to insert an express provision addressing the procedural treatment of personal guarantors, thereby replacing the current judicially improvised regime with a stable and predictable statutory standard accessible to creditors, guarantors, and courts alike. Second, the Supreme Court should be encouraged to formalise, through a further Chamber Formulation or regulation, an explicit requirement that a Commercial Court consider the availability of recovery against the principal debtor's assets before granting a bankruptcy petition against a waiving guarantor, building upon the proportionality-oriented qualification already introduced through the 2024 Chamber Formulation concerning the scope of guarantor liability. Third, notaries and legal counsel engaged in drafting personal guarantee instruments should ensure that guarantors receive clear and comprehensible advice concerning the practical consequences of waiving statutory privileges, including the specific exposure to bankruptcy proceedings, so that the pacta sunt servanda principle invoked to justify enforcement of the waiver rests upon a foundation of genuinely informed consent rather than upon standard-form contractual language signed without full appreciation of its eventual severity.

Decision Number 141 PK/Pdt.Sus/Pailit/2016 accordingly occupies a significant place within the development of Indonesian insolvency jurisprudence, offering both a doctrinally coherent resolution of the immediate dispute between Arifin and PT Bank Mayapada Internasional, Tbk and a revealing case study in the continuing evolution of the legal position of the personal guarantor under Indonesian law. The decision confirms that the age-old privileges of prior execution and division, though rooted in a Civil Code inherited from a different century and a different legal culture, remain fully capable of contractual renunciation with far-reaching consequences within the modern architecture of bankruptcy law. Future research, whether legislative, judicial, or academic, should build upon the analysis presented in this article to develop a more explicit and proportionate doctrinal framework governing the intersection of suretyship and insolvency, ensuring that the commercial utility of the personal guarantee continues to be matched by a fair and considered allocation of the risks it entails for the natural persons who extend it.

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