

ABSTRAK

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KEPASTIAN HUKUM EKSEKUSI HARTA DEBITOR PAILIT DI LUAR WILAYAH NEGARA REPUBLIK INDONESIA

(x + 110 halaman)

Inti dari persoalan kepailitan adalah sitaan umum (menyeluruh) atas harta kekayaan debitor, dan isu yang berkembang dalam kepailitan lintas batas di Indonesia dan Negara lainnya adalah benturan pelaksanaan putusan pailit dengan yurisdiksi negara lain. Hal tersebut berdampak kepada permasalahan mengenai eksekusi atas harta/aset Debitor Pailit untuk digunakan sebagai pelunasan pembayaran kepada para Kreditor. Rumusan masalah dalam penelitian ini adalah bagaimana penerapan pengaturan eksekusi harta debitor pailit di luar wilayah negara Republik Indonesia? Bagaimana upaya kreditor dalam eksekusi harta debitor pailit di luar wilayah negara Republik Indonesia? Penelitian ini menggunakan metode yuridis normatif. Hasil penelitian menyatakan bahwa pertama penerapan pengaturan eksekusi harta debitor pailit di luar wilayah negara Republik Indonesia tidak memberikan kepastian hukum. Hal tersebut dikarenakan dua faktor, yaitu pada elemen substansi, Undang-Undang Kepailitan di Indonesia tidak mengenal kepailitan lintas batas negara (*cross border insolvency*). Selain itu, meskipun Indonesia masuk sebagai anggota dari UNCITRAL, namun Indonesia belum menerapkan Model Law dalam hukum kepailitannya. Pada elemen struktur, Pemerintah Indonesia belum ada perjanjian kerjasama dengan negara terkait dengan kepailitan. Kedua, upaya kreditor dalam eksekusi harta debitor pailit di luar wilayah negara Republik Indonesia dilakukan secara preventif melalui melalui pelunasan sepihak oleh seorang kreditor atas beban harta pailit dengan berdasarkan Pasal 212 Undang-Undang Kepailitan. Upaya kedua secara represif dengan berdasarkan putusan Pengadilan Niaga yang telah ditetapkan oleh Hakim di Indonesia dapat dijadikan dasar untuk mengajukan pailit di tempat kedudukan debitor maupun di tempat perusahaan debitor beroperasi selama memenuhi persyaratan ketentuan hukum kepailitan setempat.

Kata Kunci: Kepastian Hukum, Pailit, Luar Wilayah Negara Republik Indonesia

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ABSTRACT

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LEGAL CERTAINTY ON THE ENFORCEMENT OF ASSETS OF A BANKRUPT DEBTOR OUTSIDE THE TERRITORY OF THE REPUBLIC OF INDONESIA

(xi + 110 pages)

The essence of the bankruptcy issue is the general (comprehensive) confiscation of the debtor's assets, and the issue that is developing in cross-border bankruptcy in Indonesia and other countries is the conflict between the implementation of bankruptcy decisions and the jurisdictions of other countries. This has an impact on problems regarding the execution of the Bankrupt Debtor's assets/assets to be used as settlement of payments to Creditors. The formulation of the problem in this study is how is the implementation of the execution arrangements for the assets of bankrupt debtors outside the territory of the Republic of Indonesia? What are the efforts of creditors in executing bankrupt debtor assets outside the territory of the Republic of Indonesia? This study uses a normative juridical method. The results of the study state that first, the application of arrangements for executing bankrupt debtors' assets outside the territory of the Republic of Indonesia does not provide legal certainty. This is due to two factors, namely the element of substance, the Bankruptcy Law in Indonesia does not recognize cross-border insolvency. In addition, even though Indonesia is a member of UNCITRAL, Indonesia has not yet implemented the Model Law in its bankruptcy law. In terms of structural elements, the Government of Indonesia has not yet entered into a cooperation agreement with other countries related to bankruptcy. Second, creditors' efforts to execute bankrupt debtor assets outside the territory of the Republic of Indonesia are carried out preventively through unilateral repayment by a creditor of the burden on bankrupt assets based on Article 212 of the Bankruptcy Law. The second repressive measure based on a Commercial Court decision that has been determined by a judge in Indonesia can be used as a basis for filing for bankruptcy at the place of domicile of the debtor or where the debtor's company operates as long as it meets the requirements of local bankruptcy laws.

Keyword: Legal Certainty, Bankruptcy, Outside the Territory of the Republic of Indonesia

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