

Tinjauan yuridis mengenai penjualan lelang sebagai cara pemberesan harta pailit

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Abstrak

The process of the bankruptcy law is based on two important points. One is how much assets owned by the Debtor can repay the loan, and two, when the Creditors can have their money returned. This thesis has tried to answer the above questions by examining the scope of *boedel pailit* (bankruptcy estate) in the Bankruptcy Law Act No.37/2004 and the process of auction which is the method to sell the bankruptcy estate.

There is a scope enlargement relating to the bankruptcy estate in the decision of Supreme Court No.010/KINi2002 jo.no.016 Pk/N/2002. The Supreme Court has decided to judge the Guarantor's assets can also be considered as bankruptcy estate. The decision and the case have been examined in this thesis to find out the judge's considerations to include Guarantor's assets to the bankruptcy estate.

The regulations of the auction have also been analyzed to find out the auction methods used and whether it is effective to sell the bankruptcy estate. The auction used in the study case is the process of auction to sell the Guarantor's assets (decision of the Supreme Court No.OIOIK/N/2002 jo.no.016 PKIN/2002) which surprisingly has taken 5 (five) years to sell it.

Based on the above mentioned backgrounds, this thesis has been titled " Auction as a Method to Sell Bankruptcy Estate: Study Case of the Supreme Court's Decision No.070IKINi2002 jo.no.016 PK4N12002; IBRA (Indonesian Bank Restructuring Agency) against Tafrizal Hasan Gwang, SH (Trustee)" The issues in this thesis are:

- The trustee's authority as a legal representative of the bankruptcy debtor's estate to organize and to sell the estate.
- The auction regulations in Indonesia.
- The problems and solutions to sell bankruptcy estate in Indonesia through auction.

The Trustee has a very large authority to organize and sell the bankruptcy estate_ the open process of the trustee's decision to organize and sell the estate often becomes the problems for the Creditors who consider the process to sell the estate has taken a very long time. In the meantime, the role of the trustee's observer, who is also the chairman of Creditors' meeting, must meet the expectations of both the Creditors and the Trustee. The lack of understanding from the Creditors for bankruptcy laws has decreased the role of the Creditors to make bankruptcy laws become efficient for them, because the Creditor's meeting can drive the chairman of the meeting to replace the trustee or to get information in detail about the trustee's process to sell the estate as regulated in the Bankruptcy Law Act No.37 (2004).

The methods used in the auction also have created problems. For an example, the announcement of the auction in the media (newspapers) is still old fashioned and it does not attract people who have potential to buy the bankruptcy estate. The implementation of an auction should use up-to-date marketing strategies to target the potential buyers and should also use the current technology to make the auction process cheap, quick, and effective.