

Perlindungan Hukum Investor Going Concern Terhadap Akta Pernyataan Keputusan Sirkuler Para Pemegang Saham Yang Dibuat Tanpa Persetujuan Kurator (Studi Putusan Mahkamah Agung Nomor 522 K/Pdt.Sus-Pailit/2021) = Legal Protection of Investors Going Concern Against the Deed of Circular Decisions of Shareholders that Made Without the Curator's Approval (Study of Supreme Court Decision Number 522 K/Pdt.Sus-Pailit/2021)

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Abstrak

Pelaksanaan kasus kepailitan dapat ditempuh melalui prinsip going concern, melanjutkan kegiatan usaha suatu perseroan yang dinyatakan pailit dengan menunjuk pihak ketiga berdasarkan kesepakatan kreditur pailit. Namun dalam pelaksanaannya sering kali menimbulkan permasalahan, seperti terdapat pihak yang dirugikan akibat kegiatan hukum melanggar ketentuan hukum berlaku. Permasalahan yang diangkat dalam penelitian ini mengenai status hukum Akta Pernyataan Keputusan Sirkuler Para Pemegang Saham yang dibuat notaris dalam harta pailit, dan perlindungan hukum bagi investor going concern yang mengalami kerugian akibat Akta Pernyataan Keputusan Sirkuler Para Pemegang Saham. Untuk menjawab permasalahan tersebut digunakan metode penelitian hukum yuridis normatif dengan tipe penelitian preskriptif analitis. Hasil analisis menyatakan pelaksanaan perubahan anggaran dasar menyangkut harta pailit yang tertuang pada Akta Pernyataan Keputusan Sirkuler Para Pemegang Saham harus didahului dengan persetujuan kurator, tidak dapat bertentangan dengan hukum dan peraturan perundang-undangan, bertentangan dengan keputusan pengadilan, bertentangan dengan penetapan pengadilan, sehingga menyebabkan batal demi hukum isi dari akta tersebut. Pelaksana/investor going concern yang dirugikan dapat melakukan gugatan pembatalan akta berdasarkan Pasal 3 ayat (1) UUK-PKPU, karena secara hukum bertentangan dengan Pasal 20 UUP, Pasal 1 angka 1 jo. Pasal 69 ayat (1) UUK-PKPU. Adapun saran yang dapat diberikan baik bagi debitur pailit maupun notaris hendaknya memahami ketentuan hukum yang berlaku dalam pelaksanaan perubahan anggaran dasar melalui Keputusan Sirkuler perseroan pailit. Perseroan pailit harus patuh terhadap hukum kepailitan yang berlaku, menghargai dan menyanggupi proses pelaksanaan going concern yang sedang berlangsung.

.....The implementation of bankruptcy cases can be pursued through the going concern principle, continuing the business activities of a company declared bankrupt by appointing a third party based on the agreement of the bankrupt creditor. However, in its implementation, it often creates problems, such as there are parties who are harmed due to legal activities violating applicable legal provisions. The problems raised in this study are regarding the legal status of the Circular Decision Deed of Shareholders made by a notary in bankruptcy assets and legal protection for going concern investors who suffer losses due to the Shareholders' Circular Decision Statement Deed. To answer this problem does not appear to be modifying the subject a normative juridical legal research method with an analytical perspective research type. The results of analysis that implementation of amendments to the articles of association concerning bankruptcy assets as stated in the Deed of Statement of Circular Decisions of the Shareholders must be preceded by curator approval, cannot be contrary to laws and regulations, contrary to court decisions, contrary to court decisions,

thus causing null and void the contents of the deed. The Implementers/going concern investors who are disadvantaged can file a lawsuit for deed cancellation based on Article 3 paragraph (1) Law No. 37 of 2004 because legally, it is contrary to Article 20 Law No. 40 of 2007, Article 1 number (1) jo. Article 69 paragraph (1) Law No. 37 of 2004. The advice that can be given to both the bankrupt debtor and the notary is to understand the applicable legal provisions in implementing amendments to the articles of an association through the Circular Decree of the bankrupt company. Bankruptcy companies must comply with applicable bankruptcy laws, respect and undertake the ongoing process of implementing the going concern