KEPASTIAN HUKUM *CROSS COLLATERAL* DALAM KEPAILITAN: ANALISIS PENIADAAN ASAS *PARI PASSU PRO RATA PARTE* BERDASARKAN PUTUSAN MA NO 1287K/PDT-SUS-PAILIT/ 2017

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INTISARI

Penelitian ini bertujuan untuk mengkaji peniadaan asas hukum kepailian, khusunya asas *pari passu pro rata parte* yang ditiadakan dengan perjumpaan utang atau kompensasi utang yang termuat pada putusan MA No 1287K/Pdt-Sus-Pailit/ 2017 menyatakan keberatan berdasarkan Pasal 52 ayat (2) UU Nomor 37 Tahun 2004. Penelitian berfokus dalam memahami bagaimana Putusan MA memperlakukan klausula *cross collateral* sebagai instrumen sah yang meniadakan pembayaran berdasarkan asas *pari passu pro rata parte* sebagai kreditur konkuren serta menjelaskan kedudukan hukum kurator dan kreditur atas perjumpaan utang atau kompensasi yang terjadi selama poses kepailitan.

Penelitian ini dilakukan dengan metode hukum normative, menggunakan pendekatan konseptual, pendekatan kasus dan pendekatan perundang-undangan. Sumber data penelitian ini adalah data skeunder berupa bahan hukum primer yaitu putusan MA No 1287K/Pdt-Sus-Pailit/ 2017 dan UU Kepailitan dan PKPU, serta bahan hukum sekunder yang relavan dengan topik penelitian. Data yang dikumpulkan akan dianalisi secara kualitatif, analisis yang mengindetifikasi tema, atau kerangka pemahaman dari data yang terpilih.

Hasil penelitian menunjukan bahwa Mahkamah Agung mempertegas tindakan kurator yang melakukan perjumpaan utang atau kompensasi, yang secara subtansial meniadakan tagihan kreditur konkuren berdasarkan asas *pari passu pro rata part*. Perjumpaan utang atau kompensasi terjadi akibat dari pelunasan kewajiban melalui mekanisme mekanisme eksekusi jamminan berdasarkan klausula *cross colaterall,* perjanjian yang disepakati sebelum putusan pernyataan pailit dijatuhkan. Kompensasi atau perjumpaan utang dianggap sah berdasarkan pasal 51 ayat (1) UU Kepailitan dan PKPU meskupun eksekusi perjumpaan terjadi dalam proses kepailitan.

Kata kunci: Kepailitan, Perjumpaan Atau Kompensasi, Jaminan Cross Collateral, Asas Pari Passu Pro Rata Parte

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LEGAL CERTAINTY OF CROSS COLLATERAL IN BANKRUPTCY: AN ANALYSIS OF THE ELIMINATION OF THE PARI PASSU PRO RATA PARTE PRINCIPLE BASED ON MAJOR COURT DECISION NO. 1287K/PDT-SUS-PAILIT/2017

ABSTRACT

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This study aims to examine the elimination of bankruptcy legal principles, specifically the pari passu pro rata parte principle, which is eliminated through set-off or debt compensation. The applicant in MA Decision No. 1287K/Pdt-Sus-Pailit/2017 filed an objection based on Article 52 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (Bankruptcy and PKPU) in the context of set-off arising from the settlement of cross-collateral agreements. This research focuses on understanding how the Supreme Court Decision treats cross-collateral agreements as instruments that eliminate payments based on the pari passu pro rata parte principle for concurrent creditors. It also explains the legal standing of curators and creditors regarding set-offs or compensation arising during bankruptcy proceedings.

This research was conducted using a normative legal method, utilizing conceptual, case-based, and statutory approaches. The data sources for this research are secondary data in the form of primary legal materials, such as Supreme Court Decision No. 1287K/Pdt-Sus-Pailit/2017 and the Bankruptcy and PKPU Law, as well as secondary legal materials relevant to the research topic. The collected data will be analyzed qualitatively, identifying themes or frameworks for understanding the selected data.

The results show that the Supreme Court affirmed the curator's actions in conducting set-offs or compensation, which substantially eliminate the claims of concurrent creditors. Set-off or compensation occurs as a result of the settlement of a cross-collateral agreement, an agreement reached before the bankruptcy declaration decision is issued. Compensation or set-off is considered valid under Article 51 paragraph (1) of the Bankruptcy and PKPU Law, even if the execution of the set-off occurs during the bankruptcy process.

Keywords: Bankruptcy, Set-Off Or Compensation, Cross-Collateral Agreement, Pari Passu Pro Rata Parte Principle

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