

Perlindungan Hukum Para Pemegang Saham Dalam Proses Pengajuan Pailit Secara Sukarela Oleh Perseroan Terbatas (Analisa Perkara Kepailitan PT. Mandala Airlines Putusan Nomor 48/PDT.SUS.PAILIT/2014/PN.NIAGA.JKT.PST.) = Legal Protection of Shareholders In Filing Process Bankrupt Voluntary By Company Corportion (analysis of the bankruptcy case PT. Mandala Airlines VERDICT NUMBER: 48/PDT.SUS.PAILIT/2014/PN.NIAGA.JKT.PST)

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Abstrak

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Tesis ini membahas studi kasus permohonan kepailitan PT. Mandala Airlines yang diajukan secara sukarela. Pembahasan terhadap PUTUSAN NOMOR 48/PDT.SUS.PAILIT /2014/PN.NIAGA.JKT.PST) meliputi beberapa aspek hukum terkait perlindungan terhadap para pemegang saham PT. Mandala Airlines diantaranya aspek hukum kepailitan dan aspek hukum perusahaan. Pada kasus perkara kepailitan P.T Mandala Airlines menjadi menarik untuk dibahas mengingat justru pada saat proses kepailitan berlangsung, para pemegang saham yang notabenehnya justru mayoritas malah tampil menjadi pemohon keberatan dalam proses tersebut. Pada akhirnya, putusan kepailitan tetap dijatuhkan oleh Majelis Hakim dalam perkara ini, sekalipun asas kelangsungan usaha yang dikedepankan oleh pemohon keberatan telah dikedepankan. Namun karena semua persyaratan untuk dijatuhkannya pailit bagi pemohon telah memenuhi persyaratan sebagaimana ditentukan dalam Pasal 2 ayat (1) juncto Pasal 8 ayat (4) Undang-Undang Kepailitan, maka sesederhana pembuktiannya pula, PT Mandala Airlines akhirnya memperoleh putusan pailit tersebut. Pokok permasalahan dalam tesis ini adalah mencari informasi dan menganalisa bagaimana proses pengajuan pailit atas permohonan sendiri oleh suatu badan hukum perseroan terbatas serta bagaimana pula hukum positif Indonesia memberikan perlindungan hukum bagi pemegang saham badan hukum perseroan dalam proses kepailitan. Dan tesis ini menjawab dua pokok permasalahan tersebut dimana proses pengajuan pailit atas permohonan sendiri memiliki mekanisme/tata cara yang sama dengan proses pengajuan pailit oleh kreditor dan Undang-Undang Kepailitan Indonesia tidak mengatur tentang perlindungan hukum bagi pemegang saham (shareholder) perseroan terbatas dalam proses pailit, tetapi tetap membuka pintu bagi pihak berkepentingan untuk melakukan upaya hukum terhadap putusan pailit.

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ABSTRACT

This thesis discusses case studies of insolvency petition PT. Mandala Airlines submitted voluntarily. Discussion on verdict number 48/PDT.SUS.PAILIT.2014/ PN.NIAGA.JKT.PST consisting some aspects of the law regarding the protection of shareholders PT. Mandala Airlines including aspects of bankruptcy/insolvency law and legal aspects of the company. The case of PT Mandala Airlines bankruptcy case will be rather interesting to be reviewed considering the fact that, just when bankruptcy proceedings take place, the shareholders who appears to be the majority is actually the applicants who objects in that process. At the end, the decision of bankruptcy still being uphold by the Judges in this case, even if the

principle of continuity of effort being put forward by the applicant, objections has been put onward. However, since all the qualifications to have the bankruptcy case being filed towards the applicants has been fulfilled, as stated in Section 2 Verse (1) juncto Section 8 Verse (4) Indonesian Law of Insolvency/Bankruptcy, it will as easily be proven PT. Mandala Airlines will eventually receive the verdict for that insolvency. Literature research, secondary data and verbal interviews as primary resource with all parties involve such as notary, and curator will be uphold for information gathered in PT. Mandala Airlines bankruptcy case as writing methods throughout this thesis. This thesis discuss two major problem, first, how the process of filing for bankruptcy voluntarily (company) and how the Indonesian positive law provides a legal protection for shareholder in bankruptcy proceedings. And this thesis also provides answer for the two main issues where the process of filing for bankruptcy voluntarily has the same mechanism/ procedure the process of filing for bankruptcy by creditors; and Indonesia Bankruptcy Act does not regulate a specific legal protection for shareholders (company) in the process of bankruptcy, but there's a chance for interested parties to take legal actions against the bankruptcy decision.

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