

Kedudukan trustee sebagai pihak yang mengajukan permohonan penundaan kewajiban pembayaran utang (PKPU) kepada debitur sebagai pihak penerbit obligasi yang berbasis ekuitas (Equity Linked Bonds) : tinjauan Putusan Nomor 53/Pdt.Sus PKPU/2013/PN.Niaga.Jkt.Pst = The position of trustee for the asking party request suspension of payment (PKPU) to debtor in the bond issuer based equity (Equity Linked Bonds) : review decision Number 53/Pdt.Sus PKPU/2013/PN.Niaga.Jkt.Pst

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Abstrak

Tesis ini membahas mengenai konsep dan kedudukan Trust dalam sistem hukum Common Law dan Civil Law, serta kedudukan Trustee sebagai Pihak yang Mengajukan Permohonan Penundaan Kewajiban Pembayaran Utang (PKPU). Penelitian ini merupakan suatu penelitian yang berbentuk yuridis normatif yang bersifat deskriptif analisis. Hasil penelitian dalam penulisan ini yaitu konsep Trust adalah pranata yang unik dalam sistem hukum Common Law karena keberadaannya yang mengenal kepemilikan ganda (dual ownership) yaitu legal ownership dan beneficiary ownership, dimana pranata tersebut tumbuh dan berkembang di Inggris dan negara Commonwealth lainnya. Meskipun awalnya konsep Trust dan equity merupakan kebiasaan yang berlaku di masyarakat, saat ini telah ada undang-undang yang secara khusus mengatur mengenai Trust yaitu: Trustee Act 1925, Trustee Investments Act 1961, Recognition of Trusts Act 1987, Financial Services and Markets Act 2000, Trustee Act 2000. Lain halnya dengan di negara Civil Law yang tidak mengenal sistem kepemilikan ganda. Seperti di Indonesia, meskipun pranata mirip Trust telah dikenal dalam bidang hukum bisnis, seperti likuidator dalam kepailitan, wali amant dalam pasar modal, dan direksi perseroan dalam hukum perusahaan, akan tetapi belum ada undang-undang yang khusus mengatur mengenai Trust. Kedudukan Bank Trustee dalam mengajukan Permohonan Penundaan kewajiban Pembayaran Utang (PKPU) adalah sama dengan pemohon lainnya yaitu orang atau badan hukum, sepanjang syarat pendirian kegiatan usahanya sesuai dengan Peraturan Bank Indonesia No. 14/17/PBI/2012, tentang kegiatan usaha bank berupa penitipan dengan pengelolaan (Trust). Hasil penelitian menyarankan perlunya pemerintah membuat regulasi yang dapat menjamin kepastian dan kemudahan berinvestasi, termasuk membuat Undang-undang yang secara khusus mengatur tentang Trust, bukan hanya di bidang perbankan, tetapi juga di bidang lainnya.

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This thesis focuses on discussing the concept and the position of Trust in the legal system of Common Law and Civil Law, and also the position of the Trustee as the parties applying for Suspension of Payment (PKPU). This research is a study in the normative form of juridical normative with descriptive analysis. The results of this research shows that the concept of the Trust is a unique institution in the legal system of Common Law because of its existence which can acknowledge about dual ownership, which are legal ownership and beneficiary ownership, where such institutions grow and thrive in England and other Commonwealth countries. Although the concept of trust and equity was initially the habit of society, there have been legislations specifically governing the Trust today, namely: Trustee Act 1925, the Trustee

Investments Act 1961, Recognition of Trusts Act 1987, the Financial Services and Markets Act 2000, Trustee Act 2000. It is different from the Civil Law country which does not acknowledge the dual ownership system. As in Indonesia, although institutions similar to Trust have been known in the area of business law, liquidator in bankruptcy, trustee in the capital markets, and the directors of the company in corporate law, but there is no specific legislation which govern about the Trust. The position of the Bank Trustee in applying for Suspension of Payment (PKPU) is the same as the other applicants which are the person or legal entities, as long as the requirement of the establishment of business activities based on regulation Bank Indonesia Number 14/17/PBI/2012, about the bank's business activities in the form of deposit with certain management (Trust). The researcher suggests that government needs to make regulations to ensure the certainty and the ease of investing, including making regulations specifically regulating the Trust, not only in banking, but also in other sectors.