

Going Concern dan Insolvency Terhadap Perkara Pailit Studi Putusan Nomor 1262 K/Pdt.Sus-Pailit/2022 dan Putusan Nomor 1434 K/Pdt.Sus.Pailit/2020 = The Going Concern and Insolvency in a Bankruptcy Cases Study Decision Number 1262 K/Pdt.Sus-Pailit/2022 and Decision Number 1434 K/Pdt.Sus.Pailit/2020

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Abstrak

Tulisan ini menganalisis bagaimana penerapan dari asas kelangsungan usaha yang lahir dari Undang-Undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (UUK-PKPU) sebagai sarana bagi debitor untuk melanjutkan usahanya. Tulisan ini juga membahas mengenai kondisi insolvensi pada debitor yang dapat dijadikan rujukan bagi majelis hakim sebelum menjatuhkan pailit. Tulisan disusun dengan menggunakan metode doktrinal. Lebih lanjut, penerapan dari going concern dalam UUK-PKPU memungkinkan usaha milik debitor tetap dijalankan meskipun telah dinyatakan pailit. Penerapan dari going concern dalam UUK-PKPU memberikan kewenangan bagi kurator atau kreditor melalui persetujuan panitia kreditor untuk melangsungkan usaha debitor. Sementara itu, kondisi debitor yang telah dinyatakan pailit berada di kondisi insolvensi, sehingga tidak mampu untuk membayarkan utang-utangnya kepada kreditor. Majelis hakim yang memutus perkara pailit masih terbatas terhadap pemenuhan syarat pailit dalam ketentuan UUK-PKPU. Tulisan ini akan membahas mengenai penerapan dari going concern dan kondisi insolvensi pada debitor yang telah dinyatakan pailit melalui perbandingan dengan Amerika Serikat. Penulis membandingkan dua putusan dalam menganalisis terkait going concern dan kondisi insolvensi yaitu Putusan Nomor 1262 K/Pdt.Sus Pailit/2022 dan Putusan Nomor 1434K/Pdt.Sus.Pailit/2020. Hasil dari penelitian ini menunjukkan bahwa kewenangan untuk going concern terhadap usaha debitor atas persetujuan dari panitia kreditor atau izin dari hakim pengawas berdasarkan UUK-PKPU. Akan tetapi, majelis hakim dapat mempertimbangkan mengenai parameter dari going concern sebelum menjatuhkan pailit. Sementara itu, insolvency test belum diatur di Indonesia, sehingga majelis hakim keliru untuk mempertimbangkan mengenai implementasi dari kondisi insolvensi.

.....This thesis analyzes the principle of going concern in Law Number 37 of 2004 on Bankruptcy and Suspension of Obligation for Payments of Debts (UUK-PKPU) is implemented as a means for debtors to continue their business. Furthermore, this thesis also discusses the debtor's insolvency condition which can be used as a reference for the panel of judges before bankruptcy. In this regard, this article is prepared using the doctrinal method. The application of going concern in UUK-PKPU allows the debtor's business to continue running even though the debtor has been declared bankrupt. However, the implementation of the principle going concern in the UUK PKPU gives the curator or creditor the authority through the approval of a creditor committee to carry on the debtor's business. Meanwhile, the debtors who have been declared bankrupt are in a state of insolvency so they are unable to pay their debts to creditors. The panel of judges who decide on bankruptcy cases are still limited in fulfilling the bankruptcy requirements in the UUK PKPU provisions. This article will discuss the application of going concern and insolvency conditions for debtors who have been declared bankrupt through comparison with the United States. This article compares two decisions in analyzing going concern and insolvency conditions in Decision Number 1262 K/Pdt.Sus-

Pailit/2022 and Decision Number 1434 K/Pdt.Sus.Pailit.2020. The research of this article shows that the authority to going concern for the debtor's business with approval from the creditor committee or permission from the supervisory judge through UUK-PKPU. However, the panel of judges can consider the parameters of the going concern before declaring bankruptcy. Meanwhile, the insolvency test has not been regulated in Indonesia, so the panel of judges was wrong to consider the implementation of insolvency.