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JURIDICAL ANALYSIS OF PERSONAL GUARANTORS' LEGAL POSITION IN INDONESIA'S PKPU MECHANISM TO ENSURE LEGAL CERTAINTY

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ABSTRACT

This article examines the legal position of personal guarantors in Indonesia's Suspension of Debt Payment Obligations (PKPU), distinguishing contractual liability from procedural debtor status. Using normative juridical research with statutory, conceptual, and case approaches, it analyzes Law No. 37 of 2004, Articles 1820–1850 of the Civil Code, and Central Jakarta Commercial Court Decision No. 403/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst (18 January 2024). The court rejected a PKPU petition joining a corporate debtor and two personal guarantors without conclusively determining the alleged debt or enforceability of the guarantees. Article 254 excludes co-debtors and guarantors from PKPU protection, whereas Article 287 concerns guarantors of court-approved compositions. Waiving the benefit of prior exhaustion may affect enforcement but does not automatically establish PKPU respondent status. Legal certainty requires clear statutory classification, verifiable guaranteed obligations, predictable procedural treatment, and preservation of lawful remedies. Findings are confined to the examined provisions and decision, without generalizing across commercial courts.

INTRODUCTION

Indonesia's suspension of debt payment obligations (Penundaan Kewajiban Pembayaran Utang, PKPU) is designed to facilitate a court-supervised composition between a debtor and its creditors, while preserving a framework for orderly debt resolution under Law No. 37 of 2004. In contemporary financing, however, corporate debt is frequently supported by undertakings from directors, shareholders or other individuals. The critical question is whether the individual who guarantees performance of another person's debt should also be treated as a debtor for the purpose of a PKPU petition. These are not identical legal questions. Recent insolvency scholarship underscores the importance of distinguishing procedural access to collective proceedings, the justification for restructuring, and the legal protection afforded to creditors (Dewi 2024a; Fahamsyah et al. 2024; Hamamah and Bahtiar 2019; Pakarti et al. 2025; Riyanto et al. 2025; Robert, Agustina, and Nasution 2022). Failure to separate those questions creates uncertainty not only about who may be named in a petition, but also about what consequences a court's

procedural rejection has for underlying private-law claims.

Under Article 1820 of the Indonesian Civil Code, suretyship (borgtocht) is an undertaking by a third party for the creditor's benefit to satisfy the principal debtor's obligation if the latter defaults. The undertaking is accessory to, but analytically distinct from, the principal debt. Articles 1821–1824 determine its legal connection and scope; Article 1831 recognises the benefit of prior exhaustion; Article 1832 provides exceptions, including waiver; and Article 1850 addresses the consequences of granting time to the debtor. A waiver of prior exhaustion may change the sequence of enforcement, but its effect cannot be presumed to change the guarantor's procedural identity under insolvency legislation. Relevant literature on credit security and contractual justice supports a documentary analysis of the beneficiary, the protected debt and the promises actually made (Dewi 2024a; Hage and Ningrum 2022; Luthfi et al. 2022; Sulistianingsih et al. 2024; Usanti and Sulani 2024). Comparative scholarship addressing personal guarantor insolvency likewise shows that the treatment of guarantors depends on the governing statute and procedural design, not on a universal rule of automatic substitution (Dewi 2024b; Shaji and Shilpa 2025; T et al. 2024).

The legal problem becomes more pronounced when the provisions of Law No. 37 of 2004 are considered together. Article 254 states that the suspension does not operate for the benefit of co-debtors and guarantors; that provision concerns the protective effects of PKPU and requires careful interpretation when used to determine respondent eligibility. Article 287 concerns enforceability of a final approved composition against the debtor and persons who have undertaken to guarantee that composition. A pre-existing guarantee of a financing facility is not necessarily a guarantee of a later composition. Consequently, three different inquiries may arise at different stages: may a person be made a respondent, may a creditor enforce the earlier guarantee, and has the person undertaken a new or modified obligation under the composition? Comparative work on insolvency discharge and the contractual effects of changed circumstances illustrates why procedural protection, debt discharge and contractual enforcement must not be conflated (Dawwas and Dodeen 2025; Putra and Hamamah 2026; Taylor 2023; Uribe and Olivares 2022; Vandenbossche 2023).

Legal certainty is the organising standard of this study. It concerns whether creditors, principal debtors and guarantors can predict which rules govern their obligations, what evidence is required, how their procedural roles are assessed and what remedies remain available. Indonesian scholarship on legal certainty, contractual good faith and the interpretation of promises offers useful normative foundations (Cahyono, Pangaribuan, and Raumanen 2025; Hamamah 2020; Pakarti et al. 2025; Priyono et al. 2025; Said et al. 2025). Research on credit documentation and evidentiary sufficiency further emphasises the need to distinguish assertions from proven obligations (Hamzah et al. 2023; Hartini et al. 2024; Ropitasari et al. 2024). Nevertheless, those studies do not collectively resolve the particular interplay between a surety's status under the Civil Code, the protection withheld by Article 254, the composition-guarantee rule of Article 287 and the procedural effect of rejecting a joined PKPU petition. This narrowly defined doctrinal gap frames the originality of the present case-based analysis.

Central Jakarta Commercial Court Decision No. 403/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst, delivered on 18 January 2024, offers a concrete setting for this question. PT Fintech Advisory Asia sought PKPU against PT Inet Global Indo and two individual respondents described as personal guarantors. The court rejected the application in that configuration, reasoning by reference to Article

254 and an interpretation attributed to Supreme Court Decision No. 019/PK/N/2000. The judgment did not determine the amount of any established debt, hold all guarantee deeds invalid, or decide that the individuals were permanently immune from a separate enforcement claim. Treating such unadjudicated matters as findings would undermine the very legal certainty that the article seeks to advance.

Accordingly, the study asks three connected questions. First, how do the Indonesian Civil Code and Law No. 37 of 2004 define the obligations and procedural position of personal guarantors in PKPU? Second, what does the reasoning in Decision No. 403/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst establish, and which issues of liability remain undecided? Third, what interpretive and procedural safeguards can strengthen legal certainty for guarantors, creditors and principal debtors? The objective is to answer these questions through a legal-certainty framework rather than to claim an unproven nationwide pattern of judicial inconsistency. The proposed contribution is an integrated explanation of procedural standing, suretyship scope, waiver of prior exhaustion and the effect of a confirmed composition.

METHOD

This research uses a normative juridical (doctrinal) design employing statutory, conceptual and case approaches. The primary legal materials are Law No. 37 of 2004, particularly Articles 222, 224, 254 and 286–288; the Indonesian Civil Code, particularly Articles 1820–1824, 1831–1832, 1839–1840 and 1850; and Central Jakarta Commercial Court Decision No. 403/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst. Supreme Court Decision No. 019/PK/N/2000 is discussed only as an authority cited by the analysed court, because its full text was not independently examined. Secondary material comprises 20 journal articles published in 2022–2025 and selected for their direct or comparative relevance to debt restructuring, personal guarantees, contractual liability, procedural proof and legal certainty. Doctrinal and comparative insights are distinguished from binding Indonesian law; an article discussing a foreign insolvency system is not treated as authority for Indonesian PKPU procedure (Dewi 2024a; Shaji and Shilpa 2025; Theil 2025).

Analysis was undertaken in four steps. The statutory provisions were first classified by legal function: access to and procedure in PKPU; the effects of suspension; the nature and enforcement of suretyship; and the consequences of a confirmed composition. The court record was then analysed by separating litigants' allegations, descriptions of documents, judicial reasons and the operative order. Next, the propositions extracted from the statutes and judgment were tested against four legal-certainty criteria: normative clarity, evidentiary ascertainability, procedural foreseeability and remedial continuity. Finally, those findings were used to formulate carefully limited judicial and legislative recommendations. Table 1 records the function of each principal statutory rule; Table 2 distinguishes the case materials by evidentiary status. This source-sensitive approach reflects current discussion of doctrinal method and proof (Hamzah et al. 2023; Hartini et al. 2024; Sukardi et al. 2024; Theil 2025).

The empirical boundary is explicit. The case analysis relies on an accessible 54-page reproduction of the decision; the case number and the parties were checked against the public judgment directory. The reproduced text has not been treated as a court-certified copy. The original guarantee deeds and a complete independent copy of Supreme Court Decision No. 019/PK/N/2000 were not available for

direct examination. Accordingly, amounts claimed, the identity of a disputed beneficiary, and the validity of asserted assignments are reported as contested positions unless expressly resolved in the decision. No interview, survey or comparative database of commercial court judgments was created. These limits prevent an individual decision from being overstated as a system-wide trend.

RESULTS AND DISCUSSION

The juridical position of personal guarantors under the Civil Code and PKPU law

The first issue is the statutory identity of the applicant and proposed debtor in PKPU. Article 222(1) of Law No. 37 of 2004 recognises applications by a debtor or creditor, while Article 222(2)–(3) regulates the relevant debtor and creditor grounds; Article 224 addresses the application procedure. A personal guarantee is not itself a substitute for analysing whether the particular individual is a proper respondent in a collective debt-rescheduling procedure. Each proposed respondent must be evaluated by reference to the obligation asserted against that person and the procedural remedy requested. Studies of individual debt relief and insolvency entry criteria support the need for accurate legal classification, without determining the status of the sureties in this case (Fahamsyah et al. 2024; Hamamah and Soekarno 2021; Riyanto et al. 2025; Robert et al. 2022).

The second question is the existence and scope of contractual liability. Articles 1820–1824 of the Civil Code make the promise of suretyship and the principal obligation legally relevant, but they do not justify assuming that all individuals economically linked to a debtor are guarantors of every debt. A creditor invoking a guarantee should be able to identify the signed instrument, the beneficiary, the principal debt covered, the applicable conditions of default and any transfer or assignment of rights. Good faith, contractual balance and clarity of evidence matter precisely because they allow an enforceable promise to be distinguished from an assertion unsupported by the agreement (Abdullah et al. 2024; Hamzah et al. 2023; Kurniawan and Gandakusuma 2022; Sulistianingsih et al. 2024).

The third question concerns the effect of waiving the benefit of prior exhaustion. Under Articles 1831–1832 of the Civil Code, the guarantor may have a defence requiring prior recourse to the principal debtor's assets, subject to statutory exceptions and an effective waiver. Removal of that defence changes the conditions under which the creditor may pursue the guarantor; it does not automatically determine who is the principal debtor in a PKPU petition. This conceptual separation is pivotal in Decision No. 403/2023. Comparative analysis of guarantor liability under another jurisdiction's insolvency regime is a useful warning that rules granting access to debtor-resolution proceedings cannot simply be transferred across legal systems (Shaji and Shilpa 2025).

The fourth issue is the different legal effect of a suspension and a confirmed composition. Article 254 provides that PKPU does not operate for the benefit of co-debtors and guarantors; it should not be treated, without further reasoning, as an express statutory declaration extinguishing their contracts. Article 286 governs the binding effect of a confirmed composition on creditors subject to the statutory exception, while Article 287 makes a final confirmation decision enforceable, on the terms stated in that article, against the debtor and persons who have undertaken to guarantee the composition. An earlier guarantee of a financing facility must therefore be distinguished from a guarantee of the subsequent composition. Whether an earlier

guarantee survives, changes or is independently enforceable depends on the relevant instruments and law, not merely on the existence of PKPU proceedings (Dawwas and Dodeen 2025; Dewi 2024a; Uribe and Olivares 2022).

Table 1. Primary rules and distinct legal effects

Authority	Verified legal proposition	Analytical implication
Civil Code Arts. 1820–1824	Suretyship is an express third-party undertaking associated with the principal debt.	Identify principal obligation, guarantee deed, parties and express limits.
Civil Code Arts. 1831–1832	Ordinary prior-exhaustion protection; exceptions include waiver.	Waiver affects enforcement sequence, not automatically PKPU status.
Civil Code Arts. 1839–1840, 1850	Surety recourse after payment; mere payment extension does not discharge surety.	Keep collection, recourse and extension analytically separate.
Law No. 37/2004 Arts. 222, 224	PKPU entitlement/grounds and procedural submission.	Establish applicant/respondent eligibility independently.
Law No. 37/2004 Art. 254	Payment suspension does not benefit co-debtors and guarantors.	Do not assume a debtor's stay extends to the guarantor.
Law No. 37/2004 Arts. 286–287	Binding effect of composition and enforcement against guarantors of the composition.	Distinguish the composition guarantor from any pre-existing loan guarantor.

Judicial assessment of personal guarantors in Decision No. 403/2023

The proceeding is recorded as Decision No. 403/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst, dated 18 January 2024. The applicant was PT Fintech Advisory Asia and the first respondent was PT Inet Global Indo, joined by two individuals identified as guarantors, Ir. Santoso Halim and Sukoco Halim. The applicant described an invoice-financing transaction involving PT Fundo Sukses Bersama. The respondents disputed the asserted direct contractual relationship and the legal effect of the relevant documentation. The legal certainty issue at this stage is evidentiary: the existence of a contractual narrative does not itself mean that the court has accepted the alleged debt, the beneficiary of the guarantee, or the right to claim under it.

The reproduced decision refers to Personal Guarantee Deed No. 10 of 13 July 2020 and Deed No. 11 of 29 December 2022. It records the applicant's alleged outstanding exposure of IDR 34,205,883,167 as of 30 November 2023. That figure is an amount pleaded by the applicant, not a debt amount verified and adjudicated by the panel. Similarly, the parties' competing accounts concerning PT Fundo Sukses Bersama and the relevant guarantee beneficiary cannot be converted into a universal finding about all underlying contractual relationships. The case-evidence matrix below distinguishes court-directory information, allegations and reasons appearing in the reproduced decision.

Table 2. Case evidence matrix (decision of 18 January 2024)

Item	Recorded material	Evidentiary classification
Docket and parties	Case 403/2023; applicant PT Fintech Advisory Asia; PT Inet Global Indo and two individuals named respondents.	Corroborated court-directory metadata.
Guarantee deeds	No. 10 (13 July 2020), No. 11 (29 December 2022).	Documents described in reproduced judgment; full executed deeds not independently obtained.
Claimed amount	IDR 34,205,883,167 stated by applicant as at 30 November 2023.	Applicant allegation; not an adjudicated liability.
Competing beneficiary accounts	Applicant asserted invoice financing/guarantees; respondents questioned direct legal relationship and pointed to PT Fundo Sukses Bersama.	Contested pleadings; no blanket factual finding.
Ratio and disposition	Art. 254 and Supreme Court No. 019/PK/N/2000; joinder formalities not met. Entire PKPU application rejected; costs IDR 3,750,000.	Express court reasoning and order in reproduced judgment, pp. 52–53.

The reproduced judicial reasoning should be understood as a procedural disposition. The panel considered the individual sureties and the asserted waiver of the Civil Code benefit of prior exhaustion, but referred to Article 254 and Supreme Court Decision No. 019/PK/N/2000 in rejecting the joined petition. As recorded in the reproduction, the panel found the application formally defective and rejected it without reaching a final determination of the alleged debt, the complete scope of the guarantees or entitlement to a separate contractual remedy. The stated court costs were IDR 3,750,000. Because this research relied on a publicly accessible reproduction rather than a certified court copy, the precise phrasing of these

reasons should be rechecked against the official judgment before publication.

The judgment supports a limited but valuable conclusion. In the configuration put before this panel, the procedural joining of the individual guarantors was rejected. It does not follow that the guarantee instruments were judicially declared void, that the creditor held no enforceable claim, or that a guarantor can never face any insolvency-related procedure under another legally distinct factual configuration. Nor can a single case establish a frequency or pattern of inconsistent judgments. Its relevance to legal certainty is instead to reveal where parties must distinguish procedural identity from the separate proof of a guarantee obligation (Theil 2025).

Suretyship liability, waiver and remaining creditor remedies

Respondent status and enforceability of the suretyship must be assessed on separate legal planes. On the procedural plane, Decision No. 403/2023 shows the risk of assuming that an individual surety may be joined simply because of an Article 1832 waiver. On the contractual plane, the same waiver may still have consequences for the right to pursue payment or security. This distinction contributes to certainty by preventing an unsuccessful PKPU petition from being misconstrued either as a declaration that the debt exists or as an extinction of the creditor's separate cause of action. The exact remedy available in a later proceeding depends on the valid instruments, the parties' standing and the applicable substantive and procedural rules (Hamzah et al. 2023).

A balanced approach must preserve lawful creditor protection while preventing excess liability from being imposed on guarantors. Civil Code Article 1839 addresses reimbursement after a guarantor pays, and Article 1840 recognises subrogation to the creditor's relevant rights. These consequences illustrate that the principal debtor's debt, the guarantor's liability and the guarantor's recourse after payment form an interconnected legal structure, not a single undifferentiated obligation. Normative fairness calls for liability to be measured by the actual undertaking and applicable defences, not by the mere fact of being a director or shareholder (Hage and Ningrum 2022; Kurniawan et al. 2022; Sulistianingsih et al. 2024).

This approach also avoids an artificial choice between protecting creditors and protecting guarantors. A creditor benefits from reliable enforcement of an express guarantee, while the guarantor benefits from knowing the obligation's scope and the relevant procedure before being subjected to collective proceedings. Contemporary scholarship on contractual good faith, standard terms and contractual adjustment helps explain the value of careful construction of the parties' promises; it does not, however, displace specific rules governing PKPU (Cahyono et al. 2025; Dawwas and Dodeen 2025; Hamamah 2020; Pakarti et al. 2025; Priyono et al. 2025).

PKPU suspension, confirmed composition and the scope of guarantees

Articles 254 and 287 should be interpreted in light of their different objects and stages. Article 254 regulates the protective effects of a payment suspension; it is not a general cancellation clause for obligations owed by guarantors. Article 287 concerns a confirmed composition and the individuals who have undertaken to guarantee that composition. One instrument may secure the original loan, another may secure payment under a confirmed composition, and both may coexist subject to their terms and the law. Describing every pre-existing guarantor as an Article 287 composition guarantor without proof of assent would defeat foreseeability and contractual clarity. The distinction is consistent with wider scholarship that separates insolvency relief from the modification of private contractual duties

(Dawwas and Dodeen 2025; Taylor 2023; Uribe and Olivares 2022).

The consequence for legal certainty is practical. The creditor must know whether a court-supervised suspension affects the principal debtor only and whether recovery from another obligor remains possible; the guarantor must know whether the creditor relies on a previous suretyship or a fresh undertaking attached to the composition; and the court must know which procedural rule governs the relief requested. Comparative research identifies differences between jurisdictions in the treatment of discharge, debtor rehabilitation and third-party undertakings, making careful domestic statutory interpretation indispensable (Rahma et al. 2022; Shaji and Shilpa 2025; Taylor 2023; Vandenbossche 2023). The legal certainty principle therefore favours clear classification over an automatic approach based solely on the word 'guarantor' (Abdullah et al. 2024; Said et al. 2025).

A four-part legal-certainty test for personal guarantors

For the purpose of this title, "legal certainty" is operationalised as four mutually reinforcing doctrinal standards. Normative clarity means differentiating PKPU initiation and procedure under Articles 222 and 224, the effects of suspension under Article 254 and the enforceability of a composition under Article 287. Evidentiary ascertainability means identifying the primary debt, the signed guarantee, the correct beneficiary, any transfer of rights and the terms of an alleged Article 1832 waiver. Procedural foreseeability means explaining why the law permits or prevents each individual from being named in the particular application. Remedial continuity means distinguishing the procedural fate of the PKPU petition from the separate substantive question whether a creditor may enforce a valid suretyship. This framework makes legal certainty a testable feature of the court's legal reasoning rather than a general aspiration (Said et al. 2025; Sukardi et al. 2024; Theil 2025).

Applied to Decision No. 403/2023, normative clarity and procedural foreseeability concern the panel's application of Article 254 to the joined respondents; evidentiary ascertainability concerns the disputed underlying financing and personal guarantee deeds; and remedial continuity cautions against treating the rejection of this PKPU application as a complete ruling on all private-law claims. The decision therefore illustrates a specific legal-certainty problem: the same individual can be an alleged guarantor under civil law without necessarily occupying the procedural position asserted in the filed PKPU petition. The question whether a particular guarantee obligation can later be enforced remains dependent on proof and the proper procedure, which the analysed rejection did not finally settle.

Judicial and legislative measures for legal certainty

A proportionate judicial response would require the applicant to identify separately for each proposed respondent the alleged debt and legal basis, the executed guarantee, the intended beneficiary, any effective waiver under Article 1832, and the specific statutory authority for including that person in PKPU. A court should give separate reasons for the procedural significance of Article 254 and for any substantive findings it is actually authorised and required to make. If Article 287 is invoked, the party relying on it must identify the guarantor's undertaking in relation to the confirmed composition itself. These are proposals for more transparent pleading and judicial reasoning; they are not presented as rules already imposed by the Supreme Court (Fahamsyah et al. 2024; Hartini et al. 2024; Putra and Hamamah 2026; Theil 2025).

Targeted legislative clarification would likewise be preferable to a blanket rule that all

guarantors must, or can never, become PKPU respondents. Law No. 37 of 2004 could expressly clarify the procedural treatment of sureties, any right to notice and an opportunity to be heard, and the relationship between a loan guarantee and a guarantee of a confirmed composition. It should preserve creditors' ability to pursue enforceable contractual rights while protecting guarantors against obligations broader than those validly undertaken. Such reform follows the paper's four-part legal-certainty framework and draws on literature concerning contract balance, creditor protection and predictable insolvency procedure (Kurniawan et al. 2025; Riyanto et al. 2025; Said et al. 2025).

Integrated juridical findings and contribution

Read together, the three doctrinal findings answer the central proposition of the title. A guarantor's legal position cannot be described solely by reference to economic association with a principal debtor: the Civil Code requires an identifiable suretyship obligation, and PKPU law separately regulates the requested collective procedure. Decision No. 403/2023 illustrates the consequence of overlooking that difference when a PKPU petition joins a principal debtor and individual guarantors. The legal certainty achieved through clearer judicial reasoning is therefore two-sided. The guarantor is protected from procedural treatment not justified by the applicable law, and the creditor is not wrongly deprived of a separately enforceable obligation merely because one procedural application failed (Dewi 2024a; Hamamah and Soekarno 2021; Said et al. 2025; Theil 2025).

The principal contribution is a limited doctrinal proposal rather than a new substantive defence for all guarantors. Judges should identify the operative statute, characterise the written undertaking, justify the respondent's procedural position and specify what the order does not decide. This approach aligns the status of the personal guarantor, the PKPU mechanism and the objective of legal certainty while recognising the limits of a single-case analysis (Hartini et al. 2024; Shaji and Shilpa 2025).

CONCLUSION

The study answers the three research questions by distinguishing procedural status from contractual liability. First, under the Indonesian Civil Code, a personal guarantor undertakes an obligation connected with an identifiable principal debt, while Articles 1831–1832 regulate the benefit of prior exhaustion and its exceptions. These rules do not, simply through a waiver, establish that the guarantor is the principal debtor for PKPU purposes. Under Law No. 37 of 2004, Articles 222 and 224 address access and procedure, Article 254 limits the benefit of suspension for co-debtors and guarantors, and Articles 286–287 address the effects of a confirmed composition. Second, Decision No. 403/Pdt.Sus-PKPU/2023/PN Niaga Jkt.Pst rejected the joined petition against a corporate debtor and two guarantors, but did not finally establish the pleaded debt or extinguish all separate guarantee claims. Third, legal certainty can be strengthened by requiring clarity of the applicable norm, verifiable documentation of each obligation, reasoned and predictable decisions on respondent status, and a clear statement of remedies unaffected by the procedural order. The legal novelty is an integrated framework connecting these four criteria with the distinct legal functions of suretyship, PKPU suspension and composition. Focused judicial guidance and legislative clarification, rather than automatic inclusion or categorical exemption of guarantors, would provide a more predictable balance of rights. This case-based analysis does not establish a nationwide judicial trend; broader conclusions require certified decisions from multiple courts and periods.

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