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Status of Third-Party Assets as Collateral for a Bankrupt's Debt Post-SEMA 2 of 2024

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Executive Summary

A recurring issue in Indonesian bankruptcy practice is whether assets owned by third parties but pledged as collateral for a debtor's obligations can be treated as part of the debtor's bankruptcy estate. Conflicting court decisions have long created uncertainty for creditors, guarantors, and debtors. The Supreme Court has sought to resolve this through Supreme Court Circular Letter No. 2 of 2024 ("**SEMA 2/2024**")[1], which confirms that such assets should not be included in the bankruptcy estate of the debtor, except where it can be proven that they in fact belong to the debtor. While this represents an important step toward legal certainty, the "*unless proven otherwise*" wording still leaves room for interpretation. Clearer guidance would help ensure consistent application and better protection for third parties.

Status of Third-Party Assets in Bankruptcy: A New Direction

When discussing the settlement of bankruptcy assets, the process is not only time-consuming and complex but may also involve practices that disadvantage third parties as owners of assets as collateral for a bankrupt debtor's debt. One recurring issue is the tendency of some receivers to treat assets owned by third parties as collateral for the bankrupt debtor's obligations, as though they were the debtor's own assets. This practice raises significant concerns for third parties, creating real risks for those who provide collateral in support of another's debts. How does the bankruptcy law actually view this matter?

To understand how Indonesian bankruptcy law addresses this issue, it is first necessary to consider the principles set out in Law No. 37 of 2004 on Bankruptcy and Suspension of Payments, as amended by Law No. 4 of 2023 ("**Bankruptcy and SOP Law**")[2]. Under this law, bankruptcy is defined as a general attachment over **all assets belonging to the bankrupt debtor**, to be administered and settled by a receiver under court supervision. The law clearly provides that bankruptcy extends only to the debtor's assets at the time of the declaration, not to assets owned by third parties.

However, in practice, divergent interpretations have emerged. Some courts have held that third-party assets that serve as collateral for a bankrupt debtor's debt can be considered part of the bankruptcy estate, while others have taken the opposite view. These inconsistencies have fuelled debate and created uncertainty for all parties involved.

On one hand, certain judges have found that third-party assets pledged as collateral should indeed be included in the bankruptcy estate. For example, in **Case No. 779/2019[3]**, the court reasoned:

> *"… With the bankruptcy of Debtor PT Sinarlestari Ultrindo, all of its assets as well as third-party assets that serve as collateral for the Bankrupt Debtor's debt constitute bankruptcy assets that must be surrendered to the receiver for management and settlement."*

[1] Surat Edaran Mahkamah Agung Nomor 2 Tahun 2024.
[2] Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang sebagaimana diubah terakhir berdasarkan Undang-Undang Nomor 4 Tahun 2023.
[3] Putusan No. 779 K/Pdt.Sus-Pailit/2019 ("**Case No. 779/2019**").

Conversely, other courts have ruled that third-party assets cannot be treated as a bankruptcy estate since they are not legally owned by the debtor. For instance, in **Case No. 30/2019**[4], the court stated:

> *"…because the guarantee is not the property of PT. Vteh Mold Indonesia (in bankruptcy), but of a third party,* ***the certificate used as such guarantee cannot be included as bankruptcy assets****."*

These conflicting rulings have created considerable uncertainty, particularly for third parties who put their assets at risk when providing collateral for a bankrupt debtor's debt.

To address this issue, on 17 December 2024, the Supreme Court issued SEMA 2/2024. Among other issues, SEMA 2/2024 provides clarification on the treatment of third-party assets in bankruptcy proceedings.

The key formulation states:

> *"Regarding assets owned by guarantors/third parties, they cannot be included as bankruptcy estate, unless proven otherwise."*

This provision affirms the principle that third-party or guarantor-owned assets are not part of the bankruptcy estate. However, the qualification "unless proven otherwise" leaves room for exceptions. While SEMA 2/2024 does not specify these exceptions, we note that the following reasons have been used by judges to include such assets in the bankruptcy estate: (i) the third-party assets were financed by the bankrupt debtor; (ii) such assets were recorded in the debtor's financial statements; or (iii) ownership rights had effectively been transferred to the debtor. For example, in **Case No. 03/2011**[5], the court held that assets owned by shareholders formed part of the bankruptcy estate because they were financed by and recognized as assets of PT Tripanca. Similarly, in **Case No. 15/2013**,[6] the court found that factory machinery located in the debtor's premises legally belonged to the debtor and was therefore part of the estate.

While SEMA 2/2024 provides much-needed clarification by affirming that third-party assets are generally excluded from the bankruptcy estate, the residual wording "unless proven otherwise" may perpetuate uncertainty. Without further explanation, different courts could interpret this phrase inconsistently, leading to the very risks SEMA 2/2024 sought to resolve.

Conclusion

SEMA 2/2024 is a welcome development that strengthens protection for third parties and enhances the Indonesian bankruptcy framework. However, clearer guidance from the Supreme Court would be beneficial, specifically, an authoritative explanation of the circumstances under which third-party assets may be deemed part of the bankruptcy estate. For example, it could be expressly limited to cases involving debtor-financed acquisitions, accounting recognition of ownership, or legal transfer of title. To avoid ambiguity, open-ended terms such as "unless proven otherwise" should be avoided.

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[4] Putusan No. 30/Pdt.Sus-Gugatan Lain-Lain/2019/PN.Niaga.Jkt.Pst. jo. Putusan Mahkamah Agung No. 376 K/Pdt.Sus-Pailit/2020 ("**Case No. 30/2019**").

[5] Putusan No. 03/Gugatan lain-lain/2011/PN.Niaga.Jkt.Pst jo. Putusan No. 33/Pailit/2009/PN.Niaga.Jkt.Pst jo.Putusan No. 576 K/Pdt.Sus/2011 ("**Case No. 03/2011**").

[6] Putusan No. 15/Pailit/2013/PN.Niaga.Sby jo. Putusan No. 158 K/Pdt.Sus-Pailit/2015 ("**Case No. 15/2013**").

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The article above was prepared by Dentons HPRP's lawyers.

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