



## The Execution of Personal Guarantees (Borgtocht) on Working Capital Loans in Bankruptcy Cases: a Study of Indonesian Supreme Court Decision No. 141/Pdt.Sus- PKPU/2020/PN.Niaga.Jkt.Pst

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**Abstract.** This research analyzes the impact of Indonesian Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020 on the execution of personal guarantees (borgtocht) in bankruptcy proceedings. This decision is significant as it has the potential to alter the practice of borgtocht execution and affect legal certainty for both creditors and debtors. The research employs a normative method with a statutory approach and case studies. Legal sources include legislation, legal literature, and relevant court decisions. The findings indicate that the Supreme Court decision provides clarity regarding the position of borgtocht in bankruptcy, yet also raises some legal uncertainties. This research offers recommendations for legal improvements regarding borgtocht execution to ensure legal certainty and fairness for all parties involved..

**Keywords:** Borgtocht, Guarantee Execution, Bankruptcy, Supreme Court Decision, Legal Certainty.

### 1. INTRODUCTION

The protection of creditor and debtor rights in bankruptcy proceedings is of paramount importance. Bankruptcy represents a complex financial crisis where the interests of both parties often conflict. Creditors seek to maximize the recovery of their lent funds, while debtors strive to maintain their business continuity and obtain debt relief (Evi Retno Wati, 2019).

The urgency of creditor rights protection lies in ensuring they receive a return on their investment in the debtor. Without adequate protection, creditors can suffer significant losses that negatively impact their financial stability. This can lead to distrust in the financial system and hinder economic growth (Baiq ermayanti, 2023).

On the other hand, the urgency of debtor rights protection is equally crucial. Debtors facing financial difficulties need the opportunity to restructure their debt and recover their business. Adequate protection for debtors can help prevent unnecessary bankruptcy and allow them to contribute to the economy once again (Lubis & Harahap, 2023).

Therefore, the protection of creditor and debtor rights must be balanced in bankruptcy proceedings. This balance is essential to create fairness and legal certainty for all parties involved. With adequate protection, the bankruptcy process can proceed effectively and efficiently, benefiting the overall economy.

Supreme Court Decision (MA) No. 141/Pdt.Sus-PKPU/2020 has become a spotlight

in the world of bankruptcy law in Indonesia. This decision relates to the execution of personal guarantees (borgtocht) in bankruptcy proceedings, a crucial issue in providing legal certainty for creditors and debtors. Borgtocht, as a form of debt guarantee, plays an important role in providing protection to creditors if the debtor fails to fulfill their obligations. However, the execution of borgtocht often faces challenges and legal uncertainty, especially in the context of bankruptcy.

Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020 provides a new interpretation of the provisions regarding the execution of borgtocht in the Bankruptcy Law. This decision has the potential to change the current practice of borgtocht execution and raises questions about legal certainty for the parties involved. The importance of studying this decision lies not only in its impact on ongoing bankruptcy cases but also in its implications for the practice of providing personal guarantees in credit agreements in the future.

Previous studies have discussed borgtocht and its execution in bankruptcy. However, in-depth studies on the impact of Supreme Court Decision No. 141/Pdt.Sus- PKPU/2020 on borgtocht execution are still limited. This research aims to fill that gap by comprehensively analyzing the impact of the Supreme Court decision on the mechanism of borgtocht execution, the protection of creditor and debtor rights, and legal certainty in banking and credit practices. This research will also provide recommendations for legal improvements related to the execution of borgtocht in bankruptcy to create a system that is fairer, more efficient, and provides legal certainty for all parties involved.

This research thoroughly reviews Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020 and aims to analyze its impact on the execution of borgtocht in bankruptcy proceedings. In addition, this research will also assess the level of legal certainty provided by the decision for creditors and debtors in terms of borgtocht execution. Based on this analysis, this research aims to provide recommendations for legal improvements related to the execution of borgtocht in bankruptcy, with the hope of creating a system that is fairer, more efficient, and provides better legal certainty for all parties involved.

## **2. THEORHY**

### **Concept of Personal Guarantee (Borgtocht)**

Borgtocht, or personal guarantee, is an agreement where a person (the guarantor) binds themselves to fulfill the debtor's obligations to the creditor if the debtor fails to do so. Borgtocht is regulated in Articles 1820 to 1850 of the Indonesian Civil Code (KUHPdata). In the context of bankruptcy, borgtocht is a type of security that can be executed by the

curator to fulfill the debtor's obligations to the creditors (Hariwijaya et al., 2020).

Borgtocht has different characteristics compared to collateral security. In collateral security, the creditor has a property right over the collateral, while in borgtocht, the creditor only has a claim right against the guarantor. This difference has implications for the mechanism of guarantee execution in bankruptcy.

#### Bankruptcy Proceedings and Execution of Guarantee

The bankruptcy process begins with a petition for a declaration of bankruptcy filed by a creditor or debtor to the commercial court. Upon approval of the petition, the court will appoint a curator to manage and settle the bankrupt's estate. One of the curator's duties is to execute guarantees, including suretyships (borgtocht), to fulfill the debtor's obligations to the creditors (Dewa Ayu Dian Sawitri & I Gusti Ngurah Dharma Laksana, 2018).

The mechanism for executing suretyships in bankruptcy is regulated in Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law). The curator has the authority to collect the surety from the guarantor and to sell the guarantor's assets if necessary..

#### Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020

Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020 is a landmark decision that provides a new interpretation of the provisions regarding the execution of borgtocht (guarantee) in the Bankruptcy Law. This decision affirms that the execution of borgtocht can be carried out directly by the curator without having to wait for a court decision that has permanent legal force.

This decision has significant implications for banking and credit practices in Indonesia. With this decision, creditors have greater legal certainty in executing borgtocht in bankruptcy cases. However, this decision also raises several questions regarding the protection of the rights of debtors and guarantors.

#### Previous Research

Several previous studies have discussed borgtocht and its execution in bankruptcy. However, in-depth studies on the impact of Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020 on the execution of borgtocht are still limited. This research is expected to contribute to filling this gap and provide a more comprehensive understanding of this issue.

#### Research Hypothesis

This research assumes that Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020 provides greater legal certainty for creditors in executing borgtocht in bankruptcy cases, but also raises several questions regarding the protection of the rights of debtors and guarantors.

This research will test this hypothesis through an analysis of the Supreme Court decision, relevant laws and regulations, and relevant legal literature.

### **3. RESEARCH METHODS**

#### **Research Type**

This research employs a normative legal research method with a statute approach and a case approach (Muhammad, 2004). The statute approach is used to analyze laws and regulations related to borgtocht (surety bonds) and bankruptcy, particularly Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020. The case approach is used to analyze court decisions related to the execution of borgtocht in bankruptcy, both before and after the aforementioned Supreme Court Decision.

#### **Data Sources**

The data used in this research is secondary data obtained from various sources, namely:

##### **Primary Legal Materials:**

Indonesian Civil Code (KUHPerdara)

Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy Law)

Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020

Secondary Legal Materials:  
Legal textbooks on borgtocht, bankruptcy, and guarantee law

Law journals discussing issues related to borgtocht and bankruptcy  
Scientific articles relevant to the research topic

##### **Court Decisions:**

Court decisions related to the execution of borgtocht in bankruptcy, both before and after Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020

#### **Data Collection Techniques**

The data collection techniques used in this research are literature review and document study. The literature review is conducted by reading and studying legal textbooks, law journals, and relevant scientific articles. The document study is conducted by reading and analyzing laws and regulations, Supreme Court decisions, and relevant court decisions.

#### **Data Analysis Techniques**

The data analysis techniques used in this research are content analysis and legal interpretation. Content analysis is used to identify, classify, and interpret data obtained from various sources. Legal interpretation is used to understand the legal meaning and implications

of the analyzed data.

#### Research Model

This research uses a descriptive analytical research model. This model aims to describe and analyze the impact of Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020 on the execution of borgtocht in bankruptcy cases. The results of the analysis will be used to assess the legal certainty provided by the Supreme Court decision and to provide recommendations for legal improvements regarding the execution of borgtocht in bankruptcy.

## 4. RESULTS AND DISCUSSION

### **The Impact of Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020 on Borgtocht Execution**

Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020 has brought about significant changes in the mechanism for executing borgtocht (personal guarantees) in bankruptcy proceedings. Prior to this decision, the execution of borgtocht was often hampered by lengthy and complicated legal processes. Creditors had to wait for a final and binding court decision before they could execute the borgtocht. This caused legal uncertainty and losses for creditors.

Decision No. 141/Pdt.Sus-PKPU/2020 changed this paradigm by affirming that the execution of borgtocht can be carried out directly by the curator without having to wait for a final and binding court decision. This decision is based on the consideration that borgtocht is an accessory agreement that follows the main agreement (credit agreement). Therefore, if the debtor is declared bankrupt, the borgtocht can also be executed immediately.

This change in the borgtocht execution mechanism has a positive impact on creditors. Creditors can now execute borgtocht more quickly and efficiently, thereby reducing the risk of losses due to debtor bankruptcy. This also provides greater legal certainty for creditors in providing personal guarantees (Marnita, 2017).

However, this Supreme Court decision also raises several questions and challenges. One question that arises is regarding the protection of the rights of debtors and guarantors. The Supreme Court decision does not explicitly regulate the mechanism for protecting the rights of debtors and guarantors in the execution of borgtocht. This raises concerns that the execution of borgtocht can be carried out arbitrarily by the curator without regard to the rights of debtors and guarantors.

Another challenge that arises is regarding the implementation of the Supreme Court

decision in practice. This Supreme Court decision is still relatively new and has not been widely tested in court practice. Therefore, socialization and education are still needed for relevant parties, including judges, curators, creditors, and debtors, regarding the implementation of this Supreme Court decision.

### **Evaluation of Changes in the Borgtocht Execution Mechanism Post Supreme Court Decision**

Overall, Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020 brings positive changes to the borgtocht execution mechanism in bankruptcy cases. This decision provides greater legal certainty for creditors and expedites the borgtocht execution process. However, this decision also raises several questions and challenges that need to be addressed.

To address these questions and challenges, efforts are needed to clarify the mechanism for protecting the rights of debtors and guarantors in the execution of borgtocht. In addition, socialization and education are needed for relevant parties regarding the implementation of this Supreme Court decision. Thus, it is hoped that this Supreme Court decision can provide optimal benefits for all parties involved in the bankruptcy process.

#### **Creditor Rights Protection**

The Supreme Court ruling strengthens the position of creditors by providing greater legal certainty in the execution of guarantees (borgtocht). Previously, guarantee executions were often hampered by the need to wait for a court decision with permanent legal force. The Supreme Court ruling changes this by allowing the curator to directly execute the guarantee after the debtor is declared bankrupt. This accelerates the execution process and provides a stronger guarantee for creditors to receive payment of their debts (Surinda, 2019).

However, this decision also raises concerns about the potential abuse of authority by the curator. The curator has significant authority in determining the value of the guarantee assets and the sales process. This can harm debtors and guarantors if not done carefully and transparently. Therefore, there needs to be strict supervision of the curator's performance in carrying out guarantee executions.

#### **Protection of Debtor and Guarantor Rights**

Although the Supreme Court ruling provides legal certainty for creditors, the protection of debtor and guarantor rights also needs attention. This decision has the potential to harm debtors and guarantors as they can lose their assets without going through a lengthy court process. This can lead to injustice, especially if the value of the guarantee assets exceeds the debtor's debt amount (Anwar, 2014).

In addition, the Supreme Court ruling can also create legal uncertainty for debtors and guarantors. The decision does not provide a detailed explanation of the guarantee execution mechanism, including the valuation of guarantee assets and the sales process. This can lead to different interpretations and potentially lead to disputes in the future.

#### Recommendations

To address these issues, several recommendations can be made:

**Increased Supervision of Curators:** There needs to be stricter supervision of the curator's performance in carrying out guarantee executions. This can be done through the establishment of an independent supervisory body or an enhancement of the role of existing supervisors.

**Improvement of the Guarantee Asset Valuation Mechanism:** The guarantee asset valuation mechanism needs to be improved to be more transparent and objective. This can be done by involving independent third parties in the valuation process.

**Provision of Objection Opportunities for Debtors and Guarantors:** Debtors and guarantors need to be given the opportunity to object to the execution of guarantees. This can be done through court mechanisms or alternative dispute resolution institutions.

**Revision of the Bankruptcy Law:** The Bankruptcy Law needs to be revised to provide a more balanced protection between creditor and debtor rights in guarantee executions. This revision needs to regulate in more detail the guarantee execution mechanism, including the valuation of guarantee assets, the sales process, and the rights of debtors and guarantors.

With these improvements, it is hoped that guarantee executions in bankruptcy can be more fair, efficient, and provide legal certainty for all parties involved.

#### Identification of Potential Problems and Legal Uncertainties

Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020, although providing clarity regarding the position of borgtocht (surety bond) in bankruptcy and facilitating creditors in executing it, is not without potential problems and legal uncertainties. Several issues that can be identified include:

**Protection of Debtor and Surety Rights:** This decision grants the curator greater authority to execute the borgtocht without a court ruling with permanent legal force. This can raise concerns about the protection of debtor and surety rights, especially if the debtor objects to the execution. The decision also does not explicitly regulate the mechanism for debtors and sureties to file objections against the execution of the borgtocht (Lubis & Harahap, 2023).

**Proportionality of Execution:** The Supreme Court decision does not provide clear

limits regarding the proportionality of borgtocht execution. This opens up opportunities for creditors to execute all of the surety's assets, even if the value of the guarantee provided far exceeds the debtor's debt.

Legal Uncertainty in Practice: Although the Supreme Court decision provides clarity regarding the mechanism of borgtocht execution, its implementation in practice can still lead to legal uncertainty. This is due to the lack of clear guidelines regarding the borgtocht execution procedure and the lack of uniform understanding among the relevant parties (Baiq ermayanti, 2023).

**Table 1. Potential Issues and Legal Uncertainties Following the Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020**

No.	Potential Issues	Legal Uncertainty
1.	Protection of debtor and guarantor rights is inadequate.	The mechanism for filing an objection to the execution of a bail bond is unclear.
2.	Proportionality of guarantee execution is not explicitly regulated.	The limit on the value of the bail bond execution is unclear.
3.	Implementation of Supreme Court decisions in practice still creates uncertainty.	The procedure for executing bail bonds and the understanding of the relevant parties are not uniform.

These potential issues and legal uncertainties need to be addressed to create better legal certainty for all parties involved in bankruptcy proceedings. This can be achieved through revisions to relevant laws and regulations, as well as increased understanding of Supreme Court decisions among legal practitioners.

### **Legal Certainty after the Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst**

The Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst concerning the execution of personal guarantees (borgtocht) in bankruptcy cases has become a significant milestone in Indonesian legal dynamics. This decision provides significant legal clarity regarding the position of personal guarantors in bankruptcy proceedings, particularly concerning the order of execution and treatment of personal guarantees.

#### **Contribution of the Supreme Court Decision in Providing Legal Certainty**

This Supreme Court decision makes a major contribution to creating legal certainty. Previously, there was uncertainty about whether personal guarantors could be executed directly without having to wait for the execution of the principal debtor. This decision confirms that execution against personal guarantors can be carried out simultaneously with the principal debtor, even without having to wait for the execution of the principal debtor's



assets first. This provides clarity for creditors and personal guarantors regarding their respective rights and obligations in a bankruptcy situation (Lusiana Indriawati & Arifah, 2023).

#### Consistency of the Supreme Court Decision with Legal Principles

This Supreme Court decision is in line with applicable legal principles. The principles of joint and several liability in personal guarantees are reaffirmed in this decision. This means that the personal guarantor is fully responsible for the debts of the principal debtor, and the creditor has the right to demand payment of the debt from the personal guarantor without having to wait for execution against the principal debtor (Rosdalina & Gunawan, 2018). In addition, this decision also considers the principles of balance and fairness in the relationship between creditors, principal debtors, and personal guarantors.

#### Effectiveness of the Supreme Court Decision in Judicial Practice

This Supreme Court decision has had a significant impact on judicial practice. Commercial courts in various regions have referred to this decision as jurisprudence in resolving similar disputes. This decision also provides clear guidance for judges in handling bankruptcy cases involving personal guarantees. However, it should be noted that the implementation of this decision in practice still requires time and further socialization so that it can be understood and implemented consistently by all relevant parties.

Overall, Supreme Court Decision No. 141/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst is a step forward in strengthening legal certainty in Indonesia, particularly in the areas of bankruptcy and personal guarantees. This decision provides clear guidance for business actors, creditors, and personal guarantors in dealing with bankruptcy situations, and makes a positive contribution to creating a more conducive business climate.

## 5. CONCLUSION AND SUGGESTIONS

### Conclusion

The Supreme Court (MA) Decision No. 141/Pdt.Sus-PKPU/2020/PN.Niaga.Jkt.Pst serves as a significant milestone in upholding the law concerning the execution of personal guarantees (*borgtocht*) in working capital credit cases during bankruptcy. This decision affirms that the execution of *borgtocht* does not automatically become void during the Suspension of Debt Payment Obligations (PKPU) or bankruptcy of the debtor. However, the execution must still consider the principles of reasonableness and fairness, including the rights of the debtor in the PKPU or bankruptcy process.

This MA decision provides clearer legal certainty regarding the execution of

borgtocht in the context of bankruptcy. However, its implementation still requires caution and careful consideration from all parties involved, including creditors, debtors, and law enforcement. This decision also opens up opportunities for further discussion on bankruptcy law reform, particularly regarding the protection of the rights of debtors and guarantors in the bankruptcy process.

#### Suggestions

##### Legal Improvements:

The government and the House of Representatives need to consider revising the Bankruptcy and PKPU Law to regulate more clearly and comprehensively the execution of borgtocht in the context of bankruptcy.

There needs to be a clear and transparent mechanism for assessing the reasonableness and fairness in the execution of borgtocht, including considering the financial condition of the debtor and guarantor.

##### Creditors and Debtors:

Creditors need to be more careful in drafting credit agreements, including borgtocht clauses, to comply with the principles of reasonableness and fairness.

Debtors and guarantors need to understand their rights and obligations in credit agreements, as well as the risks associated with borgtocht, especially in PKPU or bankruptcy situations.

##### Law Enforcement:

Judges need to apply this MA decision wisely, considering all relevant facts and evidence, and prioritizing the principles of reasonableness and fairness in each case.

Law enforcement officials need to improve their understanding of bankruptcy and PKPU law, as well as the latest related decisions, so that they can carry out their duties professionally and fairly.

With this MA decision and the implementation of the above suggestions, it is hoped that a more just, transparent bankruptcy law system will be created that protects the interests of all parties, including creditors, debtors, and guarantors.

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