

ABSTRAK

Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban pembayaran Utang mengatur mengenai kepailitan dan segala akibat hukumnya. Salah-satunya berkaitan dengan hak eksekusi dan kedudukan daripada kreditur yang memegang hak jaminan kebendaan terhadap asset harta pailit. Ternyata dalam prakteknya membawa sejumlah permasalahan sebagaimana dalam kasus pailit PT Griya Pena Mas yang asset harta pailit berupa sertifikat hotel menjadi jaminan pada PT. CIMB Niaga. Pada saat PT Griya Pena Mas dinyatakan pailit, bank CIMB Niaga yang berkedudukan sebagai kreditor separatis tidak menyerahkan jaminan tersebut kepada kurator. Oleh karena itu, skripsi ini membahas apakah perbuatan bank CIMB Niaga yang tidak menyerahkan asset harta pailit tersebut dapat dikategorikan sebagai tindak pidana penggelapan menurut hukum yang berlaku di Indonesia. Penelitian ini menggunakan tipe penelitian yuridis normatif sesuai dengan karakteristik ilmu hukum. Bahan hukum yang digunakan meliputi bahan hukum primer yang sifatnya mengikat yakni peraturan perundnag-undangan dan bahan hukum sukender. Hasil penelitian ini menunjukkan bahwa Perbuatan PT. Bank CIMB Niaga yang tidak menyerahkan jaminan kepada kurator adalah tidak memenuhi unsur-unsur tindak pidana penggelapan Pasal 372 KUHP dan PT. Bank CIMB Niaga memegang sertifikat hotel yang dijamin dengan hak tanggungan secara sah dan tidak melawan hukum. PT. Bank CIMB Niaga dalam kepailitan debitor Herry Shio berkedudukan sebagai kreditor separatis dan memiliki hak privilege sebagaimana diatur dalam Pasal 1134 KUH Perdata dan Pasal 55 UUK. Saran dalam penelitian ini adalah agar UUK segera direvisi karena telah terjadi tumpang tindih yang terdapat dalam Pasal 55 ayat (1) dengan Pasal 56 ayat (1) UUK.

Kata Kunci : Tindak Pidana Penggelapan, Kepailitan, Kreditor Separatis

ABSTRACT

UU No. 37 of year 2004 regarding Bankruptcy and Suspension of Debt payments concerning bankruptcy and all legal consequences. One of them relates to the right of execution and position rather than the creditor who holds the right of collateral property asset of the bankruptcy estate. It turns out in the practice that cause number of problems, as in the case of bankruptcy PT Griya Pena Mas which their assets of the bankruptcy estate in the form of a certificate hotels which has been assured to PT. CIMB Niaga. At the time of PT Griya Mas Pena has been declared bankrupt by the commercial court, CIMB Niaga Bank as the separatist creditor did not hand over the particular guarantee to the curator. Therefore, this paper discusses whether CIMB Niaga Bank's action that did not hand over the bankruptcy estate assets can be categorized as a crime of embezzlement under applicable law in Indonesia. The research method used is the normative juridical which compatible with the characteristics of law. Legal materials used include primary materials that bond which is the rules and regulations also secondary legal material law. The results of this research shows that the actions of PT. Bank CIMB Niaga who did not hand over the particular guarantee to the curator guarantee is not fulfilled the elements of fraud offenses which has been written in Article 372 of the Criminal Code and PT. Bank CIMB Niaga holds the particular certificate with encumbrance right legally and not against the law. PT. Bank CIMB Niaga in bankruptcy of the debtors Herry Shio which is PT. Bank CIMB Niaga as the separatist creditor and have the privilege right as it has been written in Article 1134 Civil Code and Article 55 of the Bankruptcy and Suspension of Debt payments concerning bankruptcy and all legal consequences. As a suggestion in this research is that the law Bankruptcy and Suspension of Debt payments concerning bankruptcy and all legal consequences must be revised because there has been overlap contained in Article 55 paragraph (1) with Article 56 paragraph (1) of Bankruptcy and Suspension of Debt payments concerning bankruptcy and all legal consequences.

Keywords: Crime of Embezzlement, Bankruptcy, Creditor Separatist