

Perlindungan Hukum Terhadap Kreditor Preferen Dalam Proses Kepailitan

Ditinjau Berdasarkan Keadilan

ABSTRAK

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Kreditor preferen merupakan kreditor yang memiliki hak istimewa untuk mendapat pelunasan terlebih dahulu dari hasil pemberesan harta pailit berdasarkan sifat piutangnya sebagaimana diatur dalam Pasal 1134, 1139, dan 1149 KUH Perdata serta UU No. 37 Tahun 2004 tentang Kepailitan dan PKPU. Meskipun secara normatif kreditor preferen diberikan kedudukan istimewa, implementasi perlindungan hukumnya dalam praktik sering menimbulkan persoalan keadilan. Kasus PT Swissindo Marine menunjukkan bahwa kreditor preferen (KPP Pratama Jakarta Tanah Abang I) dengan tagihan pajak sebesar Rp 14.134.021.435 mengalami ketidakadilan di mana kurator tidak mengakui piutang sesuai jumlah yang diajukan, keberatan ditolak Pengadilan Niaga karena alasan prosedural, dan baru mendapat keadilan setelah Peninjauan Kembali ke Mahkamah Agung. Penelitian ini bertujuan untuk: (1) menganalisis alur proses pengajuan kepailitan menurut hukum positif Indonesia; (2) mengkaji pengaturan hukum dan bentuk perlindungan terhadap kreditor preferen dalam proses kepailitan; dan (3) mengevaluasi apakah perlindungan hukum kreditor preferen telah mencerminkan prinsip-prinsip keadilan. Penelitian ini menggunakan metod yuridis normatif dengan pendekatan peraturan perundang-undangan (statute approach) dan bersifat deskriptif-analitis. Bahan hukum primer meliputi KUH Perdata, UU No. 37 Tahun 2004, UU Ketenagakerjaan, UU Perpajakan, dan putusan pengadilan terkait. Analisis dilakukan secara kualitatif dengan menggunakan teori keadilan John Rawls yang terdiri dari Prinsip Kebebasan (First Principle of Justice) dan Prinsip Perbedaan (Difference Principle). Hasil penelitian menunjukkan bahwa: (1) Proses kepailitan di Indonesia diatur secara sistematis mulai dari pendaftaran, pemanggilan, persidangan, hingga putusan dengan batas waktu yang ketat; (2) Kreditor preferen dilindungi melalui hak pelunasan yang didahulukan, kewajiban kurator melakukan pemberesan tertib, hak ikut verifikasi piutang, hak mengajukan keberatan, dan pengawasan hakim pengawas; (3) Perlindungan hukum kreditor preferen belum sepenuhnya mencerminkan prinsip keadilan karena terdapat kesenjangan antara akses formal dan akses substantif, kebebasan prosedural hanya ada di atas kertas, tidak ada mekanisme check and balance efektif terhadap kurator, serta formalisme prosedural mengalahkan keadilan substantif. Dari perspektif Prinsip Perbedaan, meskipun prioritas kreditor preferen dapat dibenarkan secara

normatif, dalam praktik terdapat ketimpangan yang perlu dikaji ulang karena kreditor preferen justru tidak dilindungi, kurator memiliki kekuasaan berlebihan tanpa akuntabilitas, dan sistem gagal menyeimbangkan efisiensi prosedural dengan keadilan substantif. Penelitian ini merekomendasikan perlunya revisi UU No. 37 Tahun 2004 untuk memperkuat mekanisme verifikasi tagihan dengan standar objektif, menyediakan akses remedial yang lebih mudah, memberikan fleksibilitas prosedural untuk menjamin keadilan substantif, memperkuat fungsi pengawasan hakim pengawas, membuat pedoman teknis verifikasi tagihan yang transparan, serta meningkatkan standar profesionalisme dan kode etik kurator.

Kata Kunci: Perlindungan Hukum, Kepailitan, Kreditor preferen

Legal Protection Of Preferred Creditors In Bankruptcy Proceedings Reviewed Based On Justice

ABSTRACT

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Preferred creditors are creditors who have preferential rights to obtain payment first from the liquidation of bankruptcy assets based on the nature of their receivables as regulated in Articles 1134, 1139, and 1149 of the Civil Code and Law No. 37 of 2004 on Bankruptcy and Suspension of Payment Obligations. Although preferred creditors are normatively given special status, the implementation of their legal protection in practice often raises issues of justice. The PT Swissindo Marine case demonstrates that preferred creditors (KPP Pratama Jakarta Tanah Abang I) with tax claims of Rp 14,134,021,435 experienced injustice where the curator did not recognize receivables according to the proposed amount, objections were rejected by the Commercial Court on procedural grounds, and justice was only obtained after Review to the Supreme Court. This research aims to: (1) analyze the bankruptcy filing process according to Indonesian positive law; (2) examine legal regulations and forms of protection for preferred creditors in bankruptcy proceedings; and (3) evaluate whether the legal protection of preferred creditors reflects principles of justice. This research uses normative juridical methods with a statutory approach and is descriptive-analytical in nature. Primary legal materials include the Civil Code, Law No. 37 of 2004, Labor Law, Tax Law, and related court decisions. Analysis is conducted qualitatively using John Rawls' theory of justice consisting of the First Principle of Justice (Liberty Principle) and the Difference Principle. Research findings show that: (1) The bankruptcy process in Indonesia is systematically regulated from registration, summons, hearings, to decisions with strict time limits; (2) Preferred creditors are protected through priority payment rights, curator's obligation to conduct orderly liquidation, rights to participate in receivables verification, rights to file objections, and supervision by supervisory judges; (3) Legal protection of preferred creditors does not fully reflect principles of justice due to gaps between formal and substantive access, procedural freedom exists only on paper, lack of effective checks and balances mechanisms against curators, and procedural formalism overrides substantive justice. From the Difference Principle perspective, although priority for preferred creditors can be normatively justified, in practice there are inequalities that need review because preferred creditors are actually not protected, curators have excessive power without accountability, and the system fails to balance procedural efficiency with substantive justice. This research recommends revising Law No. 37 of 2004 to strengthen receivables verification mechanisms with objective standards, provide easier remedial access, give procedural flexibility to ensure substantive justice, strengthen supervisory judge functions, create transparent technical guidelines for receivables verification, and improve professional standards and curator code of ethics.

Keywords: Legal Protection, Bankruptcy, Preferred Creditors