

## ABSTRAK

Dalam penulisan tesis ini penulis melakukan penelitian berjudul “Kedudukan Harta Jaminan Yang Dibebani Hak Tanggungan Terhadap Debitor Pailit. Maksud dan tujuan penulisan untuk memberikan kepastian hukum kepada dunia usaha mengenai kontradiksi antara Undang-Undang Kepailitan dan Penundaan Kewajiban Pembayaran Utang Nomor 37 Tahun 2004 (Pasal 1 butir 7, pasal 21 dan pasal 59) dengan Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan (pasal21)

Dimana dalam kedua Undang-Undang tersebut terjadi ketidakselarasan dalam pengaturan Harta Jaminan Yang Dibebani Hak Tanggungan sehingga menimbulkan perbedaan pandangan antara Kreditor, Kurator dan Debitor Pailit dalam Pengurusan Harta Kepailitan dan mengakibatkan kasusnya masuk Pengadilan.

Penulis mengambil 3 (tiga) Pokok permasalahan yaitu: (1) Bagaimana kedudukan benda jaminan yang telah dibebani dengan hak tanggungan apabila debitur dinyatakan pailit? (2) Bagaimanakah Ketentuan Hukum tentang eksekusi terhadap Benda jaminan dalam hal debitur pailit. Dan (3) Bagaimana mekanisme eksekusi Harta Jaminan Yang Dibebani Hak Tanggungan.

Penelitian ini adalah jenis penelitian normative yaitu penelitian yang didasarkan pada data sekunder. Disamping itu penelitian ini menggunakan pendekatan perundang-undangan (statute approach).

Hasil penelitian dari tesis ini menunjukkan bahwa; (1) Apabila debitur dinyatakan pailit, maka kedudukan Harta Jaminan yang dibebani hak tanggungan baik yang telah ada pada saat pailit ditetapkan serta kekayaan debitur yang akan ada, menjadi harta pailit (Pasal 21 Undang-undang No. 37 Tahun 2004 Tentang KPKPU) kecuali harta debitur yang secara limitatif telah ditentukan dalam Pasal 22 Undang-undang No. 37 Tahun 2004 Tentang KPKPU tidak termasuk sebagai harta pailit.

(2) Ketentuan Hukum tentang eksekusi terhadap Harta jaminan dalam hal debitur cidera janji (wanprestasi) prosesnya dilakukan melalui parate eksekusi dan eksekusi berdasarkan kekuatan eksekutorial sertifikat hak tanggungan.

(3) Akan tetapi dalam hal debitur telah dinyatakan pailit, maka proses eksekusi dilakukan oleh kurator dibawah kuasa hakim pengawas, melalui tahapan proses hukum yaitu; pengamanan dan penyegelan harta pailit oleh kurator, pencocokan piutang, penawaran damai terhadap kreditor, dan terakhir pemberesan dan Pembagian hasil Eksekusi Harta Pailit.

**Kata Kunci : Hak Tanggungan, Eksekusi, Kepailitan, Harta Jaminan Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang, Undang-Undang Nomor 4 Tahun 1996 tentang Hak Tanggungan**

## ABSTRACT

*In the writing of this thesis the author conducted a study entitled "the position of the Property Collateral encumbered by rights of Dependants Against the debtor in bankruptcy. Goals and purpose of writing to give legal certainty to the business community about the contradictions between the Act of Bankruptcy and Suspension of payment Nomor 37 Tahun 2004 (Pasal 1 butir 7, pasal 21 dan pasal 59) and Act Number 4 Year 1996 about the rights of a dependent (pasal 21)*

*Where in the second act occurs in the setting of disharmony of property Collateral encumbered by the rights of a dependent view of the difference between giving rise to the creditor, the debtor was discharged as receiver and in the management of the Property and Bankruptcy resulted in the case entered the Court.*

*Authors take three (3) Principal issues, namely: (1) how to position objects guarantee that has been burdened with the rights of a dependent if the debtor is declared bankrupt? (2) how can the provisions of the law on the execution of warranty Objects in terms of the debtor in bankruptcy. And (3) How the mechanism of execution of property Collateral encumbered by rights of dependents.*

*This research is a kind of normative research i.e. research which is based on secondary data. In addition, this research uses an approach militate-invitation (statute approach).*

*Results of research of this thesis shows that; (1) if the debtor is declared bankrupt, then the position of the Property collateral encumbered right dependent either have existed at the time bankruptcy was set as well as the wealth of the debtor that will be there, become bankrupt property (article 21 of Act No. 37 Year 2004 About KPKPU) unless the debtor's property that is specified in article limitatif 22 Act No. 37 Year 2004 About KPKPU do not include as treasure in bankruptcy.*

*(2) the provisions of the law on the execution of the guarantee of property in the event of injury to the debtor's promise (tort) the process is done through the execution and execution parate based on strength of eksekutorial certificate of entitlement dependants.*

*(3) However, in the event that the debtor has been declared bankrupt, then execution is performed by the curator under the authority of the judge's supervisors, through the stages of the legal process, namely; securing and sealing of property in bankruptcy by the curator, matching accounts receivable, the offer of peace against the creditor, and last pemberesan and Division results of execution of property in bankruptcy.*

**Keywords: rights of a dependent, Execution, bankruptcy, Property Bail Act No. 37 Year 2004 about bankruptcy and Suspension of payment, Act No. 4 of the year 1996 on the rights of a dependent**