

ABSTRAK

IMPLEMENTASI HUKUM TANGGUNG JAWAB BORGTOCHT DALAM KEPAILITAN (Studi Kasus Putusan Mahkamah Agung Nomor 42 PK/Pdt.Sus-Pailit/2022)

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PT Asiapac Pancamakmur Abadi (Debitur Pailit) telah dinyatakan pailit dengan segala akibat hukumnya. Selanjutnya, Kurator yang ditetapkan demi hukum berwenang mengambil alih pengurusan dan pemberesan harta (*boedel*) pailit sesuai ketentuan UU Kepailitan. Kurator melakukan pencocokan piutang dengan menyusun Daftar Pertelean Sementara dan memasukkan harta Penjamin (*Borgtocht*) dalam *boedel* pailit. *Borgtocht* keberatan atas tindakan Kurator dan mengajukan Gugatan Lain-Lain dan dilanjutkan dengan upaya hukum kasasi dan peninjauan Kembali. Penelitian ini akan mengkaji dan membahas tentang alasan Kurator memasukkan harta *Borgtocht* sebagai *boedel* pailit dan alasan hukum tanggung jawab *Borgtocht* atas utang Debitur Pailit.

Jenis penelitian ini adalah penelitian hukum normatif dengan tipe penelitian deskriptif. Pendekatan masalah menggunakan pendekatan studi kasus putusan yang telah berkekuatan hukum tetap. Data yang digunakan adalah data sekunder melalui studi dokumen (putusan) dan studi kepustakaan. Selanjutnya, data diolah melalui pemeriksaan data, *editing*, dan sistematisasi data, serta dianalisis secara kualitatif.

Hasil penelitian dan pembahasan menunjukkan bahwa alasan Kurator memasukkan harta *Borgtocht* sebagai *boedel* pailit telah sesuai dengan kewenangan yang ditentukan dalam UU Kepailitan dan dibenarkan oleh Majelis Hakim Agung Dalam perkara ini, *Borgtocht* merupakan pihak yang telah mengikatkan harta pribadinya dengan jaminan hak tanggungan atas pinjaman Debitur Pailit. Hal ini dibuktikan dengan *Borgtocht* telah membuat pernyataan secara otentik di muka Notaris. Akta *Borgtocht* menyatakan bersedia menanggung kewajiban Debitur Pailit. Alasan Kurator tersebut telah dibenarkan dalam Putusan Peninjauan Kembali yang menguatkan Putusan Kasasi untuk memasukkan harta *Borgtocht* ke dalam *boedel* pailit. Untuk itu, beralasan hukum bagi *Borgtocht* bertanggung jawab atas utang Debitur Pailit. Tanggung jawab tersebut menjadi melekat dan wajib dilaksanakan dalam hal Debitur Pailit berada dalam keadaan insolvensi sehingga sah dan beralasan hukum harta *Borgtocht* digunakan untuk melunasi utang-utang Debitur Pailit.

Kata Kunci: *Borgtocht, Gugatan Lain-Lain, Hukum Kepailitan.*

ABSTRACT**IMPLEMENTATION OF BORGTOCHT RESPONSIBILITIES
IN BANKRUPTCY LAW
(Study of Supreme Court Decision Number 42 PK/Pdt.Sus-Pailit/2022)****By****SALSABILA AULIA ASA PRAMESTI**

PT Asiapac Pancamakmur Abadi (Bankrupt Debtor) has been declared bankrupt with all the legal consequences. Furthermore, the Curator who is appointed by law has the authority to take over the management and settlement of the bankrupt's assets (boedel) in accordance with the provisions of the Bankruptcy Law. The curator reconciles the receivables by compiling a Temporary Disposal List and including the Guarantor's assets (Borgtocht) in the bankruptcy filing. Borgtocht objected to the Curator's actions and filed a Miscellaneous Lawsuit and continued with cassation and reconsideration. This research will examine and discuss the Curator's reasons for including Borgtocht's assets as bankruptcy debt and the legal reasons for Borgtocht's responsibility for the Bankrupt Debtor's debts.

This type of research is normative legal research with descriptive research type. The problem approach uses a case study approach to decisions that have permanent legal force. The data used is secondary data through document studies (decisions) and literature studies. Next, the data was processed through data checking, editing, and data systematization, and analyzed qualitatively.

The results of the research and discussion show that the Curator's reasons for including Borgtocht's assets as a bankrupt boedel are in accordance with the authority specified in the Bankruptcy Law and confirmed by the Supreme Court of Justice. In this case, Borgtocht is the party who has tied up his personal assets with collateral for mortgage rights on the Bankrupt Debtor's loans. This is proven by Borgtocht having made an authentic statement before a Notary. The Borgtocht Deed states that it is willing to assume the obligations of the Bankrupt Debtor. The Curator's reasons were confirmed in the Judicial Review Decision which upheld the Cassation Decision to include Borgtocht's assets in the bankruptcy court. For this reason, it is legal for Borgtocht to be responsible for the debts of the Bankrupt Debtor. This responsibility becomes inherent and must be carried out in the event that the Bankrupt Debtor is in a state of insolvency so that it is legal and legal for the Borgtocht assets to be used to pay off the Bankrupt Debtor's debts.

Keywords: Borgtocht, Miscellaneous Lawsuit, Bankruptcy Law.