

Analisis kedudukan bank lessee dan status jaminan fidusia dalam proses penundaan kewajiban pembayaran utang PT Dharmatama Megah Finance = Analysis title of bank lessee and status of fiduciary in the process of suspension of payment of PT Dharmatama Megah Finance / Warakah Anhar

Warakah Anhar, author

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Abstrak

ABSTRAK

PT Dharmatama Megah Finance (“DMF”), suatu perusahaan pembiayaan dinyatakan dalam Penundaan Kewajiban Pembayaran Utang/PKPU (sementara) berdasarkan putusan Pengadilan Niaga Pada Pengadilan Negeri Jakarta Pusat Nomor: 18/Pdt.Sus-PKPU/2014/PN.Niaga.Jkt.Pst tanggal 16 April 2014, yang berakhir dengan homologasi tanggal 22 September 2014. Meskipun demikian, Perjanjian kerjasama pembiayaan yang dilakukan PT DMF dengan bank dan perjanjian leasing, menimbulkan beberapa persoalan hukum dalam menentukan kedudukan bank sebagai kreditor berdasarkan perjanjian kerjasama pembiayaan, Lessee sebagai Pemberi Fidusia berdasarkan Perjanjian Leasing dan status jaminan fidusia. Penelitian dilakukan dengan metode penelitian hukum normatif menggunakan data sekunder. Dengan kesimpulan; Kedudukan bank adalah kreditor konkuren dengan hak tagih senilai pembayaran yang belum diserahkan oleh PT DMF kepada bank; Kedudukan Lessee sebagai Pemberi Fidusia ditentukan oleh status hutangnya berdasarkan Perjanjian Leasing, dan jaminan fidusia merupakan asset PT DMF dalam bentuk jaminan atas Perjanjian Leasing yang akan menjadi harta pailit jika PT DMF sampai dinyatakan pailit. Disarankan kepada para Kreditor dan Debitor untuk berupaya melaksanakan skema penyelesaian utang. Dan kepada pihak bank maupun pembuat regulasi, perlu mengkaji ulang ketentuan mengenai pihak Penerima Fidusia terkait perjanjian kerjasama pembiayaan dengan perusahaan leasing agar terhindar dari kerugian jika perusahaan leasing dinyatakan pailit.

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ABSTRACT

PT Dharmatama Megah Finance (“DMF”), a company multi finance company, was declared in the status of Suspension of Payment /PKPU (temporarily) by the Decision of the Commercial Court of the District Court of Central Jakarta Number: 18/Pdt.Sus-PKPU/2014/PN.Niaga.Jkt.Pst dated April 16th 2014, which was ended with the homologation dated September 22nd, 2014. However, some cooperation agreements (joint finance) entered into by DMF with banks and Leasing Agreements, have raised some legal issues particularly to determine the status of banks as creditors in accordance with the cooperation agreement, Lessee

as the Giver of Fiduciary and the status of fiduciary. The research was conducted with normative legal research method by using secondary data. With the conclusions; The bank is unsecured creditors whose claim is based on the value of payment that has not been transferred by PT DMF to the bank. The Status of Lessee will be subject to the Leasing Agreement, and the Fiduciary should be deemed as assets of PT DMF which would be a bankruptcy estate if PT DMF bankrupt. The recommendation are: the Debtors and Creditors should obey the Settlement Agreement. The banks and related regulator institution should review the clause of the Fiduciary Receiver in cooperation agreements with leasing company to avoid the loss when the leasing company is declared in bankruptcy.