

ABSTRACT

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“THE POSITION OF SECURED CREDITOR ON GUARANTEE IN BANKRUPTCY PROCESS”

(xii + 158 pages;3 attachment)

This research explains about the position of secured creditor on guarantee in bankruptcy process. The position of secured creditor in bankruptcy regulated on Article 56 paragraph 1 of Law Number 37 of 2004 regarding Bankruptcy and Suspension of Obligation for Payment of Debts (“Bankruptcy Act”) which is contradictory with Article 55 paragraph 1 of Bankruptcy Act, Article 21 of Law Number 4 of 1996 regarding Encumbrance Right Over Land and Land-Related Objects (“Mortgage Act”) and Article 27 paragraph 3 of Law Number 42 of 1999 regarding Fiduciary (“Fiduciary Act”). Besides of that, there are another regulation that harm secured creditor in bankruptcy process that is Article 56 paragraph 3 and Article 59 paragraph 1 jo Article 59 paragraph 2 of Bankruptcy Act. This research analyzes the position of secured creditor in bankruptcy process reviewed by Mortgage Act and Fiduciary Act and the law consequences with the presence of Article 56 paragraph 3 and Article 59 paragraph 1 jo Article 59 paragraph 2 of Bankruptcy Act to secured creditor. This research is normative research with descriptive research type. Data collection was done by literature study and used secondary data. Data processing is analyzed qualitatively. The problem approach used is law approach and case approach. The result of this research is Article 56 paragraph 1 of Bankruptcy Act is not contradictory with Article 21 of Mortgage Act and Article 27 paragraph 3 of Fiduciary Act. Because even though secured creditor right is suspended for 90 (ninety) days, secured creditor still get the payment of their debt first compared to other creditors and it is because secured creditor could execute their guarantee and other creditors should wait for curator to clear up debtor asset. Furthermore, Article 56 paragraph 3 and Article 59 paragraph 1 jo Article 59 paragraph 2 of Bankruptcy Act caused displacement of authority to execute from secured creditor to curator. Basically, the regulation is right but there are some people who delinquent that caused secured creditor harmed.

References: 63 (1973-2016)

Keywords: Secured Creditor, Bankruptcy, Guarantee Rights.