

Perlindungan hak kreditor separatis dalam kepailitan Badan Usaha Milik Daerah = The protection of bankruptcy of separatist creditor's right in the Local Government Owned Enterprise / Nidi Marchilia

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Abstrak

ABSTRAK

Badan Usaha Milik Daerah (BUMD) untuk mengembangkan usahanya sering mengikat perjanjian kredit dengan bank. BUMD memberikan jaminan bisa berupa sewa guna bangunan atau hak pakai tanah negara apabila sudah diperjanjikan terdahulu oleh kedua belah pihak. BUMD bisa dipailitkan karena telah memenuhi Pasal 2 UU No.37 Tahun 2004 Tentang Kepailitan dan Penundaan Pembayaran Piutang. Dalam hal ini, BUMD dilelang bukan di Pantia Urusan Piutang Negara melainkan kepailitan diserahkan kepada hukum acara perdata karena BUMD merupakan badan hukum privat yang pengaturan menggunakan Undang-Undang Perseroan Terbatas. Dalam hal ini yang menjadi kendala pada saat pembagian hasil penjualan aset debitor terutama hak kreditor separatis ketika kurator telah memasukan klasul beban gaji pegawai 2008-2009 dan sewa hak pakai atas tanah perusahaan daerah Bali kedalam boedel pailit. Seharusnya, kurator hanya memasukan beban sewa kedalam boedel pailit bukan dengan menambah beban gaji pegawai perusahaan daerah Bali kedalam boedel pailit. Ketetapan Mahkamah Agung No.123/Kasasi/PDT.Sus/2010 harus batal demi hukum karena dalil yang diajukan Pengadilan Niaga Surabaya sudah batal demi hukum. Terakhir, Ketetapan Mahkamah Agung No.150/Peninjauan Kembali/PDT.SUS/2011 yang diajukan oleh kreditor konkuren dengan bukti baru bahwa pembagian sisa hasil lelang tidak dibagikan berdasarkan prinsip secara prorata. Dengan demikian, kreditor separatis tidak mendapatkan perlindungan yang wajar sesuai Pasal 60 Undang-Undang No.37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang. Peristiwa hukum tersebut melahirkan penelitian yang menggunakan metode pendekatan yuridis normatif. Penelitian tersebut ditopang dengan pengumpulan data yang diperoleh dari kepustakaan yang dituangkan kedalam deskriptif analisis. Menurut hasil penelitian ternyata penyelesaian masalah kreditor separatis bisa ditanggguhkan dengan cara title eksekutorial yang berdasarkan Pasal 20 Undang-Undang No.4 Tahun 1996 Tentang Hak Tanggungan dan penyelesaian masalah kredit perbankan bisa melalui pengambil alihan agunan sesuai Pasal 12 A Undang-Undang No.10 Tahun 1998 Tentang Perbankan. Setelah ada keseimbangan antara peraturan hak tanggungan dengan peraturan perbankan kemungkinan bisa memprioritaskan kedudukan kreditor separatis sesuai Pasal 55 Undang-Undang No.37 Tahun 2004 Tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.

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ABSTRACT

If a Local Government Owned Enterprise (LGOE) willing to expand its business, they must bind credit agreement with the bank. The LGOE can guarantee rent buildings or land use rights if the state had earlier agreed by both parties. LGOE can be bankrupted if it meet article 2 of the law No.37 in 2004 years on bankruptcy and suspension of payment accounts. In this regard, enterprises are auctioned instead trustee, state receivables affairs bankruptcy but handed over to civil procedural law as a legal entity of private enterprises. That using the company's Act Limited debt owned enterprises was the non-government accounts. In the case, the constrained goes on the distribution of assets from the sale of public enterprises where separatist creditor's did not get benefit from off property debtor. Therefore could to include from mistake of the curator while calculated of obligation debtor. Properly devide not salary of employee from assets debtor for separatist creditor's. As what is true in decision Supreme Court No.123/Apple/Privat /2010, curator had counted clausul of salary employee in 2008 - 2009 Bali of Local Government Enterprises to listing bankruptcy. The Underlying principle of the curator because of Abadi Persada Nusantara company was done of rent agreement about soil of right utility to Bali of Local Government. Consequently, what happens next are burdens of rent and salary of employee Bali of Local Government. This decision could been invalid law because this case was canceled of comersial law court in Surabaya. Last of creditors with novum as sharing production did not agree principle secured prorata. As a result is separtist creditor's do not get protection whom real matching on arcticle 60 of Act No. 37 of 2004 in Bankrupt and Suspension Payment Account. Law events mentioned above spawned research using normative judicial approach. The reasearch was supported by collection of data obtained from the literature which is poured into a descriptive analysis. According to results of research it turns out the problem solving separatist creditor's possibly suspended by way of the title executor based on article 20 of Act No.4 of 1996 in dependents right and the settlement of bank could take out the guarantee with it self on article 12 A Act No.10 of 1998 in Bank. When there is balance between guarantee regulation and banking regulation could prioritize separatist creditor's position matching on Article 55 of Act No. 37 of 2004 in Bankrupt and Suspension Payment Account.