

Tanggung jawab negara dalam kasus kepailitan BUMN persero berdasarkan three keywords theory = State responsibility on state owned enterprise BUMN persero bankruptcy case based on three keywords theory

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Abstrak

[ABSTRAK

Penelitian tesis ini ditujukan untuk memahami batasan tanggung jawab Negara sebagai badan hukum publik sekaligus sebagai badan hukum privat, dalam menjalankan aktivitasnya. Ketika Negara melakukan penyertaan Modal dalam suatu BUMN Persero dalam bentuk kepemilikan saham, baik seluruhnya atau sebagian, maka pada prinsipnya posisi Negara adalah sebagai pemegang saham. Dalam penelitian ini dibahas mengenai bagaimana pembatasan tanggung jawab Negara dalam kasus kepailitan BUMN Persero, dikaitkan dengan Three Keywords Theory, dan upaya apa saja yang dapat dilakukan oleh Negara terhadap potensi kerugian yang dianggap sebagai risiko keuangan negara atau risiko fiskal dalam suatu kepailitan BUMN Persero. Metode penelitian ini adalah yuridis normatif dengan analisis data secara kualitatif.

Hasil penelitian menunjukkan terhadap kekayaan Negara yang dipisahkan pada perusahaan Negara (BUMN Persero), maka segala bentuk penguasaan, risiko, dan tata kelola beralih kepada BUMN Persero.

Konsekuensi hukumnya, terhadap risiko bisnis yang bakal muncul dalam pengelolaan BUMN Persero pada prinsipnya merupakan risiko bisnis, dan bukan risiko keuangan negara.

Dari penelitian ini dapat diambil kesimpulan tanggung jawab Negara dalam kasus kepailitan BUMN Persero, apabila ditinjau berdasarkan Three Keywords Theory dan teori pendukung lainnya, hanya sebatas pada jumlah kekayaan negara yang sudah dipisahkan dari APBN dan disetor sebagai modal BUMN Persero. Sebagai langkah antisipasi adanya potensi kerugian terhadap risiko bisnis, maka dalam kedudukannya sebagai pemegang saham, Negara dapat mengawasi dan turut serta berpartisipasi dalam penerapan prinsip good corporate governance (GCG) dalam BUMN Persero. Sebagai bentuk perlindungan hukum terhadap pemegang saham dalam suatu perseroan, berdasarkan pengelolaan prinsip perusahaan yang sehat, maka Negara dapat meminta pertanggungjawaban hukum kepada Direksi atau bahkan melakukan upaya hukum melalui lembaga peradilan.

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ABSTRACT

This thesis survey is aimed to understand the limitation of responsibility of a State as public legal entity as well as private legal entity in running it's activities. Whenever a State conduct equity capital in a BUMN Persero in the form of shares ownership, either partially or entirely ownwership, therefore in this case the country functions as share holder. Matters analyzed in this research is how is the responsibility limitation of a country State-Owned Enterprise (BUMN Persero) bankruptcy case related to Three Keywords Theory. And what efforts can be conducted over loss potential which is recognized as state financial risks or fiscal risks in BUMN Persero bankruptcy. The methode of this research is juridical normative with qualitative

analysis.

The result of this research shows that the assets separated from State-Owned Enterprise (BUMN Persero), every occurring responsibility, risks and management shifted to BUMN Persero. And the legal consequences against business risks principally a private risks, and will not be state financial risks.

Overviewed from the above mentioned Three Keywords Theory and other supporting theories, the responsibility of a country in State-Owned Enterprise (BUMN Persero) bankruptcy case, only on the side of the sum of state assets that is already separated from National APBN (National Budget) and being cashed as BUMN Persero capital. In anticipating the possibility of being lost by the private risks, the government will also watch and evaluate and involves in implementing good corporate government in BUMN Persero. As legal responsibility, the State can request the boards of directors the report of responsibility. And furthermore, the State (Government) can imply Court legal efforts.

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