

KAJIAN TENTANG PENGUASAAN HARTA PAILIT BERUPA BENDA GADAI OLEH KURATOR DALAM KAITANNYA DENGAN KONSEP GADAI

Oleh:
Bobtian Sijabat¹ dan Tata Wijayanta²

INTISARI

Tujuan penelitian ini adalah untuk mengetahui dan menganalisis (1) Alasan pertentangan ketentuan penguasaan harta pailit berupa benda gadai oleh kurator berdasarkan Pasal 59 ayat (2) Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (UU KPKPU) dengan konsep gadai berdasarkan Pasal 1152 Kitab Undang-Undang Hukum Perdata (KUHPerdata), (2) Solusi yang dapat digunakan atas terjadinya pertentangan antara kedua ketentuan tersebut. Penelitian ini merupakan penelitian hukum normatif yang didukung wawancara narasumber. Penelitian hukum normatif dilakukan dengan penelitian kepustakaan dengan menelusuri data sekunder berupa bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier, dengan metode dokumentasi dan alat berupa studi dokumen. Wawancara dilakukan terhadap narasumber dengan alat berupa pedoman wawancara. Analisis data menggunakan analisis kualitatif.

Hasil penelitian dan pembahasan menunjukkan bahwa ketentuan penguasaan harta pailit berupa benda gadai oleh kurator berdasarkan Pasal 59 ayat (2) UU KPKPU bertentangan dengan konsep gadai berdasarkan Pasal 1152 KUHPerdata, karena penguasaan benda gadai oleh kurator melanggar hak kreditor pemegang gadai untuk menguasai dan menahan benda gadai, serta berakibat pada hapusnya hak gadai. Solusi yang dapat digunakan atas terjadinya pertentangan antara kedua ketentuan tersebut adalah dengan menerapkan asas *lex specialis derogat legi generali*, bahwa ketentuan Pasal 59 ayat (2) UU KPKPU merupakan ketentuan yang bersifat khusus dari ketentuan Pasal 1152 KUHPerdata, dan menerapkan asas keadilan, bahwa penguasaan benda gadai oleh kurator tidak mengurangi hak kreditor pemegang gadai untuk memperoleh pelunasan seluruh piutangnya secara proporsional.

Berdasarkan hasil penelitian dan pembahasan tersebut dapat disimpulkan bahwa (1) Penguasaan benda gadai oleh kurator melanggar hak kreditor pemegang gadai untuk menguasai dan menahan benda gadai, serta berakibat pada hapusnya hak gadai, (2) Solusi yang dapat digunakan adalah dengan menerapkan asas *lex specialis derogat legi generali* dan asas keadilan. Saran yang dapat diberikan yaitu (1) Kreditor pemegang gadai dalam hal kepailitan harus melaksanakan ketentuan UU KPKPU terkait pelaksanaan hak eksekusi kreditor pemegang gadai, (2) Kreditor pemegang gadai harus melepaskan atau menyerahkan benda gadai kepada kurator apabila tidak melaksanakan hak eksekusinya dalam jangka waktu dua bulan terhitung sejak dimulainya keadaan insolvensi.

Kata Kunci: Harta Pailit, Gadai, Kurator.

¹ Mahasiswa Magister Hukum Bisnis, Fakultas Hukum, Universitas Gadjah Mada, Yogyakarta (bobtiansijabat@yahoo.com).

² Dosen Hukum Bisnis, Fakultas Hukum, Universitas Gadjah Mada, Yogyakarta (wijayanta@mail.ugm.ac.id).

**A STUDY OF THE CONTROL OF INSOLVENT ASSETS IN THE FORM OF
PAWNEED GOODS BY CURATOR IN RELATION
TO THE CONCEPT OF PAWN**

By:

Bobtian Sijabat³ and Tata Wijayanta⁴

ABSTRACT

The research aims to reveal and analyze (1) reasons for the contradictory provisions for the control of insolvent assets in the form of pawned goods by the curator based on Article 59 paragraph (2) of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligation (Bankruptcy Law) with the concept of pawn based on Article 1152 of the Civil Code, (2) Solutions that can be adopted for the contradiction between the two provisions. This research is a normative legal research supported by interviews with resource persons. The normative legal research was conducted through library research by tracing secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials, which was conducted using documentation methods and instrument in the form of document studies. Interviews were conducted with resource persons using interview guidelines. Data were analyzed using qualitative analysis.

The results of the research and discussion indicated that the provisions on the control of insolvent assets in the form of pawned goods by the curator based on Article 59 paragraph (2) of the Bankruptcy Law contradicts the concept of pawn based on Article 1152 of the Civil Code because the control of pawned goods by the curator violates the creditor's right as the pawn holder to control and hold the pawned goods and this results in the loss of lien. The solution that can be adopted for the contradiction between the two provisions is by applying the principle of *lex specialis derogat legi generali*, that the provision of Article 59 paragraph (2) of the Bankruptcy Law is a special provision from the provision of Article 1152 of the Civil Code, and applying the principle of justice, that the control of pawned goods by the curator does not reduce the creditor's right as the pawn holder to obtain the payment of all receivables proportionately.

Based on the results of the research and discussion, it can be concluded that (1) the control of pawned goods by the curator violates the creditor's right as the pawn holder to control and hold the pawned goods and this results in the loss of the lien, (2) The solutions that can be adopted is by applying the principle of *lex specialis derogat legi generali* and the principle of justice. It is suggested that (1) the creditor as the pawn holder in the case of bankruptcy should implement the provision of the Bankruptcy Law in relation to the exercise of the execution rights of the creditor as the pawn holder, (2) the creditor as the pawn holder should release or hand over pawned goods to the curator if they do not exercise their right of execution within a period of two months starting from the state of insolvency.

Keywords: Insolvent Assets, Pawn, Curator.

³Student, Master of Business Law, Faculty of Law, Gadjah Mada University, Yogyakarta (bobtiansijabat@yahoo.com).

⁴Faculty Member, Master of Business Law, Faculty of Law, Gadjah Mada University, Yogyakarta (wijayanta@mail.ugm.ac.id).