

Perlindungan hak pemegang saham publik dalam pengambilalihan bank gagal yang berstatus terbuka oleh lembaga penjamin simpanan =  
Protection of shareholder rights in the takeover process of open status failing bank performed by the deposit insurance corporation

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Abstrak

[Tesis ini membahas mengenai perlindungan hak pemegang saham publik dalam pengambilalihan Bank Gagal yang berstatus terbuka oleh Lembaga Penjamin Simpanan. Permasalahan yang diangkat dalam penulisan ini ketika Lembaga Penjamin Simpanan memiliki hak untuk mengambil alih segala hak, wewenang, kepemilikan, kepengurusan dari Bank Gagal bermaksud untuk menjual saham pemegang saham publik. Penulisan tesis ini menggunakan metode kepustakaan dengan data sekunder sebagai sumber datanya. Pengambilalihan Bank Gagal oleh Lembaga Penjamin Simpanan berdasarkan penyerahan hak kepemilikan melalui RUPS oleh para pemegang saham yang menyerahkan, serta Penyertaan Modal Sementara yang kemudian dikonversi menjadi saham. Kedua mekanisme tersebut menjadikan Lembaga Penjamin Simpanan sebagai pemegang saham mayoritas, namun tidak dapat menghilangkan pengakuan terhadap kepemilikan pemegang saham publik. Lembaga Penjamin Simpanan tidak memiliki hak untuk menjual saham pemegang saham publik yang tidak dikuasai oleh Lembaga Penjamin Simpanan apabila tidak diserahkan oleh pemilik hak sebagaimana dimaksud dalam teori property rule. Pengambilalihan yang dilakukan oleh Lembaga Penjamin Simpanan bukan bertujuan untuk menguasai Bank, namun untuk melaksanakan perintah Undang-Undang. Ketentuan take over, mewajibkan untuk dilakukan tender offer terhadap sisa saham. Peraturan No. IX.H.1. mengenai ketentuan tender sukarela mengecualikan tender offer terhadap pengambilalihan yang dilakukan berdasarkan perintah Undang-Undang. Ketentuan ini membuktikan pemegang saham publik tetap memiliki hak terhadap saham yang dimilikinya. Mengingat lamanya waktu untuk melakukan revisi terhadap Undang-Undang, maka Lembaga Penjamin Simpanan dapat meminta dilakukan uji materiil ke Mahkamah Konstitusi untuk meminta penjelasan terhadap siapa yang dimaksud dengan pemegang saham dan apa yang dimaksud dengan seluruh saham.]; This thesis describes the protection of public shareholder rights in the takeover process of open-status Failing Bank performed by the Deposit Insurance Corporation. The main focus of this discussion is on the event the Deposit Insurance Corporation posits that it reserves the right to take over all rights, authority, title of ownership and management of the Failing Bank, and generalizes that the liquidation of the stocks includes those belonging to public shareholders. This thesis applies library research method using secondary data as data sources. The handling process of Failing Bank by Deposit Insurance Corporation is performed by surrendering of rights and powers of General Shareholders Meeting in part of the Failing Bank, and provision of temporary capital placement in part of the Deposit Insurance Corporation which is further conversed into shares. The dual mechanisms deems

Deposit Insurance Corporation as the major shareholder, however still withstand recognition to the title of ownership of public shareholders. Deposit Insurance Corporation does not reserve the right to sell shares belonging to public shareholders that are not surrendered to the Deposit Insurance Corporation, as described in the theory of Property Rule. The takeover is performed by Deposit Insurance Corporation not for the purpose of acquiring the Bank, but as execution of the Law. The laws governing performance of takeover stipulates that the remaining shares must be disclosed in form of bidding offer or tender offer. Law number IX.H.1. governing voluntary tender excludes tender offer in the event of takeover prescribed by Law. This regulation substantiates that public shareholders reserves rights over their shares. Considering the time taken to conduct revision on the said law, Deposit Insurance Corporation may appeal for judicial review in the Constitutional Court to gain verification as to the reference for shareholder and as to the reference of shares as cited in the law.;

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