



PELAKSANAAN HAK EKSEKUSI KREDITOR SEPARATIS DALAM KEPAILITAN

INSTISARI

Oleh:

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Penelitian ini bertujuan untuk mengetahui dan menganalisis pelaksanaan hak eksekusi kreditor separatis dalam perspektif Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (selanjutnya disebut UU Kepailitan dan PKPU), serta penerapan pembatasan jangka waktu pelaksanaan hak eksekusi kreditor separatis berdasarkan Pasal 59 ayat (1) dan (2) UU Kepailitan dan PKPU. Penelitian ini merupakan penelitian hukum normatif. Bahan penelitian yang digunakan, yaitu bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Data dikumpulkan melalui cara metode dokumentasi dengan alat pengumpulan data, yaitu studi dokumentasi. Data yang telah diperoleh tersebut kemudian dianalisis secara kualitatif.

Hasil penelitian menunjukkan bahwa objek jaminan kebendaan yang dipegang oleh kreditor separatis, merupakan bagian dari *boedel* pailit terhitung sejak putusan pernyataan pailit diucapkan, sehingga pelaksanaan eksekusinya tidak terpengaruh proses kepailitan. Kreditor separatis harus menunggu hingga masa penangguhan berakhir atau diakhiri lebih cepat agar dapat melaksanakan hak eksekusinya, dan eksekusi tersebut harus sudah mulai dilaksanakan dalam waktu dua bulan sejak insolvensi. Apabila eksekusi telah selesai, maka kreditor separatis wajib memberikan laporan pertanggungjawaban kepada kurator. Jika terdapat sisa hasil penjualan objek jaminan kebendaan, maka bagian tersebut harus diserahkan kepada kurator untuk dibagikan kepada kreditor lainnya. Penentuan mulainya dan selesainya hak eksekusi kreditor separatis diatur secara tegas dalam UU Kepailitan dan PKPU, namun kapan kreditor separatis dianggap berhenti atau tidak lagi melaksanakan haknya, belum memiliki tolok ukur yang pasti.

Berdasarkan hasil penelitian dan pembahasan, dapat disimpulkan 1) terhitung sejak putusan pernyataan pailit diucapkan, seluruh harta kekayaan debitor termasuk objek jaminan kebendaan yang telah diagunkan secara otomatis menjadi harta pailit sehingga pelaksanaan eksekusinya wajib dilaksanakan dengan mengindahkan UU Kepailitan dan PKPU, dan 2) pembatasan jangka waktu pelaksanaan hak eksekusi kreditor separatis tidak relevan untuk diatur mengingat sudah ada perlindungan terkait pelunasan piutang bagi kreditor preferen dan kreditor konkuren meskipun kepailitan telah berakhir. Oleh karena itu, disarankan penyempurnaan UU Kepailitan dan PKPU dengan mengatur 1) tindakan kreditor separatis yang dianggap berhenti atau tidak lagi melaksanakan haknya, serta 2) mekanisme penetapan dan siapakah yang berhak menetapkan adanya tindakan kreditor separatis yang menyebabkan *unnecessary delay* dimaksud, sehingga pelaksanaan hak eksekusi kreditor separatis mempunyai kepastian hukum dan berkeadilan.

Kata kunci: hak eksekusi, kreditor separatis, kepailitan.

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THE IMPLEMENTATION OF THE RIGHT TO EXECUTE OF THE SEPARATED CREDITORS IN BANKRUPTCY

ABSTRACT

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This study aims to understand and analyze the implementation of the right to execute of the separated creditors from the perspective of Law Number 37 of 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts (hereinafter called Law on Bankruptcy), and the implementation of the time limitation set by Article 59 paragraph (1) and (2) of Law on Bankruptcy. It was normative legal study, using primary, secondary and tertiary materials. The data were collected by documentation method using the document study tools. Data analysis was conducted qualitatively.

The study has found that the collateral rights on the property hold by the separated creditors, are considered as bankruptcy estate at the time of the bankruptcy declaration, so the execution implementation is affected by the process of bankruptcy. The separated creditors have to wait until the stay period is over or brought to an end faster in order to exercise their rights, and must have started to implement the rights within no more than two months since the commencement of insolvency. If the execution has been completed, the separated creditors are required to provide the accountability report to curator. If there is remaining after the sale, the separated creditors should hand it over to the curator to be distributed to other creditors. The beginning and completion of the right to execute are firmly stipulated in the Law on Bankruptcy. However the action of the separated creditors which could be considered as stop or no longer carry out the rights, do not have a definite measurement.

In accordance with the study, it can be concluded that 1) the collateral rights on the property hold by the separated creditors, are considered as bankruptcy estate at the time of the bankruptcy declaration, so the execution must be implemented with regard to the Law on Bankruptcy, and 2) the time limitation of the right to execute is not relevant to be set since there is a mechanism to protect the right of concurrent and preferred creditors though the bankruptcy process has been ended. Therefore, it is necessary to complete the Law on Bankruptcy by setting 1) the actions of the separated creditors which could be considered as stop or no longer carry out the rights, and 2) the mechanism to measure whether there is unnecessary delay in the action of separated creditors, and who entitled to determine whether there is unnecessary delay in the action of separated creditors, so that the implementation of the right to execute of the separated creditors shall have legal certainty and fairness.

Keywords: the right to execute, separated creditors, bankruptcy.

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