

Tanggung jawab pribadi pemegang saham terhadap kerugian suatu perseroan terbatas analisis putusan Pengadilan Negeri Bekasi nomor 266/ PDT G/ 2007 /PN ..BKS = Shareholder s personal liability for corporate indebtedness case analysis of district court of Bekasi judicial decision number 266/ PDT. G/ 2007/ PN. BKS / Iwan Andris Pratama

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Abstrak

[Skripsi ini membahas tentang bagaimana pengadilan menentukan pemegang saham melakukan perbuatan melawan hukum yang merugikan Perseroan Terbatas sesuai dengan Pasal 3 ayat (2) huruf b Undang-undang Perseroan Terbatas dan apakah pertimbangan hukum majelis hakim yang menyatakan bahwa Kwang Yang Motor Co. Limited selaku pemegang saham ikut bertanggung jawab atas kerugian yang dialami PT Kymco Lippo Motor Indonesia sudah tepat menurut Undang-undang Perseroan Terbatas. Penelitian ini menggunakan metode penelitian yuridis normatif dan perbandingan hukum. Hasil penelitian ini menunjukkan pengadilan di Indonesia dalam menentukan pemegang saham melakukan perbuatan melawan hukum yang merugikan Perseroan Terbatas kerap hanya berpatokan pada pembuktian unsur perbuatan melawan hukum secara umum sebagaimana diatur dalam Pasal 1365 KUHP, yaitu adanya perbuatan melanggar hukum, kesalahan dari tergugat, kerugian yang dialami penggugat dan kausalitas antara kerugian dan perbuatan tergugat. Pengadilan belum mempertimbangkan unsur iktikad buruk dan penyalahgunaan Perseroan Terbatas oleh pemegang saham untuk kepentingan pribadi sebagaimana terdapat dalam Pasal 3 ayat (2) huruf b Undang-undang Perseroan Terbatas. Selanjutnya, pertimbangan Majelis Hakim yang menyatakan Kwang Yang Motor Co. Limited selaku pemegang saham ikut bertanggung jawab terhadap kerugian yang dialami PT Kymco Lippo Motor Indonesia sudah tepat, baik menurut Undang-undang Perseroan Terbatas maupun Anggaran Dasar PT Kymco Lippo Motor Indonesia. Hal ini karena dua hal, yaitu Presiden Direktur melanggar Pasal 11 ayat (6) Anggaran Dasar PT Kymco Lippo Motor Indonesia karena tidak meminta persetujuan dari Direksi perwakilan PT Metropolitan Tirtaperdana dalam tiap transaksi yang berhubungan dengan pengeluaran dana PT Kymco Lippo Motor Indonesia dan Presiden Direktur melanggar Pasal 99 ayat (1) Undang-undang Perseroan Terbatas karena melakukan transaksi yang mengandung benturan kepentingan yang memberikan keuntungan pribadi pada Kwang Yang Motor Co. Limited dan bukan untuk kepentingan PT Kymco Lippo Motor Indonesia.; This thesis discusses on how Indonesian Court determines that shareholder commits a tort which is written in Article 3 (2) letter b of Indonesian Corporation Law and whether the court's judgement to hold Kwang Yang Motor Co. Limited,

the shareholder of PT Kymco Lippo Motor Indonesia personally liable, had been a correct decision. This research is conducted by two approaches: literature and comparative approach. The result of the thesis shows that Indonesian court in holding the shareholder liability for the corporation's indebtedness is merely based on the elements of Article 1365 of Indonesian Civil Code, i.e. an improper act, a fault by the defendant, a plaintiff's losses, and a causality between the losses and the defendant's fault. The shareholder's bad faith and its abuse of power to gain personal benefit governed by Article 3 (2) letter b of Indonesian Corporation Law have not been considered by the court. Furthermore, the court has correctly imposed Kwang Yang Motor Co. Limited's personally liable for the corporation's indebtedness, based on both Indonesian Corporation Law and the Article of Association of PT Kymco Lippo Motor Indonesia. The President Director of PT Kymco Lippo Motor Indonesia has violated both Article 11 (6) of PT Kymco Lippo Motor Indonesia Bylaws because he did not obtain the approval from PT Metropolitan Tirtaperdana's representative Director for corporation's expenditure and Article 99 (1) of Indonesian Corporation Law since he involves in some conflicting transactions providing benefit for Kwang Yang Motor Co. Limited, but not for the benefit of PT Kymco Lippo Motor Indonesia., This thesis discusses on how Indonesian Court determines that shareholder

commits a tort which is written in Article 3 (2) letter b of Indonesian Corporation Law and whether the court's judgement to hold Kwang Yang Motor Co. Limited, the shareholder of PT Kymco Lippo Motor Indonesia personally liable, had been a correct decision. This research is conducted by two approaches: literature and comparative approach. The result of the thesis shows that Indonesian court in holding the shareholder liability for the corporation's indebtedness is merely based on the elements of Article 1365 of Indonesian Civil Code, i.e. an improper act, a fault by the defendant, a plaintiff's losses, and a causality between the losses and the defendant's fault. The shareholder's bad faith and its abuse of power to gain personal benefit governed by Article 3 (2) letter b of Indonesian Corporation Law have not been considered by the court. Furthermore, the court has correctly imposed Kwang Yang Motor Co. Limited's personally liable for the corporation's indebtedness, based on both Indonesian Corporation Law and the Article of Association of PT Kymco Lippo Motor Indonesia. The President Director of PT Kymco Lippo Motor Indonesia has violated both Article 11 (6) of PT Kymco Lippo Motor Indonesia Bylaws because he did not obtain the approval from PT Metropolitan Tirtaperdana's representative Director for corporation's expenditure and Article 99 (1) of Indonesian Corporation Law since he involves in some conflicting transactions providing benefit for Kwang Yang Motor Co. Limited, but not for the benefit of PT Kymco Lippo Motor Indonesia.]