

Analisis hukum atas pelaksanaan suatu business transfer oleh perseroan terbatas = Legal analysis on business transfer by a limited liability company

Indra Prasetya, author

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Abstrak

[ABSTRAK

Business Transfer adalah salah satu bentuk corporate action yang banyak terjadi di antara kalangan pengusaha di dalam prakteknya dewasa ini. Ketentuan Undang-undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas (Undang-undang Perseroan Terbatas) tidak mengatur secara tegas mengenai Business Transfer, namun mengatur mengenai pemisahan yang memiliki kesamaan unsur-unsur dengan suatu Business Transfer. Walaupun demikian, pengaturan mengenai pemisahan di dalam Undang-undang ini masih sangat terbatas, dan belum ada suatu peraturan pelaksanaan terkait pelaksanaan pemisahan oleh suatu Perseroan Terbatas. Penelitian hukum ini mengemukakan dan berusaha meneliti tiga pokok permasalahan, yakni: (i) apakah pelaksanaan Business Transfer dapat dianggap sebagai suatu pemisahan menurut Undang-undang Perseroan Terbatas; (ii) Bagaimanakah tata cara pelaksanaan pemisahan menurut Undang-undang Perseroan Terbatas; dan (iii) apakah pelaksanaan Business Transfer oleh suatu perseroan terbatas, yakni PT. SSAT telah memenuhi ketentuan mengenai pemisahan yang diatur di dalam Undang-undang Perseroan Terbatas. Dengan menggunakan metode penelitian normatif untuk menjawab pokok-pokok permasalahan diatas, dapat diketahui bahwa pada hakikatnya pelaksanaan suatu Business Transfer dapat dipandang sebagai pemisahan. Dengan mendasarkan pada Undang-undang Perseroan Terbatas, pelaksanaan suatu pemisahan harus memenuhi ketentuan Pasal 127 iuncto Pasal 87 ayat (1) mengenai pengambilan keputusan secara musyawarah mufakat dan Pasal 89 Undang-undang Perseroan Terbatas ketentuan mengenai kuorum Rapat Umum Pemegang Saham. Sedangkan berdasarkan penelitian empiris yang dilakukan terhadap Business Transfer yang dilakukan oleh PT. SSAT, dicapai kesimpulan bahwa pelaksanaannya belum memenuhi syarat-syarat prosedural dari pemisahan yang diatur di dalam Undang-undang Perseroan Terbatas. Ketiadaan pengaturan yang menyeluruh mengenai pemisahan di dalam prakteknya dapat menimbulkan kerancuan dan potensi diabaikannya kepentingan pihak ketiga.

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ABSTRACT

Business Transfer is one of corporate action which often occurred in the midst of entrepreneurs as of late. The provisions under Law Number 40 Year 2007 on Limited Liability Company (Company Law) does not regulate expressly about business transfer, only spin-off which may seem to have similar traits to a business transfer. However, provisions related to spin-off under the Company Law is also still very limited, and there has been no implementing regulation on spin-off issued by the Government. This legal research focuses

on three issues, which are: (i) whether a business transfer can be deemed as a spin-off under the Company Law' (ii) how is a spin-off canied out under the Company Law1' and (iii) whether the performance of a business transfer by a company named PT. SSAT has been carried out in accordance to the provisions concerning spin-off under the Company Law. Using a normative method to obtain answers to the abovementioned issues, it is found that principally, a business transfer can be deemed as a spin-off. Based on the Company Law, the canying out of a spin-off must be made in accordance to Article 127 concurrently with Article 87 Paragraph (1) concerning the passing of a resolution based on consensus and Article 89 of the Company Law concerning the quorum of a General Meeting of Shareholders. On the other hand, an empirical research on the carrying out of a business transfer by PT. SSAT proves that its performance was not made in accordance to the procedural requirements of a spin-off under the Company Law. The absence of a thorough regulation on spin-off in its practice may very well cause ambiguity and potentially cause uncertainty towards the interests of third parties.;Business Transfer is one of corporate action which often occurred in the midst of entrepreneurs as of late. The provisions under Law Number 40 Year 2007 on Limited Liability Company (Company Law) does not regulate expressly about business transfer, only spin-off which may seem to have similar traits to a business transfer. However, provisions related to spin-off under the Company Law is also still very limited, and there has been no implementing regulation on spin-off issued by the Government. This legal research focuses on three issues, which are: (i) whether a business transfer can be deemed as a spin-off under the Company Law' (ii) how is a spin-off canied out under the Company Law1' and (iii) whether the performance of a business transfer by a company named PT. SSAT has been carried out in accordance to the provisions concerning spin-off under the Company Law. Using a normative method to obtain answers to the abovementioned issues, it is found that principally, a business transfer can be deemed as a spin-off. Based on the Company Law, the canying out of a spin-off must be made in accordance to Article 127 concurrently with Article 87 Paragraph (1) concerning the passing of a resolution based on consensus and Article 89 of the Company Law concerning the quorum of a General Meeting of Shareholders. On the other hand, an empirical research on the carrying out of a business transfer by PT. SSAT proves that its performance was not made in accordance to the procedural requirements of a spin-off under the Company Law. The absence of a thorough regulation on spin-off in its practice may very well cause ambiguity and potentially cause uncertainty towards the interests of third parties., Business Transfer is one of corporate action which often occurred in the midst of entrepreneurs as of late. The provisions under Law Number 40 Year 2007 on Limited Liability Company (Company Law) does not regulate expressly about business transfer, only spin-off which may seem to have similar traits to a business transfer. However, provisions related to spin-off under the Company Law is also still very limited, and there has been no implementing regulation on spin-off issued by the Government. This legal research focuses on three issues, which are: (i) whether a business transfer can be deemed as a spin-off under the Company Law' (ii) how is a spin-off canied out under the Company Law1' and (iii)

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