

Tinjauan yuridis permohonan pailit oleh pekerja atas utang upah atau uang pesangon berdasarkan putusan pengadilan yang telah berkekuatan hukum tetap studi kasus putusan Mahkamah Agung no 401/K/PDT.Sus/2012 = Judicial review regarding bankruptcy letter by workers based on payable wages declared by court which final and binding study case supreme court decision no no 401/K/PDT.Sus/2012  
Silalahi, Akbar Maulana, author

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#### Abstrak

[<b>ABSTRAK</b><br>

Tesis ini membahas mengenai kewenangan Pekerja mengajukan permohonan pailit atas perusahaan tempatnya bekerja atas dasar utang upah atau utang pesangon berdasarkan putusan Pengadilan Hubungan Industrial yang belum dibayarkan. Pokok permasalahan dalam tesis ini adalah kedudukan pekerja untuk mengajukan permohonan pailit berdasarkan putusan PHI ditinjau dari UU Hubungan Industrial dan UU Kepailitan dalam implementasi pelaksanaannya.

Metode penelitian yang digunakan adalah pendekatan yuridis normative, sedangkan metode analisis datanya adalah metode kualitatif.

Pekerja merupakan bagian dari suatu perusahaan dan juga merupakan salah satu pemangku kepentingan dalam suatu perusahaan. Namun demikian, dalam hal terjadi pertentangan atau sengketa antara pekerja dan perusahaan (pengusaha) sering kali meskipun dibawa ke pengadilan PHI tetap saja putusannya tidak dipatuhi khususnya oleh perusahaan (pengusaha). UU Kepailitan secara tidak langsung mensyaratkan bahwa bisa saja seorang pekerja mengajukan permohonan pailit berdasarkan utang upah atau pesangon yang utangnya telah dinyatakan oleh Pengadilan PHI.

UU Kepailitan secara tidak langsung menegaskan dalam hal proses pengajuan permohonan pailit harus secara tegas memang sudah merupakan kewenangan Pengadilan Niaga dan tidak atau sudah tidak ada kewenangan absolut Pengadilan lain. Dalam tesis ini ditarik suatu kesimpulan bahwa pada dasarnya bisa saja seorang pekerja mengajukan permohonan pailit atas dasar utang upah atau pesangon, namun pekerja harus melakukan proses di Pengadilan PHI terlebih dahulu dan hal ini dalam praktek akan sangat sulit dilakukan dikarenakan proses di Pengadilan PHI membolehkan adanya eksekusi dengan cara sita dan lelang dimana hal tersebut biasanya sudah membayar secara lunas utang perusahaan kepada pekerja. Diharapkan dimasa depan telah diatur secara tegas kewenangan absolut Pengadilan Niaga dan adanya pemahaman hakim niaga yang sama bahwa proses yang terjadi di Pengadilan Niaga tidak boleh bersinggungan dengan Pengadilan lain kecuali diatur secara tegas oleh Undang-Undang.

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This thesis is describing about legal standing of employee to submit bankruptcy petition for the company based on payable wages declared by Industrial Relation Court. The main issues of this thesis are legal standing of employee to submit bankruptcy petition based on decision of industrial relation court in the implementation reviewed from Industrial Relation Act and Bankruptcy Act. This thesis used Juridical norms approach as research method and also qualitative data analysis as the analysis method.

Employees are part of company as well as one of the stakeholders in a company. However, if there is any disputes arise between employee and the company which will be undertaken and award by Industrial Relation Court is not effectiffee because in practical mostly the decision will not be obeyed especially by company. Bankruptcy Act indirectly stated that employee could submit bankruptcy based on payable wages declared by Industrial Relation Court.

Bankruptcy Act indirectly stated that in the process of bankruptcy must be sure it is competency of commercial court and there is no other competency of other court. In this thesis there is conclusion that employee could submit bankruptcy petition for their company based on payable wages which declared by Industrial Relation Court, however the employee must undertaking any process in Industrial Relation Court prior submit the bankruptcy petition which will be very hard to execute in the practical because execution of award by Industrial Relation Court will be using confiscation goods of company which will be auctioned to pay the payable wages. It is expected that in the future there is a provision which stated very clearly about competency of commercial court and there is a same understanding between judges of commercial court that every process of bankruptcy in commercial court shall not interfering competence of the other court except stated by act.;

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