

ABSTRAK

ARIANSYAH KURNIAWAN (2410623052). “ASAS ITIKAD BAIK DALAM PENGAJUAN PERMOHONAN PAILIT OLEH KREDITOR SEPARATIS TERHADAP DEBITOR” (Studi Kasus Putusan Mahkamah Agung Nomor 1434 K/Pdt.Sus-Pailit/2020). Dibimbing oleh (Dr. Iwan Erar Joesoef, S.H., Sp.N., M.Kn.) sebagai Pembimbing Utama dan (Dr. Atik Winanti, S.H., M.H.) sebagai Pembimbing Pendamping.

Penelitian ini bertujuan menganalisis penerapan asas itikad baik dalam pengajuan permohonan pailit oleh kreditor separatis terhadap debitor pada Putusan Mahkamah Agung Nomor 1434 K/Pdt.Sus-Pailit/2020 serta menilai pertimbangan hakim dalam membedakan penggunaan hak yang sah dengan penyalahgunaan wewenang melalui perbandingan dengan Putusan Mahkamah Agung Nomor 704 K/Pdt.Sus-Pailit/2018 dan Nomor 1230 K/Pdt.Sus-Pailit/2019. Penelitian ini menggunakan metode normatif yuridis dengan pendekatan kasus dan pendekatan perundang-undangan. Bahan hukum terdiri atas bahan hukum primer, sekunder, dan tersier yang dianalisis secara kualitatif melalui penafsiran asas hukum, doktrin, serta ratio decidendi putusan. Hasil penelitian menunjukkan bahwa Mahkamah Agung menilai permohonan pailit oleh kreditor separatis dalam Putusan Nomor 1434 K/Pdt.Sus-Pailit/2020 tidak melanggar asas itikad baik karena diajukan untuk melindungi kepentingan hukum atas jaminan yang nilai ekonominya terancam. Sebaliknya, dalam Putusan Nomor 704 K/Pdt.Sus-Pailit/2018 dan Nomor 1230 K/Pdt.Sus-Pailit/2019 permohonan pailit ditolak karena dianggap tidak proporsional dan berpotensi menjadi tekanan terhadap debitor. Penelitian ini juga merumuskan model ideal permohonan pailit oleh kreditor separatis yang menekankan perlindungan nilai jaminan, tidak mengandung penyalahgunaan hak, serta didahului upaya penyelesaian alternatif. Model tersebut mencerminkan asas keseimbangan, kelayakan, dan tujuan hukum kepailitan dalam melindungi kepentingan kreditor maupun debitor secara adil dan proporsional dalam praktik peradilan kepailitan di Indonesia saat ini serta memberikan kontribusi bagi pengembangan.

Kata Kunci: itikad baik, kreditor separatis, kepailitan, proporsionalitas, penyalahgunaan hak.

ABSTRACT

ARIANSYAH KURNIAWAN (2410623052). *The Principle of Good Faith in Bankruptcy Petitions Filed by Secured Creditors Against Debtors (A Case Study of Supreme Court Decision No. 1434 K/Pdt.Sus-Pailit/2020). Supervised by Name of Main Supervisor (Dr. Iwan Erar Joesoef, S.H., Sp.N., M.Kn.) as Main Advisor and Name of Co-Supervisor (Dr. Atik Winanti, S.H., M.H.) as Co-Advisor.*

This study aims to analyze the application of the principle of good faith in bankruptcy petitions filed by separatist creditors against debtors in the Supreme Court Decision Number 1434 K/Pdt.Sus-Pailit/2020, as well as to examine the judges' considerations in distinguishing between legitimate use of rights and abuse of rights through comparisons with Supreme Court Decision Number 704 K/Pdt.Sus-Pailit/2018 and Number 1230 K/Pdt.Sus-Pailit/2019. This research employs a normative juridical method using case approach and statutory approach. The legal materials consist of primary, secondary, and tertiary sources, which are analyzed qualitatively through the interpretation of legal principles, doctrines, and the ratio decidendi of related court decisions.

The results show that the Supreme Court in Decision Number 1434 K/Pdt.Sus-Pailit/2020 considered the bankruptcy petition filed by the separatist creditor not to violate the principle of good faith because it was submitted to protect the creditor's legal interest in collateral whose economic value was under threat. In contrast, in Decision Number 704 K/Pdt.Sus-Pailit/2018 and Number 1230 K/Pdt.Sus-Pailit/2019, the petitions were rejected as they were deemed disproportionate and potentially used as pressure tactics against the debtor. Furthermore, this study proposes an ideal model of bankruptcy petitions by separatist creditors that emphasizes the protection of collateral value, avoids abuse of rights, and prioritizes alternative dispute resolution before filing for bankruptcy proceedings.

Keywords: *good faith, secured creditor, bankruptcy, proportionality, abuse of rights.*