

Legal Implications of the Suspension of Debt Payment Obligations (PKPU) Process for Legal Entity Debtors and Personal Guarantors from the Perspective of the Separate Legal Entity Doctrine

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Abstract: *Suspension of Debt Payment Obligations (PKPU) is a legal instrument in bankruptcy. PKPU provides debtors with the opportunity to reorganize their debts through a settlement plan with creditors. In business practice, debtors in the form of legal entities are usually assisted by personal guarantors. Personal guarantors guarantee the debtor's obligations to creditors. This situation raises legal issues regarding the boundaries of liability between legal entity debtors and individual debt guarantors. The problem arises from the principle of separate legal entities. The principle of separate legal entities states that legal entities are independent. Legal entities have a separate legal personality from managers, shareholders, and other parties. This study aims to analyze the legal implications of PKPU applications for legal entity debtors. This study also analyzes the legal implications of PKPU applications for individual guarantors of debt. The analysis is conducted using the principle of separate legal entities. The study uses normative juridical legal methods. The researchers used three approaches: statutory, conceptual, and case studies in relevant commercial court decisions. The results indicate that a request for a Personal Assurance Payment for Debt for a legal entity debtor does not directly bind the individual debt guarantor. The two entities remain separate due to the principle of separate legal entities. However, a personal guarantee can expose the guarantor to liability if the debtor fails to pay the creditor. Therefore, the application of the separate legal entity principle must be understood proportionally. Consider the legal relationships arising from the debt guarantee agreement. This research contributes to the development of bankruptcy law studies. It provides legal certainty regarding the position of the individual guarantor in the Suspension of Debt Payment (PKPU) process.*

Keywords: *Suspension of Debt Payment (PKPU), Bankruptcy Law, Personal Guarantor, Legal Entity Debtor, separate legal entity*

Introduction

Developments in the business world indicate that legal entities in Indonesia, particularly Limited Liability Companies, have become primary subjects in economic activities and civil legal relations. The existence of legal entities in Indonesia offers the

advantage of separating assets from their management, such as commissioners, directors, and shareholders. This principle is known as limited liability (Fuady, 2017). This principle allows business actors to conduct business activities with measured risk, without risking their entire personal wealth as managers of the legal entity.

However, in financing practices, especially those involving financial institutions, the principle of limited liability is often not fully implemented. Creditors often request additional collateral, such as personal guarantees from directors, commissioners, or even shareholders (Harahap, 2018). Creditors request additional collateral to mitigate future risks in the event the legal entity debtor defaults. Therefore, although in theory a legal entity is a separate entity, in practice there is a legal link between the legal entity's obligations and the personal liability of a particular individual. In the context of debt relations, debt is a legal relationship between two parties (the debtor and the creditor) that creates rights and obligations for both. Under Indonesian Civil Law (the Indonesian Civil Code), a debt is an obligation arising from a mutual agreement between two parties. Under this agreement, if the debtor is unable to fulfill these obligations, the creditor can legally pursue a resolution, either through litigation or non-litigation.

One important legal tool in the Indonesian bankruptcy system is the Suspension of Debt Payment Obligations (PKPU), which is regulated by Law Number 37 of 2004 concerning Bankruptcy and PKPU. The Suspension of Debt Payment Obligations (PKPU) provides the debtor with the opportunity to reorganize their debt through negotiations with the creditor, thereby reaching an amicable agreement (a composition plan). In my opinion, the primary purpose of the PKPU is to prevent bankruptcy and maintain the debtor's business continuity (going concern principle) (Sjahdeini, 2016).

During the Debt Payment Suspension (PKPU) process, which takes place from the Temporary Debt Payment Suspension (PKPUS) stage to the Permanent Debt Payment Suspension (PKPUT) stage, the debtor obtains legal protection from being collected by the creditor until the Debt Payment Suspension (PKPU) Decision. However, this protection does not explicitly cover personal guarantors. This situation raises complex legal issues, particularly under the separate legal entity doctrine. This doctrine asserts that a legal entity and the individuals within it are two distinct legal entities. Therefore, the obligations of a legal entity debtor cannot, in principle, be automatically imposed on its individual managers, except under specific circumstances, such as the doctrine of piercing the corporate veil. However, in the case of personal guarantees, the obligation does not arise from the misuse of the legal entity, but rather from a voluntary personal agreement between the guarantor. This demonstrates that the guarantor's liability is contractual and independent, although closely related to the principal agreement between the debtor and creditor (Subekti, 2003).

This situation creates tension between two key legal principles. First, the Suspension of Debt Payment Obligations (PKPU) protects the debtor. Second, the creditor is free to collect from the personal guarantor according to the agreement. The Suspension of Debt Payment Obligations (PKPU) process provides the debtor with an opportunity to restructure their debt. Meanwhile, creditors' rights over legal entity debtors and personal guarantors remain recognized as valid civil rights under the principal agreement.

I have observed that in Indonesian commercial courts, personal guarantors often do not receive the same protection as debtors during a debt suspension (PKPU). This indicates a gap, or at least unclear regulations, regarding the relationship between PKPU and the responsibilities of personal guarantors (Harahap, 2015). As a result, the Debt Suspension (PKPU) process often fails to achieve its primary objective of restructuring the debt due to pressure on the personal guarantor, thereby affecting the legal entity debtor's position.

Based on the above description, it can be concluded that the Debt Suspension (PKPU) process involving legal entity debtors and personal guarantors presents complex legal issues. The relationship between these two issues requires further legal study. Research on the Debt Suspension (PKPU) process and its legal impact on personal guarantors is warranted. Research on the Suspension of Debt Payment Obligations (PKPU) also assesses the extent to which the separate legal entity doctrine can be consistently applied in bankruptcy law practice in Indonesia.

Developments in bankruptcy law practice in Indonesia demonstrate that the Suspension of Debt Payment Obligations (PKPU) mechanism is used not only for debt restructuring. The Suspension of Debt Payment Obligations (PKPU) mechanism is also sometimes used by debtors or creditors as a legal strategy to achieve specific goals. In practice, applications for Suspension of Debt Payment Obligations (PKPU) are often filed not only to save the debtor's business but also to delay debt payments or even to exert pressure on certain parties (Fuady, 2017).

In this context, the existence of personal guarantors becomes increasingly relevant and strategic. Creditors often use the guarantor's position as an alternative source of debt repayment when the debtor is in an unstable financial condition or is undergoing a Suspension of Debt Payment Obligations (PKPU) process. Under these conditions, the personal guarantor becomes the party legally obligated to bear the primary burden of the debtor's obligations, even though the personal guarantor is not the primary debtor under the agreement.

The law-and-economics view of personal guarantors is to reduce moral hazard for corporate debtors. Personal guarantors force management or shareholders to manage the company more responsibly because their personal assets are directly threatened (Richa. However, in a Suspension of Debt Payment Obligations (PKPU), the role of the personal guarantor becomes problematic if the guarantor does not receive equal protection as the debtor.

The problem becomes more complicated when the principle of stay of proceedings is involved in the Suspension of Debt Payment Obligations (PKPU). The principle of stay of proceedings aims to halt all collection to create room for debt restructuring. However, if the stay of proceedings principle does not cover the personal guarantor, the debt settlement process is fragmented. One party receives protection, while the other remains exposed to legal action. This situation can disrupt the settlement plan. Pressure on the guarantor can impact the debtor's financial and operational stability.

Furthermore, in commercial courts, there is no uniformity in the application of the law regarding the relationship between Suspension of Debt Payment Obligations (PKPU) and personal guarantors. However, a closer look at several decisions in applications linking legal entities with personal guarantors in Suspension of Debt Payment Obligations (PKPU)

proceedings confirms the complete separation between the legal entity debtor and the personal guarantor. Judges must take into account the economic relationship between the two. This discrepancy indicates that there is still considerable room for interpretation of Indonesian positive law. Ultimately, this can lead to legal uncertainty.

From a theoretical perspective, this situation highlights a tension between a formalistic approach that emphasizes the separation of legal subjects and a substantive approach that considers the realities of economic relationships and the parties' interests. Therefore, regarding applicable law in Indonesia, it is crucial to conduct a study that focuses not only on written legal norms but also considers the dynamics of practice in the field and the objectives of the law's formation.

Based on this description, this study examines the legal impact of the Suspension of Debt Payment Obligations (PKPU) on legal-entity debtors and personal guarantors. This research also assesses the extent to which the separate legal entity doctrine can be consistently applied in debt restructuring. It is hoped that this research will contribute to the development of bankruptcy law in Indonesia. Specifically, this research aims to create a balance between legal certainty, justice, and expediency.

Methodology

This research is a normative juridical legal study that examines and analyzes legal norms regarding the Suspension of Debt Payment Obligations (PKPU). This research examines legal entity debtors and personal guarantors. This research uses a statutory, conceptual, and case study approach in the Commercial Court. The author used the statutory approach by analyzing the provisions of Law Number 37 of 2004 concerning Bankruptcy and PKPU and the Civil Code governing guarantees. I used a conceptual approach to analyze legal doctrines, including separate legal entities, piercing the corporate veil, and guarantees as accessory obligations. I used the case study approach by examining relevant Commercial Court decisions.

Legal materials include primary sources such as laws and court decisions. Secondary legal materials consist of legal literature and scientific journals, and tertiary legal materials are supporting materials. The analysis was conducted qualitatively using legal interpretation methods to produce systematic and argumentative conclusions.

Literature Review

Separate Legal Entity Doctrine

The separate legal entity doctrine is a fundamental principle of corporate law that holds that a limited liability company is a separate legal entity, distinct from its directors, commissioners, and shareholders. This concept legitimizes that a limited liability company has independent legal rights and obligations, including owning its own assets, performing legal acts, and being a party to legal proceedings (Fuady, 2014).

This doctrine was first legally affirmed in the landmark decision of *Salomon v. A. Salomon & Co Ltd* (1897) in England. The decision stated that once a company is legally formed, it becomes a separate legal entity from its founders (Gower, 2003). This principle later became the basis for the development of modern corporate law in many countries. In

Indonesia, this principle was adopted in Law Number 40 of 2007 concerning Limited Liability Companies.

The main implication of this doctrine is the emergence of the principle of limited liability, under which shareholders are liable only for the value of their shares. This principle provides legal protection for investors and can encourage economic growth through corporate-based investment. However, in practice, this doctrine is not absolute. In certain circumstances, courts may apply the doctrine of piercing the corporate veil, which breaches the boundary of legal entity separation when it discovers abuse of the legal entity, such as fraud, evasion of legal obligations, or the use of the company as a tool for personal gain (Harahap, 2015).

When discussing bankruptcy and PKPU (Suspension Order Suspension), the separate legal entity doctrine is crucial. This doctrine helps determine whether debts must be paid solely by the legal entity or also by other parties, such as shareholders or personal guarantors. Therefore, it can be emphasized that bankruptcy law targets only the legal entity in question, and only if there is a compelling reason can a personal guarantor be called upon to share responsibility.

Guarantee Theory (Security Theory)

Guarantee theory is a concept in civil law, specifically guarantee law, that explains the function and purpose of guarantees in a debt-to-credit relationship. Civil law is concerned with providing legal certainty for creditors in obtaining repayment of debts from debtors. The basic principle of this theory stems from Article 1131 of the Civil Code, which states that all of a debtor's assets, both movable and immovable, serve as collateral for all obligations. Furthermore, Article 1132 of the Civil Code affirms the principle of *paritas creditorum*, which states that all creditors have equal rights with respect to the debtor's assets, unless there is a legal reason granting them priority (preference) rights.

There are two types of guarantee theories:

a. Material Guarantee

Material guarantee is a direct right attached to movable and immovable assets, granted by the debtor to the creditor to guarantee debt repayment. This guarantee provides *droit de suite* and *droit de preference* rights, which receive priority if the debtor defaults.:

Types of Material Guarantee:

- Mortgage Rights (Law No. 4 of 1996)
- Fiduciary (Law No. 42 of 1999)
- Pawn and Mortgage

b. Personal Guarantee

A third party (guarantor) guarantees the debtor's debt to a specific party with full awareness. This guarantor can be a director, commissioner, or shareholder in a corporate legal entity.

Special guarantees provide the status of a preferred creditor or even a secured creditor, who has the right to execute the collateral directly without having to comply with the principle of *paritas creditorum* fully (Satrio, 2002).

In bankruptcy and Suspension of Debt Payment Obligations (PKPU), the guarantee theory is crucial in determining the creditor's position, namely:

- Secured creditors;

- Preferred creditors;
- Concurrent Creditors.

Munir Fuady explained that the existence of material collateral provides legal certainty and security for creditors. However, in the Suspension of Debt Payment Obligations (PKPU) process, this right can be limited for the collective benefit of debt restructuring.

Furthermore, the concept of a personal guarantee (*borgtocht*) is recognized, as provided for in Article 1820 of the Civil Code, under which a third party guarantees the repayment of the debtor's debt. In modern practice, personal guarantors are often held directly liable if the debtor defaults.

Personal guarantors occupy an additional (accessory) obligation. The personal guarantor's position is included in the main agreement between the legal entity debtor and the creditor. Although an accessory, the personal guarantor's obligations do not solely depend on the legal entity debtor. Creditors have the right to directly collect from the personal guarantor if the legal entity debtor defaults on the agreement. Personal guarantors have a unique legal position as third parties not directly involved in the main agreement. Yet they have the same legal responsibility as corporate debtors to fulfill their obligations to creditors.

Debt Payment Suspension (PKPU) cases involving personal guarantors can create legal issues. The PKPU process protects corporate debtors by postponing debt payments and temporarily halting creditor debt collection. However, this is not the case for personal guarantors, who typically remain subject to separate collection from creditors even while the PKPU process is ongoing.

This situation creates two distinct legal protections: corporate debtors can obtain legal protection through the PKPU process. However, personal guarantors remain vulnerable to other lawsuits. The doctrine of separate legal entities justifies this because the guarantor and debtor are two distinct legal entities. However, viewed from the perspective of fairness, the Suspension of Debt Payment Obligations (PKPU) as a means of debt restructuring for creditors can undermine the effectiveness of the ongoing Suspension of Debt Payment Obligations (PKPU) process.

Collection of debts from personal guarantors during the Suspension of Debt Payment Obligations (PKPU) imposes a significant economic burden. This burden can be even more pronounced if the personal guarantor has a direct relationship with the debtor, for example, if the personal guarantor is also a commissioner, director, or shareholder in the legal entity. This burden not only affects the personal guarantor but can also disrupt the debtor's stability in implementing the restructuring plan (*homologation*).

And if we discuss the role of personal guarantors in the Suspension of Debt Payment Obligations (PKPU) process, they are distinct legal entities from other legal entities. However, in practice, personal guarantors are often associated with the success of the Suspension of Debt Payment Obligations (PKPU) process in the restructuring plan. Creditors will find the restructuring plan more feasible if a personal guarantor is included. If the debtor relies solely on existing cash flow without additional collateral from a personal guarantor, the restructuring plan is considered high-risk.

Thus, an important question arises: to what extent can the law protect personal guarantors in the Suspension of Debt Payment Obligations (PKPU) process? Can personal guarantors be treated as completely separate parties from the legal entity itself, or should personal guarantors be afforded protection to ensure the success of the debt restructuring of the debtor's debt?

This issue highlights the conflict between legal certainty and substantive justice. The law must provide certainty to creditors. Creditors can claim their rights in accordance with the agreement, including from personal guarantors. The law must also provide an effective mechanism. This mechanism resolves debts collectively. This mechanism must not create an imbalance that is detrimental to one party.

In my opinion, the discussion of personal guarantors in the Suspension of Debt Payment Obligations (PKPU) cannot be separated from a broader analysis of the relationship between the principal obligation and the guarantee obligation. The law balances the interests of all parties (legal-entity debtors, creditors, and personal guarantors) in debt restructuring.

Result and Discussion

Implications of the Separate Legal Entity Doctrine in Suspension of Debt Payment Obligations (PKPU)

The separate legal entity doctrine is a key principle in the Limited Liability Company Law. The separate legal entity doctrine states that a legal entity, for example, a Limited Liability Company, is distinct from its management, namely directors, commissioners, and shareholders.

In the field of bankruptcy and Suspension of Debt Payment Obligations (PKPU), this principle states that a bankruptcy petition or Suspension of Debt Payment Obligations (PKPU) may be filed only against a legal entity with a direct debt-receivable relationship. Therefore, a company with debt cannot automatically drag its shareholders into bankruptcy proceedings unless there is a strong legal basis for piercing the corporate veil (Sjahdeini, 2004).

Piercing the corporate veil can be used when there is strong evidence of management's misuse of the legal entity, resulting in losses to creditors. Consequently, all managers of the legal entity, including directors, commissioners, and shareholders, are jointly and severally liable, including for their personal assets, to repay the debts or losses incurred by the legal entity. However, in judicial practice, there is a tendency to expand liability through a substantial approach. Courts may disregard the principle of separate legal entities if it is proven that the legal entity is being used to commit fraud, evade the law, or avoid legal obligation. In this case, the doctrine of piercing the corporate veil serves as a remedy for the abuse of limited liability rights in limited liability companies.

In relation to the Suspension of Debt Payment Obligations (PKPU), the separate legal entity doctrine also determines the scope of subjects bound by the composition plan (homologation). The composition plan binds only the debtor and its creditors, so third parties without a direct legal relationship cannot be compelled to comply unless they voluntarily provide collateral or participate in the agreement. Therefore, the separate legal

entity doctrine in the Suspension of Debt Payment Obligations (PKPU) and bankruptcy not only provides legal protection for the administrators. The separate legal entity doctrine also requires a corrective mechanism to prevent abuse by irresponsible administrators.

Analysis of the Guarantee Theory in the Suspension of Debt Payment Obligations (PKPU)

The guarantee theory plays a central role in determining creditors' positions in the Suspension of Debt Payment Obligations (PKPU) process. The basic principle is that all of a debtor's assets serve as general collateral for their creditors, as stipulated in Article 1131 of the Civil Code (Subekti, 2005). However, in the Suspension of Debt Payment Obligations (PKPU) practice, not all creditors have equal standing. Bankruptcy Law distinguishes creditors based on the type of collateral they hold: secured creditors, preferred creditors, and concurrent creditors.

Secured creditors are creditors who hold material collateral, such as mortgages, fiduciaries, pledges, and mortgages, which grant them the right to directly enforce the collateral in the event of default by the legal entity debtor.

In bankruptcy, secured creditors, in principle, have the right to enforce their collateral as if the bankruptcy had not occurred. However, in the Suspension of Debt Payment Obligations (PKPU) process, this right is limited through a stay period (Fuady, 2017). This demonstrates that the collective interests of all creditors in debt restructuring take precedence over individual creditor rights. Preferred creditors are creditors granted special rights under the law, which give them priority in the payment of their receivables over other creditors. These include receivables from employees for unpaid wages and severance pay, tax debts, and legal fees arising from bankruptcy proceedings and suspension of debt payments (PKPU).

Concurrent creditors are creditors who arise from individual loans that are not bound by any collateral rights and do not have special rights under the law. In a suspension of debt payments (PKPU), these creditors demand repayment under an agreement. In bankruptcy proceedings, concurrent creditors are paid only after the debts of secured and preferred creditors have been fully paid.

The guarantee theory also includes personal guarantees (or borgtocht), in which a third party guarantees the repayment of a legal entity's debts. In the practice of Suspension of Debt Payment Obligations (PKPU), the issue arises of whether the restructuring plan binds personal guarantors. Normatively, guarantors are separate legal entities from debtors and are therefore not automatically bound by the PKPU unless expressly stated otherwise (Subekti, 2003).

However, in judicial practice, there is a tendency to link the guarantor's responsibility to the outcome of the Suspension of Debt Payment Obligations (PKPU). If the debtor fails to implement the restructuring plan, the creditor can claim payment from the guarantor. This demonstrates that the guarantor's role remains relevant as a means of protection for creditors (Sjahdeini, 2010). Furthermore, guarantee theory is also related to the principle of balance between creditor and debtor protection. A PKPU, as a restructuring instrument,

must safeguard the interests of both parties, thereby protect the debtor and ensure the creditor's certainty of payment (Hernoko, 2014).

The relevance of material collateral to the success of a restructuring plan. In the restructuring process, a stay period is included in the Suspension of Debt Payment Obligations (PKPU). This period serves not only to delay payments technically but also to prevent creditors from seizing the debtor's assets (which are pledged as collateral). This allows the debtor to retain ownership of these assets and continue implementing the restructuring plan.

Analysis of the Suspension of Debt Payment Obligations (PKPU) as a legal tool in the bankruptcy system

The Suspension of Debt Payment Obligations (PKPU) is a legal instrument that allows debtors to settle their obligations without liquidation. From a modern legal perspective, the PKPU is viewed as a rescue mechanism intended to maintain the debtor's business continuity. Normally, the Suspension of Debt Payment Obligations (PKPU) provides a moratorium on creditor legal actions, including the execution of collateral. This aims to create a conducive environment for debtors to develop a restructuring plan. However, these restrictions often create tension between the debtor's interests and creditors' rights, particularly those of secured creditors as collateral holders.

eparated creditors typically believe their claims are secured by the collateral rights attached to the debtor's loan. In practice, the success of a Suspension of Debt Payment Obligations (PKPU) depends heavily on the debtor's good faith in submitting a realistic restructuring plan. Plans that are irrational or not supported by adequate financial conditions are likely to be rejected by creditors (Sjahdeini, 2010).

Furthermore, the Suspension of Debt Payment Obligations (PKPU) also has the potential to be abused by debtors. Debtors can use the Suspension of Debt Payment Obligations (PKPU) to delay debt payments without the intention of settling them later. This has led to criticism of the effectiveness of the Suspension of Debt Payment Obligations (PKPU) as a legal instrument. Therefore, strict oversight by the court, specifically the supervising judge, is necessary in the Suspension of Debt Payment Obligations (PKPU) process.

From a comparative legal perspective, the Suspension of Debt Payment Obligations (PKPU) bears similarities to the concept of Chapter 11 Bankruptcy in the United States, which focuses on debt restructuring. However, the main differences lie in the level of protection for creditors and the stricter oversight mechanisms in the American legal system

In Indonesia, regulations regarding the Suspension of Debt Payment Obligations (PKPU) must be strengthened. Regulation of the Suspension of Debt Payment Obligations (PKPU) is crucial to prevent abuse. Regulations on Suspension of Debt Payment Obligations (PKPU) are also crucial for expedited debt settlement. These regulations can be improved through:

- Confirming the feasibility of the reconciliation plan
- Strengthening the role of the supervising judge during creditor meetings
- Clearer rules regarding the position of personal guarantors in the reconciliation plan

· Principles of protection for creditors

Under Law No. 37 of 2004 concerning Bankruptcy and PKPU, creditors can assess the feasibility of a reconciliation plan. They can substantively assess the debtor's submitted reconciliation plan, determine whether it will benefit or harm them, and realistically assess whether it aligns with the debtor's capabilities. Therefore, Suspension of Debt Payment Obligations (PKPU) must be positioned as an instrument that not only protects debtors but also ensures fairness and legal certainty for them (Hernoko, 2014)

Legal Protection for Personal Guarantors in Debt Suspension Processes.

The previous discussion addressed the legal status of personal guarantors and legal entity debtors. Indonesian law does not provide specific legal protection for personal guarantors. While during a Debt Suspension (PKPU) process, the debt obligations of a legal entity can be legally suspended until the PKPU process is completed, this is not the case for personal guarantors, who continue to be personally liable for debt payments by creditors, rather than assuming direct responsibility for the previously agreed guarantee agreement.

This imbalance indicates a gap in Indonesian bankruptcy law, resulting in legal uncertainty for the parties involved. Therefore, a legal approach is needed that can bridge the interests of creditors and personal guarantors during the ongoing Debt Suspension (PKPU) process, ensuring a smooth process and achieving a successful debt restructuring. This approach is not intended to eliminate creditors' right to collect, but rather to restructure the collection mechanism to align with the objectives of the Suspension of Debt Payment Obligations (PKPU).

And if a personal guarantor is involved in the restructuring plan, this must be clarified. Personal guarantors can be granted access to participate in the best debt settlement scheme, either voluntarily or through specific arrangements in the restructuring agreement. Therefore, the legal entity's debt settlement does not proceed separately from the personal guarantor but can be integrated into a more reliable whole.

Conclusion

Based on my analysis of the separate legal entity doctrine, guarantee theory, and the Suspension of Debt Payment Obligations (PKPU) mechanism in Indonesian bankruptcy law, I can conclude that these three concepts are closely interrelated. The doctrine of separate legal entities, the guarantee theory, and the Suspension of Debt Payment Obligations (PKPU) mechanism collectively determine the structure of legal liability, and these three entities can also provide legal protection to all parties involved in debt-receivable relationships.

Let me explain these three entities further as follows:

First, the separate legal entity doctrine states that a limited liability company is a separate legal entity. A limited liability company has separate rights and obligations from its shareholders, commissioners, directors, and/or other related parties. This separate legal entity doctrine provides the basis for the application of limited liability to legal entities. This limited liability protects business actors legally. However, without adequate and strict

oversight mechanisms, limited liability can be abused by irresponsible parties. Therefore, the doctrine of piercing the corporate veil is crucial because it serves as a tool to pierce the boundaries of legal entity separation under certain circumstances.

Second, the guarantee theory states that guarantees provide legal certainty for creditors. General and special guarantees must work together. Personal guarantors hold a special position in PKPU (Deferred Payment for Debt) and limited liability companies. However, personal guarantees are not parties to the agreements entered into by limited liability companies, allowing creditors to pursue direct collection. The guarantor's responsibility is independent and contractual. However, it cannot be ruled out that this responsibility remains inherent in their obligations as the principal debtor.

Third, in the context of the PKPU (Personal Loan Debt Restructuring) mechanism, it is designed to restructure existing debts owed to other related parties in accordance with agreements made by the debtor and creditors. This mechanism also aims to maintain the debtor's business continuity and prevent bankruptcy for the business or the debtor itself. Through this PKPU, both debtors and creditors are provided with legal protection and certainty. This protection includes a suspension of debt payment obligations and a temporary suspension of all collections, as agreed by creditors against the debtor. However, this protection does not explicitly cover personal guarantors. In practice, however, creditors can still collect from personal guarantors separately.

In my opinion, this situation certainly creates a legal imbalance between debtors and personal guarantors. Debtors can protect themselves through a Suspension of Debt Payment Obligations (PKPU), while personal guarantors still bear other legal risks that could impact their finances or assets. We often find that personal guarantors have very close financial or business relationships with debtors. These pressures on personal guarantors can then impact the success of the debtor's debt restructuring process.

Furthermore, the inconsistency between the principle of protection for legal entities in the Suspension of Debt Payment Obligations (PKPU) and the lack of specific protection for personal guarantors has the potential to distort the objectives of debt restructuring. In practice, the presence of personal guarantors can weaken the debtor's ability to comply with the composition plan offered to creditors, failing the Suspension of Debt Payment Obligations (PKPU).

From this, I see that conditions such as these demonstrate a lack of norms within the PKPU legal regulations in Indonesia, particularly regarding the status and protection of personal guarantors. This ambiguity leaves room for numerous interpretations by the judiciary, resulting in legal uncertainty for the parties. Looking more broadly, this situation can undermine the effectiveness of the PKPU (Personal Assurance Order) as a means of resolving debt.

To address this, a more progressive and comprehensive legal approach is needed to understand and comprehend the relationship between the debtor as a legal entity and the personal guarantor in the PKPU process. This legal approach must not only be based on formal legal certainty but also take into account substantive justice and the economic realities of modern business practices.

Recommendation

As a recommendation, strong and clear regulations are needed to govern the status of personal guarantors in the PKPU (Suspension and Debt Suspension) process. These regulations must ensure the protection of personal guarantors during the debt restructuring process. Furthermore, judges in commercial court practice are expected to employ an interpretive approach that is more contextual and substantive, so that they are not fixated solely on the formal separation of legal entities. Judges must also carefully consider each economic relationship and the interests of all parties.

In my opinion, the Bankruptcy and Suspension of Debt Payment Law requires legal reform that not only clarifies the boundaries of liability between legal-entity debtors and personal guarantors but also provides legal protection mechanisms for personal guarantors during the Suspension of Debt Payment (PKPU) process in the commercial court. We must also harmonize the separate legal entity doctrine, guarantee theory, and the Suspension of Debt Payment Obligations (PKPU) mechanism, as such alignment could be key to making Indonesia's bankruptcy system fairer, more effective, and more certain. This balanced system is expected to protect the interests of debtors, creditors, and personal guarantors proportionally and to help create a healthy and sustainable business climate in Indonesia.

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