

RINGKASAN

PARAMITA AYU WIDAYANTI, Program Studi Magister Kenotariatan, Fakultas Hukum, Universitas Jenderal Soedirman Purwokerto, Penerapan Pasal 59 Undang-Undang Nomor 37 Tahun 2004 Tentang Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Pada Eksekusi Hak Tanggungan Dalam Kepailitan. (Studi Putusan PN No. 12/Pdt.Sus-Gugatan Lain-lain/2020/PN Niaga.Jkt.Pst juncto Putusan MA No. 521 K/Pdt.Sus-Pailit/2021). Komisi Pembimbing Ketua: Prof. Tri Lisiani Prihatinah, S.H.,M.A.,Ph.D, anggota: Dr. Rahadi Wasi Bintoro, S.H.,M.H.

Kepailitan Debitor berdampak langsung kepada Objek Jaminan Hak Tanggungan yang telah dijamin oleh Debitor kepada Kreditor pemegang hak tanggungan. Gugatan di Pengadilan Niaga Jakarta Pusat atas objek Hak Tanggungan agar dikeluarkan dari Asset/Harta Kekayaan (boedel) pailit diputuskan ditolak dalam Putusan Nomor 12/Pdt.Sus-Gugatan Lain-lain/2020/PN Niaga Jkt.Pst. Selanjutnya dalam Putusan Mahkamah Agung Republik Indonesia Nomor 521 K/Pdt.Sus-Pailit/2021 diputuskan Menyatakan objek jaminan Hak Tanggungan dikeluarkan dari Asset/Harta Kekayaan (boedel) pailit. Menyatakan bahwa penjualan dimuka umum melalui perantara Kantor Pelayanan Kekayaan Negara dan Lelang Jakarta II terhadap objek jaminan Hak Tanggungan adalah sah secara hukum. Metode Penelitian: Metode penelitian yuridis normatif dengan pendekatan perundang-undangan (*statue approach*), pendekatan konseptual (*Conceptual Approach*), pendekatan kasus (*Case Approach*).

Hasil penelitian dapat disimpulkan bahwa kedudukan objek jaminan Hak Tanggungan dalam boedel pailit pada Putusan PN No. 12/Pdt.Sus-Gugatan Lain-lain/2020/PN Niaga.Jkt.Pst juncto Putusan MA No. 521 K/Pdt.Sus-Pailit/2021, berada diluar asset kekayaan (*boedel*) pailit sesuai ketentuan Pasal 21 UUHT yakni apabila pemberi Hak Tanggungan dinyatakan pailit, pemegang Hak Tanggungan tetap berwenang melakukan segala hak yang diperolehnya menurut ketentuan undang-undang ini, tanpa memperhatikan tentang kepailitan yang terjadi kepada debitur, namun tetap memperhatikan prosedur yang tertuang dalam Pasal 59 UU Kepailitan dan PKPU yakni berkaitan pelaksanaan hak dalam waktu 2 (dua) bulan setelah dinyatakan insolvensi. Pada penafsiran gramatikal ketentuan yang terdapat di peraturan perundang-undangan ditafsirkan dengan berpedoman pada arti perkataan menurut tata bahasa atau menurut kebiasaan. Penafsiran frasa melaksanakan haknya, menurut tata bahasa dalam penjelasan Pasal 59 ayat (1) Undang Undang Nomor 37 Tahun 2004 tentang Kepailitan dan PKPU bahwa yang dimaksud dengan frasa “harus mulai melaksanakan haknya” adalah kreditor mulai melaksanakan haknya tersebut dalam jangka waktu paling lambat 2 (dua bulan) setelah dimulainya keadaan insolvensi.

Kata Kunci: Hak Tanggungan, Kepailitan, *Boedel*.

SUMMARY

PARAMITA AYU WIDAYANTI, Master of Notary Study Program, Faculty of Law, University of Jenderal Soedirman Purwokerto, Application of Article 59 of Law Number 37 of 2004 Concerning Bankruptcy and Postponement of Debt Payment Obligations in the Execution of Mortgage Rights in Bankruptcy. (Study of PN Decision No.12/Pdt.Sus-Other Claims/2020/PN Niaga.Jkt.Pst junto MA Decision No.521 K/Pdt.Sus-Bankruptcy/2021). Advisory Commission Chairman: Prof. Tri Lisiani Prihatinah, S.H.,M.A.,Ph.D, members: Dr. Rahadi Wasi Bintoro, S.H.,M.H.

The Debtor's bankruptcy directly impacts the Mortgage Guarantee Object that has been guaranteed by the Debtor to the Mortgage Holder Creditor. The lawsuit at the Central Jakarta Commercial Court over the object of the Mortgage to be removed from the bankruptcy assets/assets (boedel) was decided to be rejected in Decision Number 12/Pdt. Sus-Other Claims/2020/PN Niaga Jkt.Pst. Furthermore, in the Ruling of the Supreme Court of the Republic of Indonesia Number 521 K/Pdt.Sus-Bankrupt/2021 the decision declared the object of collateral for mortgages to be removed from bankrupt assets/assets (boedel). Stating that the sale in public through an intermediary of the Jakarta II State Property and Auction Services Office of the Mortgage collateral object is legally valid. Research Methods: Normative juridical research methods with statutory law approach (statute approach), conceptual approach (Conceptual Approach), and case approach (Case Approach).

The results of the study can be concluded that the position of the mortgage object guarantee in the bankrupt boedel in the PN Decision No. 12/Pdt. Sus-Other Claims/2020/PN Niaga.Jkt.Pst junto MA Decision No. /2021, is outside the bankrupt assets (boedel) by the provisions of Article 21 UUHT namely if the mortgagee is declared bankrupt, the mortgage holder remains authorized to exercise all the rights he has obtained according to the provisions of this law, regardless of bankruptcy that occurs to the debtor, but still pay attention to the procedures set out in Article 59 of the Bankruptcy Law and PKPU regarding the exercise of rights within 2 (two) months after being declared unable to pay. To find grammatical provisions contained in statutory regulations which are limited by referring to the meaning of words according to grammar or according to custom. The interpretation of the phrase exercise their rights, according to the grammar in the elucidation of Article 59 paragraph (1) of Law Number 37 of 2004 concerning Bankruptcy and PKPU that what is meant by the phrase "must begin to exercise its rights" is that the creditor begins to exercise these rights within a period of no later than 2 (two months) after the start of the state of insolvency.

Keywords: Mortgage, Bankruptcy, Boedel.