

Perbandingan perlindungan hukum bagi pemegang jaminan saham dalam perseroan terbatas tertutup berdasarkan gadai dan fidusia = Comparative legal protection for the holder of shares in the closed limited liability company as collateral based on pledge and fiduciary security

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Abstrak

Tesis ini dilatarbelakangi oleh maraknya pembuatan penjaminan atas saham dalam perseroan terbatas tertutup untuk jaminan suatu hutang berdasarkan lembaga jaminan gadai selama ini, sementara berdasarkan Undang-Undang Nomor 42 Tahun 1999 tentang Jaminan Fidusia, pembuatan jaminan atas saham dapat juga dilakukan dengan menggunakan lembaga jaminan fidusia. Oleh karenanya hal itu menimbulkan pertanyaan bagi penulis, mengapa para pihak pada umumnya, atau penerima jaminan atas saham pada khususnya, lebih memilih lembaga jaminan gadai daripada menggunakan lembaga jaminan fidusia. Apakah keunggulan penggunaan lembaga jaminan gadai dibandingkan lembaga jaminan fidusia. Apakah memang lembaga jaminan gadai memberikan perlindungan hukum yang lebih baik dibandingkan lembaga jaminan fidusia. Metode penelitian yang digunakan adalah yuridis normatif. Oleh karena itu, lebih lanjut tesis ini akan membahas mengenai tinjauan yuridis mengenai konsep saham, lembaga jaminan gadai dan lembaga jaminan fidusia, prosedur gadai saham dan fidusia atas saham serta perbandingan perlindungan hukum yang diberikan oleh ketentuan perundang-undangan bagi pemegang jaminan atas saham dalam perseroan terbatas tertutup berdasarkan konsep lembaga jaminan gadai dan lembaga jaminan fidusia. Hasil penelitian dalam tesis ini adalah bahwa lembaga jaminan gadai lebih baik digunakan untuk penjaminan atas saham dalam perseroan terbatas tertutup dibandingkan lembaga jaminan fidusia.

.....The background of this research is that nowadays there is so many granting of shares as debt collateral in the form of pledge of shares in the closed limited liability company, whereas based on Law No. 42 Year 1999 concerning Fiduciary Security, the granting of shares as debt collateral might be given in the form of fiduciary security. This fact, therefore, raise questions for the writer, why the concerned parties in general, or the grantee or the holder of the shares collateral in this matter, prefer to use security institution of pledge other than the security institution of fiduciary security. What the advantages of using the security institution of pledge other than the security institution of fiduciary security are. Whether security institution of pledge shall give legal protection better than the security institution of fiduciary security.

The research method for this thesis is judicial normative. Therefore, further, this thesis shall discuss the legal review regarding the legal concept of shares, security institution of pledge and security institution of fiduciary security, the procedure of security institution of pledge of shares and security institution of fiduciary security upon shares, and also the comparative legal protection given by the laws and regulations to the holder of collateral upon shares in the closed limited liability company based on the security concepts of pledge and fiduciary security. The research result is that the security institution of pledge of shares shall be better than the security institution of fiduciary security upon shares.