

Penerapan Prinsip Fiduciary Duty oleh Direksi dalam mengurus suatu Perseroan Terbatas berdasarkan Undang-undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (Analisis Kasus: PT Sarinah (Persero) = The implementation of Fiduciary Duty Principle by the Board of Directors in Managing a Company under Law Number 40 of 2007 on Limited Liability Company (Case study of PT Sarinah (Persero))

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Abstrak

Direksi sebagai pengurus perseroan terbatas perlu memperhatikan doktrin-doktrin yang berlaku umum berkaitan dengan tanggung jawabnya mengurus perseroan terbatas, diantaranya doktrin fiduciary duty. Penelitian ini menggunakan metode kepustakaan dengan penelitian hukum normatif dan studi kasus PT Sarinah (Persero). Kesimpulan penelitian ini adalah bahwa Undang-undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas tidak secara tegas mencantumkan bahwa Direksi mengemban tugas-tugas sesuai doktrin fiduciary duty walaupun tercermin menerima doktrin fiduciary duty dalam pasal-pasal nya. Penerapan prinsip fiduciary duty oleh Direksi dalam mengelola PT berdasarkan Undang-undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas sangat bergantung pada Direksi dan pihak-pihak yang terkait dengan PT (stakeholders). Prinsip fiduciary duty menuntut adanya tanggung jawab atas tugas Direksi tersebut. Pada dasarnya, setiap perbuatan yang dilakukan oleh Direksi yang melampaui hak dan kewenangan yang diberikan PT berdasarkan prinsip fiduciary duty tidak mengikat PT. Oleh karena itu, terhadap anggota Direksi tersebut dapat dimintakan pertanggungjawaban hukum, baik secara pidana maupun perdata (criminal and civil liability) dan ia bertanggung jawab untuk membayar kerugian tersebut dari kekayaan pribadinya. Penerapan prinsip fiduciary duty oleh Direksi dalam mengurus PT dalam kasus PT Sarinah (Persero) telah melibatkan lembaga peradilan. Dalam perkara kasus PT Sarinah (Persero), penegakan hukum atas pelanggaran tugas yang dilakukan Direksi adalah melalui dakwaan melakukan tindak pidana korupsi walaupun sebenarnya dalam perkara tersebut terdapat semua unsur fiduciary duty.

.....The Board of Directors, as the board that manages the company, must have regard to general applicable doctrines in carrying out its responsibilities, among other things the doctrine of fiduciary duty. This research uses literature methodology, with normative legal research, and a case study of PT Sarinah (Persero). The conclusion of this research is that Law No. 40 of 2007 on Limited Liability Company does not expressly stipulate that the Board of Directors must meet its duties in accordance with the doctrine of fiduciary duty, even though, this doctrine seems to be embodied in its articles. The implementation of fiduciary duty principle by the Board of Directors in managing a company based on Law No. 40 of 2007 very much depends on the actions of the Board of Directors and relevant stakeholders. The fiduciary duty principle demands that the Board of Directors be responsible for its actions. In essence, every action of the Board of Directors that exceeds rights and authorities given by the company based on the principle of fiduciary duty does not bind the company. Consequently, members of Board of Directors can be liable for both criminal and civil liabilities and to pay this with their personal property. The application of fiduciary duty principle by the Board of Directors in managing the company in the case of PT Sarinah (Persero) has involved the judiciary. In the case of PT Sarinah (Persero), enforcement upon violation of duties by the Board of

Directors takes the form of prosecution of a crime of corruption even though, in fact, all elements of fiduciary duty exists in the case.