

INTISARI

KEDUDUKAN HUKUM PRINSIP *GOING CONCERN* UNTUK OPTIMALISASI HARTA PAILIT STUDI PUTUSAN PENGADILAN NIAGA JAKARTA PUSAT NOMOR 153/PDT.SUS-PKPU/2020/PN NIAGA.JKT.PST jo. PUTUSAN MAHKAMAH AGUNG NOMOR 1434 K/PDT.SUS-PAILIT/2020

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Penelitian ini bertujuan untuk menganalisis kedudukan hukum prinsip *going concern* atau kelangsungan usaha dalam upaya optimalisasi harta pailit menurut UU No. 37 Tahun 2004 (UUK PKPU) dan untuk mengkaji pertimbangan hukum hakim dalam menerapkan prinsip *going concern* pada studi kasus Putusan PN Jakarta Pusat Nomor 153/Pdt.Sus-PKPU/2020/PN Niaga.Jkt.Pst jo. Putusan MA Nomor 1434 K/Pdt.Sus-Pailit/2020. Sifat Penelitian ini merupakan penelitian hukum normatif yang didukung dengan wawancara narasumber dengan menggunakan penelitian jenis kepustakaan dan data sekunder yang bersumber dari bahan hukum primer, sekunder, dan tersier. Cara pengumpulan data penelitian dilakukan dengan metode dokumentasi dan wawancara, sedangkan alat pengumpulan data penelitian yaitu studi kepustakaan. Narasumber dalam wawancara penelitian ini adalah Kurator. Analisis data dilakukan secara kualitatif.

Hasil penelitian dan pembahasan menunjukkan bahwa prinsip *going concern* memiliki legitimasi normatif dalam UUK PKPU, antara lain pada Pasal 104, Pasal 179 ayat (1), Pasal 181 ayat (1) dan (2), serta Pasal 184 ayat (1) dan (2). Prinsip ini berfungsi sebagai instrumen untuk mengoptimalkan harta pailit, dengan mencegah likuidasi total dan mempertahankan aset tidak berwujud yang bernilai ekonomi. Implementasinya menghadapi kendala, antara lain ketiadaan standar perilaku dan akuntabilitas yang jelas bagi Kurator, terbatasnya perlindungan hukum bagi Kurator, keterbatasan kompetensi Hakim Pengawas di bidang bisnis, dan belum ada ketentuan mengenai jangka waktu pelaksanaan *going concern*. Putusan PN dan MA dalam perkara PT PAL memperlihatkan perbedaan paradigma dimana PN menekankan efisiensi ekonomi dengan mengesahkan perdamaian, sedangkan MA membatalkannya dengan alasan prosedural, khususnya terkait hak suara Kreditor Separatis sebagaimana diatur dalam Pasal 280 jo. Pasal 281 UUK PKPU.

Kesimpulan penelitian ini: (1) prinsip *going concern* memiliki kedudukan hukum yang sah dan mampu mengoptimalkan nilai harta pailit, tetapi kekosongan normatif dalam UUK PKPU menimbulkan ketidakpastian hukum dalam implementasinya, (2) pertimbangan hukum hakim dalam Putusan PT PAL menunjukkan adanya perbedaan antara paradigma efisiensi ekonomi PN dan penegakan kepastian hukum oleh MA. Hal ini menunjukkan bahwa kepastian hukum tetap menjadi syarat sahnya penerapan *going concern*. Saran penelitian ini yaitu: (1) revisi UUK PKPU dengan mengatur standar perilaku dan perlindungan hukum Kurator, pengawasan *going concern* oleh Hakim Pengawas dan kementerian hukum, dan pengaturan mekanisme penghentian *going concern* (2) mekanisme pemungutan suara dalam rencana perdamaian perlu diatur lebih rinci untuk memastikan partisipasi yang adil bagi seluruh kreditor.

Kata Kunci: Kepailitan, *Going Concern*, Optimalisasi Harta Pailit, Pertimbangan Hukum Hakim, Kepastian Hukum.

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ABSTRACT

LEGAL STATUS OF THE *GOING CONCERN* PRINCIPLE FOR OPTIMIZATION OF BANKRUPTCY ASSETS: A STUDY OF THE CENTRAL JAKARTA COMMERCIAL COURT DECISION NUMBER 153/PDT.SUS-PKPU/2020/PN NIAGA.JKT.PST *jo.* SUPREME COURT DECISION NUMBER 1434 K/PDT.SUS-PAILIT/2020

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This study aims to analyze the legal position of the going concern principle in optimizing bankruptcy assets under the law number 37 of 2004 (UUK PKPU) and to examine the legal considerations of judges in applying the going concern principle in the case study of Central Jakarta District Court Decision Number 153/Pdt.Sus-PKPU/2020/PN Niaga. Jkt.Pst jo. Supreme Court Decision Number 1434 K/Pdt.Sus-Pailit/2020. This research is normative legal research supported by interviews with sources using literature research and secondary data sourced from primary, secondary, and tertiary legal materials. Data was collected through documentation and interviews, while the data collection toll was literature study. The source interviewed in this research was a receiver. Data analysis was conducted qualitatively.

The results of the research and discussion show that the going concern principle has normative legitimacy in the UUK PKPU, including in Article 104, Article 179 paragraph (1), Article 181 paragraphs (1) and (2), and Article 184 paragraphs (1) and (2). This principle serves to optimize bankruptcy assets by preventing total liquidation and maintaining intangible assets of economic value. Its implementation faces obstacles, including the absence of clear standards of conduct and accountability for receiver, limited legal protection for receivers, the limited competence of Supervisory Judges in business, and the absence of provisions regarding the duration of the going concern. The District Court and the Supreme Court decisions in the PT PAL case show a difference in paradigm, where the District Court emphasized economic efficiency by approving the settlement, while the Supreme Court rejected it on procedural grounds related to the voting rights of Separate Creditors under Article 280 in conjunction with Article 281 of the UUK PKPU.

This study concludes that: (1) the going concern principle has legal validity and is capable of optimizing the value of bankruptcy assets, but the normative vacuum in the UUK PKPU Law causes legal uncertainty in its implementation, (2) the legal considerations of the judges in the PT PAL Decision show a difference between the District Court's economic efficiency paradigm and the Supreme Court's enforcement of legal certainty. This indicates that legal certainty remains a prerequisite for the valid application of going concern. This study recommends: (1) revision of the UUK PKPU by regulating standards study of conduct and legal protection for receivers, supervision of going concern by Supervisory Judges and the Ministry of Law, and regulation of the mechanism for terminating going concern (2) the voting mechanism in the settlement plan needs to be regulated in more detail to ensure fair participation for all creditors.

Keywords: Bankruptcy, Going Concern, Optimization of Bankruptcy Assets, Judicial Considerations, Legal Certainty.

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