

Penerapan solvency test dalam hukum kepailitan di Indonesia = Implementation of solvency test in Indonesia's bankruptcy law / I Gst Ngurah Indra Andhika

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Abstrak

ABSTRAK

Pelaksanaan Hukum Kepailitan di Indonesia, dalam beberapa perkara, kerap menarik perhatian para pelaku usaha nasional maupun internasional. Perhatian tersebut berkaitan dengan tidak terdapatnya norma yang melindungi perusahaan atau pelaku usaha dengan kondisi finansial yang sehat (solvent) dari kepailitan. Hal tersebut dapat dilihat melalui beberapa perkara kepailitan, seperti perkara PT. AJMI, PT. Prudential Assurance dan yang teranyar adalah perkara kepailitan PT. Telkomsel Seluler serta PT Eastwood Timber Industries. Rezim kepailitan Indonesia pasca terjadinya krisis moneter pada dasarnya membuka diberlakukannya upaya hukum kepailitan terhadap siapa pun sepanjang memenuhi persyaratan mengenai jumlah kreditor dan unsur utang yang bersifat luas. Prinsip utang yang bersifat luas tersebut kerap menjadi loophole penyebab terjadinya kepailitan yang mendera perusahaan atau pelaku usaha solvent. Oleh sebab itu, untuk memberikan perlindungan bagi perusahaan atau pelaku usaha solvent, solvency test seharusnya diadopsi kedalam Hukum Kepailitan nasional kedepan untuk menghindari digunakannya pranata hukum kepailitan secara tidak tepat. Penulisan tesis ini bermaksud untuk melihat bagaimana solvency test diberlakukan dalam hukum kepailitan di Amerika Serikat. Kemudian, melihat sejauhmanakah solvency test tersebut dikenal dalam proses peradilan kepailitan di Indonesia. Berkaitan dengan permasalahan tersebut, dua buah kasus kepailitan di Indonesia, masing-masing PT. Telkomsel Seluler Tbk dan PT. Eastwood Timber Industries, dianalisa untuk melihat pemberlakuan dari solvency test dan melihat sikap pengadilan mengenai hal tersebut.

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ABSTRACT

The implementation of bankruptcy law in Indonesia has attracted attention among business people, nationally and internationally. The attention and discussion is of concern the absent of protection available for solvent company or business individuals from threats using bankruptcy regime. Since the enactment of bankruptcy law in 1998 several cases involving solvent companies had happened, such as the case of PT AJMI and PT. Prudential Assurance, which had been successfully bankrupted. Those two companies were considered solvent at the time the petition was filed by their creditors. Moreover, since the new bankruptcy regime has been amended with the new law of 37 of 2004, cases involving solvent company remain happened, inter alia: the case of PT. Telkomsel Seluler and PT Eastwood Timber Industries. Both company were solvent at the time the involuntary petition was filed by their creditors. The bankruptcy regime of 2004 clarifying claim (debt) shall be seen within a broad perspective. However, this resulted in complexity in the examination of such claims, as a result it will likely to be contradictive to the requirement stated in article 8 (2) bankruptcy law 2004. The broad perspective of claim is likely to be the loophole, causing solvent company open from the exposure of bankruptcy regime. Therefore, solvency test should be adopted into the Indonesian bankruptcy law. This Thesis comprise of a study on American Bankruptcy Code that set

solvency test and also look at 2 (two) bankruptcy cases to see how the implementation of solvency test in America. Moreover, it also making an attempt to see how the commercial court in Indonesia treat argumentation using solvency test in 2 (two) cases, involving PT. Telkomsel Seluler and PT. Eastwood Timber Industries.