

# Tumpang Tindih Sita Umum Atas Harta Bersama Berdasarkan Putusan Nomor 9/Pdt.Sus-Pailit/2019/PN.Niaga.Smg Dan Putusan Nomor 22/Pdt.Sus-Pailit/2020/PN.Niaga.Jkt.Pst = Overlap Between General Confiscation of Bankruptcy and Marital Confiscation of Joint Property Arising From Marriage Based On Commercial Court Decision Number 9/Pdt.Sus-Pailit/2019/PN.Niaga.Smg and 22/Pdt.SusPailit/2020/PN.Niaga.Jkt.Pst

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## Abstrak

Sesuai dengan peraturan hukum yang berlaku di Indonesia, kepailitan adalah sita umum terhadap seluruh harta milik debitur pailit. Sita umum hanya dapat diletakkan satu kali diatas satu objek sita. Sita umum juga dapat diletakkan atas benda yang dimiliki bersama-sama dalam persatuan harta bersama perkawinan. Majelis Hakim dalam Putusan Pengadilan Niaga pada Pengadilan Negeri Semarang No. 9/Pdt.Sus-Pailit/2019/PN.Niaga.Smg dan Putusan Pengadilan Niaga pada Pengadilan Negeri Jakarta Pusat No. 22/Pdt.SusPailit/2020/PN. Niaga.Jkt.Pst menjatuhkan putusan pailit terhadap mantan pasangan suami isteri yang masih terikat dalam persatuan harta bersama dalam perkawinan, sehingga kedua putusan pailit tersebut memiliki satu objek sita yang sama. Dalam menanggapi anomali hukum tersebut dilakukan penelitian terhadap (1) pelaksanaan dua putusan pailit pengadilan niaga atas satu objek sita umum yang sama, dan (2) upaya hukum pelaksana putusan pailit terhadap tumpang tindih sita umum dalam satu objek yang sama. metode penelitian hukum yang digunakan dalam penelitian ini adalah Yuridis Normatif dengan tipe penelitian perskriptif. Berdasarkan penelitian yang telah dilakukan telah didapatkan simpulan bahwa (1) berdasarkan prinsip sita persamaan, pelaksanaan putusan pailit No. 22/Pdt.Sus-Pailit/2020/PN.Niaga.Jkt.Pst baru dapat dilakukan setelah berakhirnya kepailitan berdasarkan putusan No. 9/Pdt.Sus-Pailit/2019/PN.Niaga.Smg. (2) kurator dapat mengajukan upaya hukum perlawanan atas sita yang dijatuhkan diatas harta pailitnya. Berdasarkan analisa serta simpulan yang dapat ditarik dari penelitian ini disarankan pembentuk peraturan perundang-undangan lebih merinci mengenai batasan harta kepailitan secara spesifik terhadap jenis-jenis harta yang dimiliki secara bersama-sama dan diakui menurut hukum yang berlaku di Indonesia khususnya mengenai harta bersama dalam perkawinan.

.....According to legal regulations in Indonesia, bankruptcy basically means a general confiscation of all the assets of the bankrupt debtor. General confiscation can only be placed once on one object of confiscation. General confiscation can also be placed on objects that are jointly owned in the union of marital property. The Panel of Judges based on Decision of the Semarang Commercial district Court No. 9/Pdt.Sus-Pailit/2019/PN.Niaga.Smg and the Decision of the Central Jakarta Commercial district Court No. 22/Pdt.Sus- Pailit/2020/PN.Niaga.Jkt.Pst imposes a bankruptcy decision on a former husband and wife who are still bound in the joint property union in marriage, so that the two bankruptcy decisions have the same object of confiscation. In response to the legal anomaly, a reasearch must be conducted on (1) the implementation of two commercial court bankruptcy decisions on the same object of general confiscation, and (2) legal remedies for implementing bankruptcy decisions against overlapping general confiscations in the same object. The legal research method used in this research is normative juridical with the type of

descriptive research. Based on the research that has been done, it has been concluded that (1) based on the principle of confiscation of equality, the implementation of the bankruptcy decision no. 22/Pdt.Sus-Pailit/2020/ PN.Niaga.Jkt.Pst can only be in the end of the bankruptcy based on decision No. 9/Pdt.Sus-Pailit/2019/PN. Niaga.Smg. (2) the curator may file a legal remedy against the confiscation imposed on his bankrupt assets. Based on the analysis and conclusions that can be drawn from this research, it is recommended that the legislators provide more detailed legislation regarding the limitations of bankruptcy assets specifically for the types of assets that are jointly owned and recognized according to applicable law in Indonesia, especially regarding joint property in marriage.