



MEKANISME PENILAIAN *GOING CONCERN* DAN EKSEKUSI HAK MEREK DALAM KEPAILITAN DI INDONESIA

Oleh

Bella Rhezi¹ dan M.Hawin²

INTISARI

Penelitian ini bertujuan untuk mengetahui dan menganalisis mekanisme penerapan asas kelangsungan usaha (*going concern*) terhadap debitur pailit yang memiliki harta pailit berupa hak merek, serta kendala dan kendala yang dihadapi kurator dalam melakukan eksekusi aset hak merek berdasarkan hukum kepailitan di Indonesia.

Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundang-undangan, pendekatan analitis, dan pendekatan kasus. Bahan hukum yang digunakan meliputi bahan hukum primer berupa peraturan perundang-undangan dan putusan pengadilan, serta bahan hukum sekunder dan tersier yang mendukung argumentasi hukum secara sistematis.

Berdasarkan hasil penelitian, diketahui bahwa meskipun debitur dinyatakan pailit, asas *going concern* dapat tetap berlaku selama debitur masih memiliki kemampuan ekonomi dan prospek usaha untuk melanjutkan kegiatan operasionalnya. Hak merek sebagai aset tidak berwujud memiliki nilai ekonomi yang signifikan dan dapat digunakan untuk melunasi kewajiban kepada kreditur melalui mekanisme eksekusi oleh kurator. Namun demikian, dalam praktiknya, kurator menghadapi sejumlah kendala seperti belum optimalnya pengakuan hukum terhadap nilai ekonomis merek, keterbatasan prosedur valuasi, serta lemahnya regulasi teknis eksekusi atas aset kekayaan intelektual. Diperlukan penguatan payung hukum dan pedoman pelaksanaan yang lebih rinci guna menjamin efektivitas pelaksanaan eksekusi hak merek dalam kepailitan tanpa mengesampingkan prinsip *going concern*.

Kata Kunci: Kepailitan, *Going Concern*, Hak Merek, Eksekusi, Kurator

¹ Mahasiswa Magister Hukum Bisnis dan Kenegaraan, Fakultas Hukum Universitas Gadjah Mada

² Dosen Fakultas Hukum Universitas Gadjah Mada Yogyakarta.



GOING CONCERN MECHANISM AND TRADEMARK EXECUTION IN BANKRUPTCY IN INDONESIA

By
Bella Rhezi¹ and M.Hawin²

ABSTRACT

This research aims to examine and analyze the application mechanism of the going concern principle to bankrupt debtors who possess bankruptcy assets in the form of trademark rights, as well as the obstacles and challenges faced by bankruptcy trustees in executing trademark assets under Indonesian bankruptcy law.

This study is a normative legal research employing statutory, analytical, and case-based approaches. The legal materials used include primary legal sources in the form of legislation and court decisions, along with secondary and tertiary legal materials that systematically support legal arguments.

Based on the findings, it is evident that although a debtor is declared bankrupt, the going concern principle may still apply as long as the debtor retains economic capability and business prospects to continue its operations. Trademark rights, as intangible assets, hold substantial economic value and can be utilized to settle obligations to creditors through execution by the trustee. However, in practice, trustees face several challenges, such as the suboptimal legal recognition of the economic value of trademarks, limited valuation procedures, and weak technical regulations concerning the execution of intellectual property assets. There is a need to strengthen the legal framework and develop more detailed implementation guidelines to ensure the effective execution of trademark rights in bankruptcy proceedings without disregarding the going concern principle.

Keywords: *Bankruptcy, Going Concern, Trademark Rights, Execution, Trustee.*

¹ Student of Magister of Business Law and State Law, Law Faculty, Gadjah Mada University

² Lecturer of Law Faculty at Universitas Gadjah Mada