

Penerapan pasal 2 ayat (1) beserta penjelasannya undang-undang No 37 tahun 2004 tentang kepailitan dan penundaan kewajiban pembayaran utang dalam perjanjian kredit sindikasi = Application of article 2 clause (1) along with its explanation of act number 37 year 2004 about bankruptcy and suspension of payment in syndication loan agreement

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Abstrak

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Setiap bentuk pemberian kredit memiliki risiko untuk mengurangi risiko dalam penyaluran kredit adalah melakukan kerja sama pemberian kredit atau disebut juga kerja sama pembiayaan antarbank. Bentuk kerja sama pembiayaan yang umum dilakukan oleh bank-bank lebih dikenal dengan kredit sindikasi. Dalam praktik, permasalahan mengenai kredit macet tetap saja muncul. Salah satu solusi yang dapat ditempuh untuk masalah tersebut adalah melalui hukum kepailitan. Permasalahan yang sering dihadapi dalam hal kepailitan kredit sindikasi adalah siapa yang berwenang untuk melakukan permohonan pailit kepada debitor apabila para kreditor terikat perjanjian kredit sindikasi, apakah pernyataan pailit tersebut harus dilakukan oleh seorang agen ataukah dibolehkan pula kreditor itu sendiri mengajukan permohonan pailit dengan atau dengan tanpa persetujuan kreditor lainnya? Menurut UUKPKPU, seorang debitor dapat dipailitkan oleh satu atau lebih kreditornya. Akan tetapi, dalam UUKPKPU tidak dijelaskan secara terperinci perihal kreditor mana yang berhak untuk mengajukan permohonan pailit apabila kreditor terikat perjanjian kredit sindikasi. UUKPKPU menyebutkan hanya satu kali perihal kreditor sindikasi, yaitu dalam Penjelasan Pasal 2 ayat (1) sebagai berikut ?Bilamana terdapat sindikasi kreditor, maka masing-masing Kreditor adalah Kreditor sebagaimana dimaksud dalam Pasal 1 angka 2?. Sedangkan Pasal 1 angka 2 menyebutkan ?Kreditor adalah orang yang mempunyai utang karena perjanjian atau undang-undang yang dapat ditagih di muka pengadilan?. Hal ini berarti, UUKPKPU tidak membedakan kedudukan kreditor dari suatu perjanjian biasa atau perjanjian sindikasi. Seorang debitor dapat dipailitkan oleh salah satu atau lebih kreditornya. Mengingat dalam skema sindikasi kredit, terdapat agen fasilitas yang mendapatkan kuasa untuk bertindak untuk dan atas nama para kreditor termasuk untuk mewakili ke pengadilan. Kepailitan dapat terjadi dikarenakan debitor dalam keadaan tidak membayar hutangnya pada kreditor yang sudah jatuh tempo, dan bila kepailitan tersebut terjadi terhadap debitor yang terikat perjanjian kredit sindikasi, maka hal ini akan menimbulkan masalah bagi peserta kreditor sindikasi yang berhak mengajukan permohonan pailit, mengingat kreditor dalam kredit sindikasi dianggap sebagai kreditor Pasal 1 angka 2 UUKPKU. Dalam kredit sindikasi terdapat agen bank mempunyai peran yang besar, yaitu mewakili dan bertindak untuk kepentingan serta untuk dan atas nama para kreditor, pihak agen bank ini diangkat oleh para kreditor, serta hak atau kewenangan agen tersebut sudah diatur oleh para kreditor dengan agen itu. Masing-masing peserta sindikasi tidak mempunyai hubungan hukum yang langsung dengan debitor, karena itu tidak dapat berhubungan langsung dengan debitor, dengan demikian anggota dari peserta sindikasi tidak berhak menegur atau menagih pembayaran kredit pokok atau bunganya kepada debitor apabila debitor menunggak pembayaran, segala perbuatan hukum termasuk menyurati debitor hanya dapat dilakukan oleh agen. Penelitian ini akan berupaya untuk menjawab permasalahan-permasalahan berikut: Bagaimanakah ketentuan Pasal 2 ayat (1) disertai

penjelasannya pada Undang-Undang Nomor 37 Tahun 2004 diterapkan (ditaati) oleh para pihak yang terlibat dalam proses kepailitan di dalam kredit sindikasi? Bagaimanakah hakim menerapkan Pasal 2 ayat (1) disertai penjelasannya dalam putusan pengadilan yang dibuatnya? Bagaimanakah para pihak yang terlibat dalam kredit sindikasi khususnya peserta kredit sindikasi dan agen fasilitas mencari celah (loophole) untuk melakukan pengajuan permohonan pailit, mengingat ketentuan mengenai kepailitan terhadap kredit sindikasi masih belum diatur secara lengkap dalam Undang-Undang Nomor 37 Tahun 2004? Analisis yang dilakukan untuk menjawab pokok permasalahan tersebut akan menggunakan metode penelitian normatif. Adapun pendekatan yang digunakan ialah pendekatan (approach) dari sudut pendekatraktan ilmu hukum, baik secara yuridis (apa yang tertulis di dalam undang-undang) maupun empiris (apa yang terjadi di dalam praktik).

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ABSTRACT

Every form of credit has an inherent risk along with it. To reduce the risk in credit provision, a distribution of the risk can be done by the means of credit provision cooperation or also known as interbank financing cooperation, with its most common form known as syndicated loan. In its application, the problem of nonperforming loan still arises. One of the solutions to such problem is the mechanism of Bankruptcy Law. The most common issue to the bankruptcy of syndicated loan is determining the party authorized to file for the bankruptcy of the debtor. When creditors are bound by syndicated loan agreement, does the bankruptcy filing fall within the duty of an agent or can any creditor file by himself with or without the approval of other creditors? According to the Bankruptcy Law, a debtor can face a bankruptcy charge from one or more of her creditors. However, the Law does not elaborate on which creditor reserves the right to file for bankruptcy in the case of syndicated loan. Only once does the Law mention the syndicated loan, that is in the Explanation of Article 2 number (1) as follows: "When there is a syndication of creditors, then each creditor is a creditor as mentioned in Article 1 number 2". Where Article 1 number 2 stipulates "Creditor is a person owning a debt which, by agreement or law, is collectible in front of Court". This means that the Bankruptcy Law does not apply any differentiation to the creditor within either a normal agreement or a syndication agreement. A debtor can be made bankrupt by one or more of her creditors. Taking into account the credit syndication scheme, an agent is authorized to act for and on behalf of the creditors, including the presence in the Court. A bankruptcy can take place due to the debtor's failure in paying her debts in due time to her creditors. And when such bankruptcy happens to a debtor bound by the syndicated credit agreement, the creditors in the syndicated loan will face an issue given that creditors in such syndicated loan is treated as a creditor in accordance to Article 1 number 2 of Bankruptcy Law. In a syndicated credit, there is a bank agent playing an important role, that is to represent and to act for the interest of and on the behalf of all the creditors. This bank agent is appointed by the creditors, and the rights and authorities of the agent are already part of the agreement between the creditors and the appointed agent. Each of the participants to the syndication does not have any direct legal connection to the debtor and thus is not able to communicate directly to the debtor. As such, any participant to the syndication has no right to collect payments to the credit, both of the principal or the interest, from ttrak Bhe debtor in the case of payment arrears. All legal action including the correspondence to the debtor is only performable by the agent. This research attempts to answer the following issues: How is the stipulation of Article 2 number (1), along with its explanation, of Act No. 37 Year 2004 applied (or abided) by the parties involved in the bankruptcy proceedings in syndication credit? How do the Judges apply Article 2 number (1), along with its explanation, in rendering

their Judgement? How can the parties involved in credit syndication, particularly the participants to the syndicated credit and the agent find a loophole in filing for the bankruptcy, taking into account that stipulations regarding bankruptcy in a syndicated loan are still seeing gaps in Act No. 37 Year 2004? Analysis held to answer the main issue employs the normative research methods, with both legal (according to the letters of law) and empirical (according to the real-life application) approaches.; Every form of credit has an inherent risk along with it. To reduce the risk in credit provision, a distribution of the risk can be done by the means of credit provision cooperation or also known as interbank financing cooperation, with its most common form known as syndicated loan. In its application, the problem of nonperforming loan still arises. One of the solutions to such problem is the mechanism of Bankruptcy Law. The most common issue to the bankruptcy of syndicated loan is determining the party authorized to file for the bankruptcy of the debtor. When creditors are bound by syndicated loan agreement, does the bankruptcy filing fall within the duty of an agent or can any creditor file by himself with or without the approval of other creditors? According to the Bankruptcy Law, a debtor can face a bankruptcy charge from one or more of her creditors. However, the Law does not elaborate on which creditor reserves the right to file for bankruptcy in the case of syndicated loan. Only once does the Law mention the syndicated loan, that is in the Explanation of Article 2 number (1) as follows: "When there is a syndication of creditors, then each creditor is a creditor as mentioned in Article 1 number 2". Where Article 1 number 2 stipulates "Creditor is a person owning a debt which, by agreement or law, is collectible in front of Court". This means that the Bankruptcy Law does not apply any differentiation to the creditor within either a normal agreement or a syndication agreement. A debtor can be made bankrupt by one or more of her creditors. Taking into account the credit syndication scheme, an agent is authorized to act for and on behalf of the creditors, including the presence in the Court. A bankruptcy can take place due to the debtor's failure in paying her debts in due time to her creditors. And when such bankruptcy happens to a debtor bound by the syndicated credit agreement, the creditors in the syndicated loan will face an issue given that creditors in such syndicated loan is treated as a creditor in accordance to Article 1 number 2 of Bankruptcy Law. In a syndicated credit, there is a bank agent playing an important role, that is to represent and to act for the interest of and on the behalf of all the creditors. This bank agent is appointed by the creditors, and the rights and authorities of the agent are already part of the agreement between the creditors and the appointed agent. Each of the participants to the syndication does not have any direct legal connection to the debtor and thus is not able to communicate directly to the debtor. As such, any participant to the syndication has no right to collect payments to the credit, both of the principal or the interest, from the debtor in the case of payment arrears. All legal action including the correspondence to the debtor is only performable by the agent. This research attempts to answer the following issues: How is the stipulation of Article 2 number (1), along with its explanation, of Act No. 37 Year 2004 applied (or abided) by the parties involved in the bankruptcy proceedings in syndication credit? How do the Judges apply Article 2 number (1), along with its explanation, in rendering their Judgement? How can the parties involved in credit syndication, particularly the participants to the syndicated credit and the agent find a loophole in filing for the bankruptcy, taking into account that stipulations regarding bankruptcy in a syndicated loan are still seeing gaps in Act No. 37 Year 2004? Analysis held to answer the main issue employs the normative research methods, with both legal (according to the letters of law) and empirical (according to the real-life application) approaches., Every form of credit has an inherent risk along with it. To reduce the risk in credit provision, a distribution of the risk can be done by the means of credit provision cooperation or also known as interbank financing cooperation, with its most common form known as

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