

Permohonan pkpu oleh anak perusahaan terhadap holding company yang berakhir pailit dan kaitannya dengan aspek-aspek hukum dalam perusahaan grup studi kasus: kasasi no. 214k/pdt.sus-pailit/2013 jo. putusan no. 64/pkpu/2012/pn.niaga.jkt.pst = The pkpu petition to holding company by its subsidiary that ends in bankruptcy and its relation to the legal aspects in the group of companies case study cassation no 214k pdt sus pailit 2013 jo decision no 64 pkpu 2012 pn niaga jkt pst

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Abstrak

Berbagai persoalan yang berkembang dalam berbagai perkara-perkara kepailitan yang terjadi di Indonesia masih memiliki banyak kelemahan, terutama apabila menyangkut kepailitan terhadap perusahaan asing dalam bentuk holding company. Perusahaan grup semakin mendominasi kegiatan usaha dan memiliki peran penting dalam pembangunan. Konstruksi perusahaan grup terpisah secara hukum namun berada dalam satu kesatuan ekonomi. Permohonan PKPU oleh anak perusahaan terhadap holding company yang berakhir pailit dalam satu perusahaan grup merupakan hal yang tidak biasa. Permohonan PKPU tersebut terjadi pada kasus kepailitan AcrossAsia Limited sebagai holding company yang berkedudukan di Hong Kong dan dipailitkan oleh anak perusahaannya yaitu PT. First Media Tbk. Apakah permohonan PKPU tersebut sesuai dengan kaidah-kaidah hukum kepailitan, bagaimana tanggung jawab holding company yang pailit terhadap anak perusahaan dalam satu perusahaan grup, dan apa saja hambatan dalam penerapan cross-border insolvency dalam hukum kepailitan terkait adanya putusan pengadilan asing. Metode penelitian yang digunakan adalah penelitian hukum yuridis normatif, dengan pendekatan perundang-undangan, kasus, sejarah, dan pendekatan analisis. Kepailitan terhadap holding company oleh anak perusahaan merupakan penyalahgunaan kekuasaan holding company dan trik bisnis yang memanfaatkan instrumen hukum kepailitan untuk menghindari kewajiban terhadap pihak ketiga. Hukum kepailitan di Indonesia perlu merumuskan insolvensi tes terhadap permohonan pailit debitor, hal tersebut diperlukan agar tidak terjadi kepailitan terhadap perusahaan yang masih solven. Dalam pengaturan cross-border insolvency, UU Kepailitan Indonesia belum mengakomodasi aturan mengenai cross-border insolvency dalam UNCITRAL Model Law. Hal tersebut menyulitkan proses eksekusi harta debitor pailit di luar negeri dan pemerintah Indonesia juga perlu melakukan perjanjian bilateral maupun multilateral dengan negara lain dalam hal pengakuan putusan pengadilan asing.

.....Various problems that develop in various cases of bankruptcy that occurred in Indonesia still has many weaknesses, particularly when it concerns of foreign companies bankruptcy in the form of holding company. The domination of Company group business activity increasingly raising and have an important role in development. The construction of group company is legally separated but it is in one economic entity. The Suspension of Debt Payment Obligation PKPU petition by subsidiaries against its holding company that ends in insolvency in one of the group company is uncommon. The PKPU petition occurred in the bankruptcy case of AcrossAsia Limited as a holding company with legal domiciled in Hong Kong and bankrupted by its subsidiary PT. First Media Tbk. Is the PKPU petition of its case is in accordance with the principle of bankruptcy law, how is the responsibility of the insolvent holding company to its subsidiary in

the one of the group company, and what 39 s are the obstacles in implementing of the cross border insolvency in bankruptcy law related to the foreign court resolution. The legal research method that used is legal normative research, with the statute, case, historical and analytical approach. The bankruptcy of a holding company by its subsidiary is an abuse of holding company powers and business tricks that take an advantage of bankruptcy legal instruments to avoid liability to the third parties. Bankruptcy law in Indonesia needs to formulating insolvency test to the debtor bankruptcy petitioner, due it is necessary to avoid bankruptcy against the company that is still solvent. In a cross border insolvency regulations, the Indonesian Bankruptcy Law has not accommodated the rules of UNCITRAL Model Law on cross border insolvency. This matter makes complicating the execution process of the bankrupt debtor assets abroad and Indonesian government also needs to enter into bilateral and multilateral agreements with other countries in the recognitions of foreign courts resolution.