

ABSTRAK

Dalam proses pemberesan harta pailit, adakalanya ditemui putusan hakim yang dianggap tidak berpihak pada keadilan bagi kreditur karena hak tanggungan yang dibuat antara debitur dan kreditur belum sempurna sehingga belum tercapainya hak tanggungan. Permasalahan yang dianalisis adalah mengenai pertimbangan Hakim dalam menentukan status kedudukan kreditur dengan hak tanggungan yang belum sempurna dan akibat hukum apabila proses pembebanan hak tanggungan antara debitur dengan kreditur belum sempurna dalam proses pemberesan harta pailit. Jenis penelitian yang digunakan dalam penelitian ini adalah jenis penelitian Yuridis Normatif yang bersifat kualitatif. Sumber data yang digunakan adalah data sekunder, data sekunder, dan data tersier. Cara pengumpulan data yaitu dengan cara studi kepustakaan dan studi putusan. Hasil dari penelitian ini menunjukkan bahwa pertimbangan Majelis Hakim dalam menentukan status kedudukan kreditur dengan hak tanggungan yang belum sempurna berdasarkan kasus pemberesan harta pailit PT Dhiva Inter Sarana dan Richard Setiawan, Majelis Hakim menegaskan bahwa kedudukan kreditur tersebut adalah kreditur konkuren. Majelis Hakim menentukan bahwa status kedudukan kreditur tersebut sebagai kreditur konkuren adalah bentuk akibat dari belum sempurna nya hak tanggungan dari perjanjian kredit antara PT Bank Maybank Indonesia, Tbk dengan Richard Setiawan (debitur pailit). Karena hak tanggungan nya belum sempurna, PT Bank Maybank Indonesia, Tbk sebagai kreditur tidak memperoleh kedudukan untuk didahulukan sehingga akibat hukum dari putusan hakim tersebut menjadikan pemberesan harta pailit dibagikan berdasarkan prinsip *pari passu pro rata parte*.

Kata kunci: Kepailitan, Harta Pailit, Hak Tanggungan, Belum Sempurna.

ABSTRACT

In the process of settling bankruptcy assets, there are sometimes judges who are considered not in favor of justice for creditors because the credit agreement between the debtor and creditor is not perfect so that the dependent rights are not achieved. The problem analyzed is regarding the judge's consideration in determining the status of the creditor's position with rudimentary dependent rights and the legal consequences if the process of encumbrance of dependent rights between the debtor and the creditor is not perfect in the process of settling bankruptcy assets. The problem analyzed is regarding the judge's consideration in determining the status of the creditor's position with rudimentary dependent rights and the legal consequences if the process of encumbrance of dependent rights between the debtor and the creditor is not perfect in the process of settling bankruptcy assets. The type of research used in this study is a type of Normative Juridical research that is qualitative. The data sources used are secondary data, secondary data, and tertiary data. The way to collect data is by means of literature studies and verdict studies. The results of this study showed that the consideration of the Panel of Judges in determining the status of the position of creditors with rudimentary dependent rights based on the bankruptcy property settlement case of PT Dhiva Inter Sarana and Richard Setiawan, the Panel of Judges affirmed that the position of the creditor was a concurrent creditor. The Panel of Judges determined that the status of the creditor's position as a concurrent creditor was a result of the rudimentary dependent rights of the credit agreement between PT Bank Maybank Indonesia, Tbk and Richard Setiawan (Bankruptcy debtor). Because its mortgage deed were not perfect, PT Bank Maybank Indonesia, Tbk as a creditor did not obtain a priority position so the Panel of Judges gave legal consequences that the settlement of bankruptcy assets was distributed based on the principle of pari passu pro rata parte to other concurrent creditors.

Keyword: *Bankruptcy, Bankruptcy Property, Mortgage Deed, Imperfect.*