

KEPASTIAN HUKUM TERHADAP KREDITOR DALAM HAL TERJADINYA SITA PIDANA TERHADAP KEPAILITAN (STUDI PUTUSAN NOMOR 11/PDT.SUS-GUGATANLAIN-LAIN/2018/PN.JKT.PST)

INTISARI

Oleh:

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Penelitian ini bertujuan untuk mengetahui kedudukan benda sita kepailitan terhadap sita pidana. Selain itu, pada penelitian ini juga menganalisis kepastian hukum kepada kreditor dalam hal sita kepailitan terhadap sita umum setelah adanya Putusan Nomor 11/Pdt.Sus-GugatanLainLain/2018/PN.Jkt.Pst

Penelitian ini merupakan penelitian hukum normatif. Sumber data utama adalah data sekunder, yang berasal dari bahan hukum primer, sekunder dan tersier. Cara penelitian dilakukan dengan metode dokumentasi, sedangkan alatnya adalah studi dokumen. Data dianalisis dengan menggunakan analisis kualitatif.

Hasil penelitian dan pembahasan menunjukkan bahwa intisari dari hukum kepailitan adalah sita umum atas seluruh kekayaan debitor. Putusan pernyataan pailit berakibat segala penetapan pelaksanaan pengadilan terhadap bagian dari harta kekayaan debitor yang telah dimulai sejak kepailitan harus dihentikan seketika. Putusan pengadilan hanya dapat dibatalkan dengan putusan pengadilan juga. Sita umum kepailitan baru dapat terjadi ketika majelis hakim memutus pailit. Sedangkan sita pidana hanya bersifat penetapan, sehingga, penetapan sita pidana tidak dapat menghapuskan putusan majelis hakim pengadilan niaga. Pasal 31 UU KPKPU yang menyebutkan mengenai semua sita diangkat sejak diucapkan kepailitan seorang debitor merupakan peraturan baru dan peraturan yang khusus dibandingkan peraturan sita pidana yang terdapat dalam Pasal 39 ayat (2) KUHAP. Kesimpulan dalam penelitian ini bahwa kedudukan sita kepailitan terhadap sita pidana sama-sama diatur dan dilindungi oleh Hukum dan Putusan Nomor 11/Pdt.Sus-GugatanLainLain/2018/PN.Jkt.Pst telah memberikan kepastian hukum kepada kreditor. Oleh karena itu disarankan perlunya Penegak Hukum, baik Kepolisian, Jaksa maupun Hakim harus memahami bahwa kedudukan Sita umum kepailitan terhadap sita pidana haruslah mempertimbangkan kepentingan Negera dan keadilan hak kreditor terpenuhi dan tidak terdapat pelanggaran hak lagi, dan perlunya Majelis Hakim pada Putusan Pidana dalam memberikan amar putusan penyitaan terhadap harta terdakwa yang berkaitan pihak ketiga harus mempertimbangkan kepentingan para kreditor dalam menentukan status dari barang bukti yang disita

Kata Kunci: Kepastian Hukum, Kreditor, Sita Pidana, Kepailitan.

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**LEGAL CERTAINTY FOR CREDITORS IN THE EVENT OF CRIMINAL
CONFISCATION FOR REASON OF BANKRUPTCY (CASE STUDY
NUMBER 11/PDT.SUS-GUGATAN LAIN-LAIN/2018/PN.JKT.PST)**

ABSTRACT

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This study was intended to learn about and analyse: the position of bankruptcy confiscation over that of criminal confiscation; and legal certainty for creditors in the event that bankruptcy confiscation takes precedence over the general confiscation upon the passing of Decision Number 11/Pdt.Sus-GugatanLainLain/2018/PN.Jkt.Pst. It was a normative legal research. The key data source was secondary data which was derived from primary, secondary and tertiary legal materials. This study was conducted by using method of documentation where the tools used were documents. Interviews with the resource people were made by using guidelines for an interview. The data was analysed in a qualitative manner.

The results of the study and discussion indicate that the main point of the Bankruptcy Law is the general confiscation of all assets of the Debtor. The court decision concerning bankruptcy has resulted in that all court stipulations of the execution of any part of the assets of the Debtor which have been commenced as from the occurrence of the bankruptcy must be immediately cancelled. The court decision can only be cancelled by a court decision. The general confiscation of bankruptcy can be incurred when the Panel of Judges passes a court award concerning bankruptcy, while the criminal confiscation is in the form of court stipulation only. Therefore, the court stipulation of the criminal confiscation cannot eliminate the award of the Panel of Judges of the Commercial Court. Article 31 of Law concerning Bankruptcy and Suspension of *Debt Payment Obligation* (UU KPKPU) stating that all confiscations shall be executed upon passing the judgment of bankruptcy of a debtor is a new regulation and it is a special regulation if compared to the regulation concerning criminal confiscation as contained in Article 39 paragraph (2) of the Indonesian Criminal Procedural Code (KUHP).

Based on the results of the study and discussion, it is concluded that: The seizure status of bankruptcy against criminal seizure is equally regulated and protected by the Law; and Decision Number 11/Pdt.Sus-GugatanLainLain/2018/PN.Jkt.Pst has given legal certainty for creditors. Therefore, it is recommended that: (1) Law Enforcement, either police, prosecutors and judges, must understand that the General Confiscation of Bankruptcy takes precedence over the Criminal Confiscation, and (2) the Panel of Judges, in a Criminal Decision, in passing a judgment concerning the confiscation of assets of the Defendant in relation to any third party must consider the interests of the creditors in determining the status of confiscated goods as evidence.

Keywords: Legal Certainty, Creditors, Criminal Confiscation and Bankruptcy.

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