

ABSTRACT

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THE LEGAL CERTAINTY OF THE RIGHTS OF SECURED CREDITORS HOLDING MORTGAGE SECURITY IN THE RESOLUTION OF AUCTION EXECUTION DURING BANKRUPTCY PROCEEDINGS

*This study aims to analyze and evaluate the legal considerations in the Supreme Court of the Republic of Indonesia's (MARI) Decision No. 1/K/Pdt.Sus-Pailit/2020 regarding the cassation appeal filed by PT Perusahaan Pengelolaan Aset (PT PPA) against the objection to the asset distribution list prepared by the curator in the bankruptcy proceedings of PT Kertas Leces (Persero). The primary focus of this research is on the execution rights of a secured creditor, which were deemed to have exceeded the two-month period as stipulated in Article 59 paragraph (1) of Law No. 37 of 2004 on Bankruptcy and Suspension of Debt Payment (UU KPKPU), as well as the normative conflict between Article 59 paragraph (1) of UU KPKPU and Article 20 paragraph (1) of Law No. 4 of 1996 on Mortgage (UU HT) concerning the time limit for the execution of mortgage rights. The research employs a normative juridical approach utilizing case analysis and statutory approach. The data utilized includes court decisions, legal literature, and other relevant documents. The findings reveal that the judicature in the facti court erred in stating that PT PPA's execution surpassed the two-month period from the commencement of insolvency. MARI upheld PT PPA's cassation, interpreting that the submission of the auction application within two months complies with the legal provisions. A normative conflict arises as the UU HT grants an execution right without a time limit, while UU KPKPU imposes a restriction on the execution by secured creditors during insolvency. The judicature in the juris court affirmed that the execution right is considered to have commenced when the auction application is filed, rather than when the auction itself takes place. The conflict of norms between UU KPKPU and UU HT must be resolved based on the principle of *lex specialis derogat legi generali*, prioritizing the specific provisions under UU KPKPU.*

Keywords: UU KPKPU, UU HT, secured creditors, legal certainty.

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KEPASTIAN HUKUM HAK KREDITOR PEMEGANG JAMINAN HAK TANGGUNGAN TERHADAP PENYELESAIAN EKSEKUSI LELANG DALAM PROSES KEPAILITAN

Penelitian ini bertujuan menganalisis dan mengevaluasi pertimbangan hukum dalam putusan Mahkamah Agung Republik Indonesia (MARI) No. 1/K/Pdt.Sus-Pailit/2020 terkait upaya kasasi PT Perusahaan Pengelolaan Aset (PT PPA) atas keberatan terhadap daftar pembagian aset yang dibuat oleh kurator dalam proses kepailitan PT Kertas Leces (Persero). Fokus utamanya adalah pelaksanaan hak eksekusi oleh kreditur separatis, yang dianggap melampaui batas waktu dua bulan sesuai Pasal 59 ayat (1) UU 37/2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (UU KPKPU), serta konflik norma antara Pasal 59 ayat (1) UU KPKPU dan Pasal 20 ayat (1) UU 4/1996 tentang Hak Tanggungan (UU HT) terkait batas waktu eksekusi hak tanggungan. Metode penelitian ini menggunakan pendekatan yuridis normatif dengan analisis kasus dan perundang-undangan. Data yang digunakan mencakup putusan pengadilan, literatur hukum, dan dokumen terkait lainnya. Hasil penelitian menunjukkan bahwa *judex factie* keliru dengan menyatakan eksekusi PT PPA melewati batas waktu dua bulan sejak masa insolvensi. MARI membenarkan kasasi PT PPA, menafsirkan bahwa permohonan lelang dalam waktu dua bulan sudah memenuhi ketentuan hukum. Konflik norma muncul karena UU HT memberikan hak eksekusi tanpa batas waktu, sedangkan UUK-PKPU membatasi eksekusi kreditur separatis selama masa insolvensi. *Judex juris* MARI menegaskan bahwa hak eksekusi dianggap dimulai saat permohonan lelang diajukan, bukan saat lelang terlaksana. Konflik norma antara UU KPKPU dan UU HT harus diselesaikan berdasarkan prinsip *lex specialis derogat legi generali*, dengan mengutamakan ketentuan khusus UU KPKPU.

Kata kunci: UU KPKPU, UU HT, kreditur separatis, kepastian hukum