

ABSTRAK

Dalam perspektif hukum jaminan dan hukum kepailitan, jaminan fidusia sejatinya memberikan perlindungan hukum yang adil bagi seorang kreditur separatis sebagai penerima hak jaminan fidusia. Namun dalam hal debitur dinyatakan pailit, dimana objek jaminan fidusia dimasukkan dalam boedel pailit, memunculkan persoalan hukum tersendiri yang berpengaruh terhadap status objek jaminan kebendaannya, kedudukan dan pelaksanaan hak seorang kreditur separatis dalam mengeksekusi objek jaminan fidusia tersebut. Penelitian ini merupakan penelitian hukum normatif yang menggunakan pendekatan peraturan perundang-undangan dan pendekatan kasus. Penelitian ini menggunakan bahan hukum primer, sekunder, dan tersier. Selanjutnya, bahan hukum yang telah terkumpul dianalisis secara preskriptif. Hasil penelitian ini menunjukkan bahwa pertimbangan Hakim berdasarkan Putusan Pengadilan Negeri Jakarta Pusat Nomor: 33/Pailit/2009/PN.NIAGA.JKT.PST. yang menyatakan objek jaminan fidusia dimasukkan dalam *boedel* pailit adalah tidak tepat jika diterapkan terhadap benda yang dibebani hak jaminan fidusia, karena berdasarkan penjelasan Pasal 27 ayat (3) UUJF menyatakan jaminan fidusia merupakan hak agunan atas kebendaan bagi pelunasan utang. Selain itu, menurut Pasal 55 ayat (1) UUK-PKPU menyatakan bahwa setiap kreditur pemegang hak kebendaan termasuk pemegang jaminan fidusia dapat mengeksekusi haknya seolah-olah tidak terjadi kepailitan. Penelitian ini juga menunjukkan bahwa, apabila hasil eksekusi benda jaminan fidusia tidak cukup untuk melunasi piutangnya maka sesuai dengan Pasal 60 ayat (3) UUK-PKPU, kreditur penerima jaminan dapat bersaing secara bersama-sama dengan kreditur konkuren lainnya untuk pelunasan sisa piutangnya.

Kata Kunci: objek jaminan fidusia, kreditur separatis, kepailitan.

ABSTRACT

In the perspective of law security and law bankruptcy, fiduciary security in fact provides legal protection for a separatist creditor as the recipient of fiduciary security rights. But, it states as bankrupt in the debtor, where the object of fiduciary security is included in bankruptcy estate, causes its own legal issues which affects the object status of its material security, position, and the rights execution of a separatist creditor in executing its fiduciary security object. This study is a normative law study which uses law and case approaches. This study uses primary, secondary, and tertiary law materials. Moreover, the law materials that has been collected is analyzed prescriptively. The result of this study shows that Judge considerations based on The Court Decree of Central Jakarta Number: 33/Pailit/2009/PN.NIAGA.JKT.PST., states that the object of fiduciary security which included in bankruptcy estate is not appropriately applied to objects that burdened by fiduciary security rights. Furthermore, according to the Article 55 Clause (1) UUK-PKPU states that every creditor that holds material rights including fiduciary security holder may execute their rights as if there was no bankruptcy. This study also shows that, if the execution result of fiduciary security object is not enough to pay off its debt then according to the Article 60 Clause (3) UUK-PKPU, creditor which received security can compete together with concurrent creditor for the repayment of the remaining debts.

Keywords: objects fiduciary security, separatist creditor, bankruptcy.